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Title 3—

The President

Executive Order 13345 of July 8, 2004

Assigning Foreign Affairs Functions and Implementing the Enterprise for the Americas Initiative and the Tropical Forest Conservation Act

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Agricultural Trade Development and Assistance Act of 1954 (ATDA Act), as amended, the Foreign Assistance Act of 1961 (Foreign Assistance Act), as amended, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Functions to be Performed by the Secretary of the Treasury.* (a) The Secretary of the Treasury is hereby designated to perform the functions of the President under the following provisions of law:

(1) sections 603(b), 604(a), and 611 of the ATDA Act (7 U.S.C. 1738b(b), 1738c(a), and 1738j); and

(2) sections 703, 704(a), 805(b), 806(a), 807(a), 808(a), and 812 of the Foreign Assistance Act (22 U.S.C. 2430b, 2430c(a), 2431c(b), 2431d(a), 2431e(a), 2431f(a), and 2431j).

(b) The Secretary of the Treasury shall:

(1)(A) make determinations under the provisions of sections 703(b) and 805(b) of the Foreign Assistance Act in accordance with any recommendations received from the Secretary of State with respect to subsections 703(a)(1)–703(a)(4) and the corresponding recommendations under section 805(a)(1) of that Act; and

(B) make determinations under the provisions of section 805(b) of the Foreign Assistance Act in accordance with any recommendations from the Administrator of the United States Agency for International Development (USAID) with respect to section 803(5)(B) of that Act;

(2) exercise the functions under the provisions listed in section 1(a)(1) of this order in consultation with the Secretary of State and with the National Advisory Council on International Monetary and Financial Policies (Council) established by Executive Order 11269 of February 14, 1966;

(3) consult, as appropriate, with the Secretary of State, the Administrator of USAID, the Council, the Secretary of Agriculture, the Director of the Office of Management and Budget, the Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental Quality, the Director of the Office of National Drug Control Policy, and the Chairman of the Council of Economic Advisers in the performance of all other functions under the provisions listed in section 1(a) of this order.

Sec. 2. *Functions to be Performed by the Secretary of State.* (a) The Secretary of State is hereby designated to perform the functions of the President under sections 607 and 614 of the ATDA Act (7 U.S.C. 1738f and 1738m) and section 813(a) of the Foreign Assistance Act (22 U.S.C. 2431k).

(b) The Secretary of State shall consult, as appropriate, with the Secretary of the Treasury and the Administrator of USAID, in the performance of functions under the provisions listed in subsection 2(a) of this order.

(c) The Secretary of State shall consult, as appropriate, in the performance of functions under section 607 of the ATDA Act, with the Secretary of Agriculture, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental

Quality, and the heads of such other executive departments and agencies as the Secretary of State determines appropriate.

(d) The Secretary of State is hereby designated to receive advice or supplemental views on the President's behalf consistent with the following provisions of law:

(1) section 610(c)(1) of the ATDA Act (7 U.S.C. 1738i(c)(1)); and

(2) section 813(b) of the Foreign Assistance Act (22 U.S.C. 2431k).

Sec. 3. *Recommendation by USAID.* The Administrator of USAID shall make recommendations with respect to 803(5)(B) of the Foreign Assistance Act (22 U.S.C. 2431a(5)(B), in cooperation with the Secretary of Agriculture and the Secretary of State.

Sec. 4. *Government Appointees to the Enterprise for the Americas Board.* (a) Pursuant to section 610(b)(1)(A) of the ATDA Act (7 U.S.C. 1738i(b)(1)(A) and section 811(b)(1)(A) and (b)(2) of the Foreign Assistance Act (22 U.S.C. 2431i(b)(1)(A) and (b)(2)), the following officers or employees of the United States are hereby designated to serve as representatives on the Enterprise for the Americas Board:

(i) the designee of the Secretary of State, who shall be the chairperson of the Board;

(ii) the designee of the Secretary of the Treasury;

(iii) two designees of the Secretary of Agriculture, one of whom shall be an officer or employee of the United States Forest Service International Programs Office with experience in international forestry matters, and the other shall be an officer or employee of the Foreign Agricultural Service;

(iv) the designee of the Secretary of the Interior;

(v) the designee of the Administrator of the Environmental Protection Agency;

(vi) the designee of the Administrator of USAID, who shall be the vice chairperson of the Board; and

(vii) the designee of the Chairman of the Council on Environmental Quality.

(b) The Board shall permit the following officers or employees of the United States to attend and observe a Board meeting:

(i) a designee of the Secretary of Commerce; and

(ii) a designee of the head of any executive department or agency, if the meeting will relate to matters relevant to the activities of such executive department or agency.

(c) An officer of the United States listed in subsections 4(a) and 4(b) shall make a designation for purposes of those subsections in writing submitted to the Secretary of State and shall change any such designation in the same manner. The authority to make such a designation may not be delegated.

(d) The Secretary of State may, after consultation with the officers of the United States listed in subsection 4(b) and the Attorney General, as appropriate, establish such procedures as may be necessary to provide for the governance and administration of the Board.

Sec. 5. *Guidance for the Performance of Functions.* In performing functions under this order, officers of the United States:

(a) shall ensure that all actions taken by them are consistent with the President's constitutional authority to (i) conduct the foreign affairs of the United States, including the commencement, conduct, and termination of negotiations with foreign countries and international organizations, (ii) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties, (iii) recommend for congressional consideration such measures as the President may judge necessary or expedient, and (iv) supervise the unitary executive branch;

(b) may further assign functions assigned by this order to officers of any department or agency within the executive branch to the extent permitted by law except as provided in subsection 4(c) of this order and such further assignment shall be published in the **Federal Register**; and

(c) shall consult the Attorney General as appropriate in implementing this section.

Sec. 6. *Revocation of Executive Orders.* The following Executive Orders are hereby revoked:

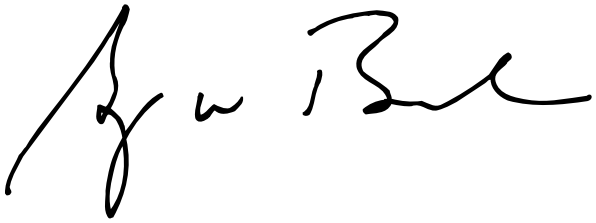
(a) Executive Order 12757 of March 19, 1991;

(b) Executive Order 12823 of December 3, 1992;

(c) Executive Order 13028 of December 3, 1996; and

(d) Executive Order 13131 of July 22, 1999.

Sec. 7. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.



THE WHITE HOUSE,
July 8, 2004.

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Presidential Documents

Executive Order 13346 of July 8, 2004

Delegation of Certain Waiver, Determination, Certification, Recommendation, and Reporting Functions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. The functions of the President in making certain waivers, determinations, certifications, recommendations, and reports to the Congress are assigned as follows:

(a) The Secretary of State is authorized to make waivers, determinations, certifications, and recommendations, and to undertake related reporting, as described in:

(i) Section 402(d)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2432(d)(1)), with respect to the extension of Jackson-Vanik waivers;

(ii) Section 609 of Division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277) as continued in effect by section 612 of Division B of the Consolidated Appropriations Act, 2004 (Public Law 108–199) with respect to cooperation related to persons missing in action and prisoners of war; and

(iii) Section 102(a)(2) of the Arms Export Control Act, as amended (22 U.S.C. 2799aa–1(a)), with respect to any Presidential determination under section 102(a)(1) that is also the subject of a determination and certification by the President pursuant to section 102(a)(2).

(b) The United States Trade Representative shall submit the report relating to sub-Saharan Africa under section 106 of the African Growth and Opportunity Act (Public Law 106–200, title 1).

Sec. 2. The functions of the President in making certifications to the Congress consistent with the resolution of advice and consent to ratification of the Chemical Weapons Convention adopted by the Senate on April 24, 1997 (Resolution) are assigned as follows:

(a) The Secretary of State is authorized to make a certification consistent with section 2(7)(C)(i) of the Resolution with respect to the effectiveness and viability of the Australia Group.

(b) The Secretary of Commerce is authorized to make a certification consistent with section 2(9) of the Resolution with respect to the interests of certain firms in the United States.

Sec. 3. Executive Order 12163 of September 29, 1979, as amended, is further amended, in section 1–100(a), by striking the period at the end of paragraph (12) and inserting a semicolon, and by inserting the following new paragraphs:

''(13) title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115), under the heading ''Assistance for the Independent States of the Former Soviet Union,'' in subsections (g)(4) and (6);'';

''(14) section 512 of Division D of the Consolidated Appropriations Act, 2004 (Public Law 108–199);'';

''(15) sections 5(c) and 6 of the Anglo-Irish Agreement Support Act of 1986 (Public Law 99–415), as amended.''.

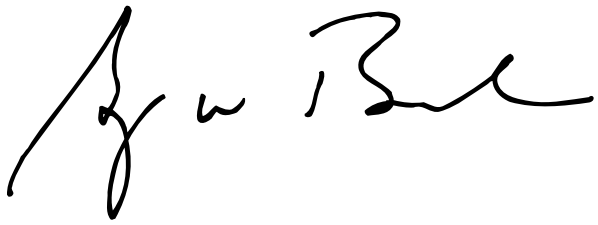
Sec. 4. Executive Order 13277 of November 19, 2002, is amended in section 1(b)(3) by adding after the phrase ''Section 2105(a)(1)'' the terms ''(A) and (C)''.

Sec. 5. References in this order to provisions of any Act shall be deemed to include references to any provision of law that is the same or substantially the same as such provisions.

Sec. 6. In carrying out sections 1 and 2 of this order, officers of the United States shall ensure that all actions taken by them are consistent with the President's constitutional authority to: (a) conduct the foreign affairs of the United States; (b) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties; (c) recommend for congressional consideration such measures as the President may judge necessary and expedient; and (d) supervise the unitary executive branch.

Sec. 7. Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

Sec. 8. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.



THE WHITE HOUSE,
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV04–981–3 FR]

Almonds Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Almond Board of California (Board) for the 2004–05 and subsequent crop years from $0.020 to $0.025 per pound of almonds received. Of the $0.025 per pound assessment, $0.014 is available as credit-back for handlers who conduct their own promotional activities. The Board locally administers the marketing order which regulates the handling of almonds grown in California. Authorization to assess almond handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 1, 2004.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California almond handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds beginning August 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 2004–05 and subsequent crop years from $0.020 to $0.025 per pound of almonds received. Of the $0.025 per pound assessment, $0.014 is available as credit-back for handlers who conduct their own promotional activities.

The California almond marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003–04 and subsequent crop years, the Board recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on May 20, 2004, and recommended 2004–05 expenditures of $24,027,344. In comparison, last year's budgeted expenditures were $20,547,385. The assessment rate of $0.025 is $0.005 higher than the rate currently in effect, and the credit-back portion of the assessment rate is $0.004 more than the rate currently in effect.

The major expenditures recommended by the Board for the 2004–05 crop year include $7,115,000 for advertising and market research, $9,215,000 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS), $1,730,000 for salaries, $1,200,000 for nutrition research, $947,321 for production research, $808,000 for food quality programs, $460,042 for environmental research, $200,000 for travel, $130,000 for office rent, $125,000 for a crop estimate, and $95,000 for an acreage survey. Budgeted expenses for these items in 2003–2004 were $6,375,312 for advertising and

market research, $7,587,750 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS), $1,500,000 for salaries and wages, $1,000,000 for nutrition research, $850,332 for production research, $823,948 for food quality programs, $254,903 for environmental research, $200,000 for travel, $122,472 for office rent, $120,750 for a crop estimate, and $90,780 for an acreage survey.

The Board recommended increasing the assessment rate from $0.020 per pound to $0.025 per pound of almonds handled. Of the $0.025 per pound assessment, $0.014 per pound is available as credit-back for handlers who conduct their own promotional activities consistent with § 981.441 of the order's regulations and subject to Board approval. The Board recommended increasing the assessment rate to generate adequate revenue to fund the Board's 2004–05 budgeted expenses and to maintain a financial reserve. Section 981.81(c) authorizes a financial reserve of approximately one-half year's budgeted expenses. One-half of the 2004–05 crop year's budgeted expenses of $24,027,344 equals $12,013,672. The Board's financial reserve at the end of the 2004–05 crop year is projected to be $3,067,437, which is well within the authorized reserve.

The assessment rate recommended by the Board was derived by considering anticipated expenses and production levels of California almonds, and additional pertinent factors. In its recommendation, the Board utilized an estimate of 1,056,000,000 pounds of assessable almonds for the 2004–05 crop year. If realized, this will provide estimated assessment revenue of $11,616,000 from all handlers, and an additional $8,131,200 from those handlers who do not participate in the credit-back program, for a total of $19,747,200. In addition, it is anticipated that $7,347,581 will be provided by other sources, including interest income, MAP funds, grant funds, miscellaneous income, and reserve/carryover funds. When combined, revenue from these sources will be adequate to cover budgeted expenses. Any unexpended funds from the 2004–05 crop year may be carried over to cover expenses during the succeeding crop year. Funds in the reserve at the end of the 2004–05 crop year are estimated to be approximately $3,067,437, which will be within the amount permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2004–05 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6,000 producers of almonds in the production area and approximately 119 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Data for the most recently completed crop year indicate that about 38 percent of the handlers shipped over $5,000,000 worth of almonds and about 62 percent of handlers shipped under $5,000,000 worth of almonds. In addition, based on production and grower price data reported by the California Agricultural Statistics Service (CASS), and the total number of almond growers, the average annual grower revenue is estimated to be approximately $199,000. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 2004–05 and subsequent crop years from $0.020 to $0.025 per pound of almonds. Of the $0.025 per pound assessment, $0.014 per pound is available as credit-back for handlers who conduct their own promotional activities consistent with § 981.441 of the order's regulations and subject to Board approval.

The Board met on May 20, 2004, and recommended 2004–05 expenditures of $24,027,344 and an assessment rate of $0.025 per pound. Of the $0.025 per pound assessment, $0.014 per pound would be available as credit-back for handlers who conduct their own promotional activities. The assessment rate of $0.025 is $0.005 higher than the current rate, and the credit-back portion is $0.004 more than the current rate. The quantity of assessable almonds for the 2004–05 crop year is estimated at 1,056,000,000 pounds. The assessment rate will provide estimated assessment revenue of $11,616,000 from all handlers, and an additional $8,131,200 from those handlers who do not participate in the credit-back program, for a total of $19,747,200. In addition, it is anticipated that $7,347,581 will be provided from other sources, including interest income, MAP funds, grant funds, miscellaneous income, and reserve/carryover funds. When combined, revenue from these sources will be adequate to cover budgeted expenses. The projected financial reserve at the end of 2004–05 will be $3,067,437, which is within the maximum permitted under the order.

The major expenditures recommended by the Board for the 2004–05 crop year include $7,115,000 for advertising and market research, $9,215,000 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS), $1,730,000 for salaries, $1,200,000 for nutrition research, $947,321 for production research, $808,000 for food quality programs, $460,042 for environmental research, $200,000 for travel, $130,000 for office rent, $125,000 for a crop estimate, and $95,000 for an acreage survey. Budgeted expenses for these items in 2003–2004 were $6,375,312 for advertising and market research, $7,587,750 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by

USDA's Foreign Agricultural Service (FAS), $1,500,000 for salaries and wages, $1,000,000 for nutrition research, $850,332 for production research, $823,948 for food quality programs, $254,903 for environmental research, $200,000 for travel, $122,472 for office rent, $120,750 for a crop estimate, and $90,780 for an acreage survey.

The Board considered alternative assessment rate levels, including the portion available for handler credit-back. After deliberating the issue, the Board recommended increasing the assessment rate to $0.025 per pound, with $0.014 available for handler credit-back. In arriving at its budget, the Board considered information from its various committees. Alternative expenditure levels were discussed by these groups, based on the value of various activities to the industry. The committees ultimately recommended appropriate activities and funding levels, which were adopted by the Board.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the average grower price for the 2004–05 season could range between $1.50 and $1.80 per pound of almonds. Therefore, the estimated assessment revenue for the 2004–05 crop year (disregarding any amounts credited pursuant to §§ 981.41 and 981.441) as a percentage of total grower revenue could range between 1.2 and 1 percent, respectively.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the May 20, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on June 16, 2004 (69 FR 33584). Copies of the proposed rule were also mailed or sent via facsimile to all almond handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending June 28, 2004, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis and the crop year begins on August 1, 2004. Further, handlers are aware of this rule which was recommended by the Board at a public meeting. Also, a 10-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 981.343 is revised to read as follows:

§ 981.343 Assessment rate.

On and after August 1, 2004, an assessment rate of $0.025 per pound is established for California almonds. Of the $0.025 assessment rate, $0.014 per assessable pound is available for handler credit-back.

Dated: July 8, 2004.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 04–15857 Filed 7–8–04; 3:39 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 00–002–2]

RIN 0579–AB42

Brucellosis in Sheep, Goats, and Horses; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis indemnity regulations to allow us to pay indemnity for sheep, goats, and horses destroyed because of brucellosis. This action makes it easier to eliminate affected herds/flocks and infected animals as sources of infection by encouraging herd and flock owners to cooperate with our brucellosis eradication program. This action is intended to help reduce the incidence of brucellosis and the likelihood of it spreading within the United States.

DATES: *Effective Date:* August 12, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Debra A. Donch, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease caused by bacteria of the genus *Brucella.* It affects both animals and humans. In its principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock.

Brucellosis is mainly a disease of cattle, bison, and swine. *Brucella abortus* affects mainly bovines; *B. suis* affects mainly swine. Goats, sheep, and horses are also susceptible to *B. abortus.* In horses, the disease is known as fistulous withers. A third strain of *Brucella*, *B. melitensis*, affects mainly goats and sheep.

The continued presence of brucellosis in a herd or flock seriously threatens the health of other animals. To prevent any

possible spread of infection, we ask livestock owners to promptly destroy all infected and exposed animals. To encourage them, we pay Federal indemnity for certain cattle, bison, and swine destroyed because of brucellosis. Regulations governing indemnity for cattle, bison, and swine are contained in 9 CFR part 51.

On September 13, 2001, we published in the **Federal Register** (66 FR 47593–47599, Docket No. 00–002–1) a proposal to amend the regulations in 9 CFR part 51 by creating an indemnity program for sheep, goats, and horses that must be destroyed because of brucellosis. These proposed regulations were modeled on our existing indemnity regulations for cattle and bison, making adjustments as necessary to better address brucellosis in sheep, goats, and horses. Like the cattle and bison program, the proposed indemnity program for sheep, goats, and horses was voluntary and was designed to give producers an incentive to cooperate and assist our ongoing program to eradicate brucellosis in the United States. We also proposed to reorganize and rewrite the requirements to make them easier to understand.

We solicited comments concerning our proposal for 60 days ending November 13, 2001. We received 2 comments by that date, from a national agricultural organization and a State agricultural organization. Both comments were generally supportive of the proposed rule. However, the commenters recommended that, instead of requiring that the appraisal be made by an independent appraiser selected by the Animal and Plant Health Inspection Service (APHIS), we consider allowing producers to provide evidence from a separate appraisal and having an unbiased third party make the final decision.

The position of the Department has consistently been that APHIS cannot delegate the final decision of an appraisal to a third party. Producers are free to offer evidence of value that may differ from the independent appraisal, but APHIS will make the final decision. If a producer believes that the valuation determined by the independent appraiser selected by APHIS is inaccurate, the producer can maintain the herd under quarantine rather than participate in the program to receive indemnity for destruction of infected animals. We are making no changes in response to these comments.

However, we are making minor changes to the proposed regulations in this final rule. Section 51.26 of the proposed rule stated that the test records for animals must include individual identification, with ''any unique identification'' being acceptable. We are changing this phrase to read ''any unique, individually numbered identification.'' This will ensure that the form of identification used will allow the test record to refer to one specific animal and will make the regulations in § 51.26 consistent with the regulations in § 51.27, which use the phrase ''unique, individually numbered identification'' to refer to the same required identification.

In addition, the proposed definition of *brucellosis reactor animal* did not clearly state what criteria a sheep, goat, or horse had to meet to be classified as a brucellosis reactor animal under proposed 9 CFR part 51, Subpart B; instead, the definition referred readers to proposed § 51.23, ''Eligibility for indemnity,'' for the criteria. In this final rule, we have moved the criteria a sheep, goat, or horse must meet to be classified as a brucellosis reactor animal into the definition of *brucellosis reactor animal*, while retaining the information about eligibility for indemnity in § 51.23.

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

Executive Order 12866 and Regulatory Flexibility Act

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

Brucellosis is a contagious, costly disease of livestock. It affects mainly ruminants and swine. However, it may also infect other animals, including horses. In addition, it is contagious to humans. Because of the serious consequences of infection in its animal hosts, which include loss of young through abortion or birth of weak offspring, reduced milk production, infertility, weight loss, and lameness, and its rapid spread among animals and potential for human infection, brucellosis is considered one of the most serious livestock diseases. At present, there is no effective treatment for animals. Affected herds/flocks and infected animals can be quarantined. However, quarantining does not eliminate possible spread; only destroying infected and exposed animals ensures that the disease is not transmitted to other animals.

We are amending the brucellosis indemnity regulations to allow us to pay indemnity for sheep, goats, and horses destroyed because of brucellosis, which will make it easier to eliminate affected herds/flocks and infected animals as sources of infection and will encourage herd and flock owners to cooperate with our brucellosis eradication program. This action is intended to help reduce the incidence of brucellosis and the likelihood of it spreading within the United States.

Sheep and Goats—Operations, Inventory, and Trade

Sheep are raised primarily for meat and wool, while goats are largely raised for meat, milk, and mohair. On January 1, 2002, there were 65,120 sheep operations in the United States that owned a total of 6.69 million head of sheep, with 4.91 million as breeding sheep and 1.77 million as market sheep.[1] According to industry statistics, the average value per head of sheep is $92.00, with a reported cash value totaling over $618 million.[2]

Unfortunately, limited data is collected on the goat industry as a whole. The 1997 Census of Agriculture, the last official report with data on the industry, estimated there were 57,925 goat operations with an inventory of approximately 1.99 million head of goat. Of that 1.99 million head, it is estimated 41 percent were angora goats raised for mohair, 7 percent were goats raised for milk, and 52 percent were goats raised for meat and other uses. In 1997, sales receipts for those primary markets in the goat industry totaled over $65 million.[3]

The United States has limited foreign trade in live sheep, live goats, and their products. Figures for 2002 are shown in table 1.

[1] USDA, *Sheep and Goats.* Washington, DC: National Agricultural Statistics Services (NASS), February 2002.

[2] USDA, *Agricultural Statistics 2002.* Washington, DC: NASS, 2002.

[3] USDA, *1997 Census of Agriculture*, Table 40. Washington, DC: NASS.

TABLE 1.—SHEEP AND GOAT IMPORTS AND EXPORTS, 2002

Item	Imports		Exports	
	Number	Value (in millions)	Number	Value (in millions)
Sheep	72,055	$6.16	197,900	$9.92
Goats	3,683	0.35	5,580	0.39
Total	75,738	6.51	203,480	10.31

Source: *World Trade Atlas*, June 2003.

The United States also imports and exports sheep and goat meat. During 2002, U.S. imports of sheep and goat meat were valued at $277.5 million and exports were valued at $6.38 million.[4]

Horses—Operations, Inventory, and Trade

According to the *1997 Census of Agriculture*, there were 375,218 farms in the United States with a total of 2,427,277 horses. During 1997, 79,516 of these farms sold 325,306 horses for about $1.03 billion, with an average value per horse of $3,165.[5] Using this average value, the total market value of horses in the United States was $10.847 billion in 1997. Over 98 percent of farms with horses had gross annual sales of less than $750,000 and thus are considered to be small entities according to the Small Business Administration size standards.[6]

The contribution of horses to the economy of the Nation is substantial. A study for the American Horse Council showed that the horse industry directly contributed about $25.3 billion to the gross domestic product. The horse industry's indirect and induced impact on the national economy is about $112 billion.

Horses also play an important role in the international trade of the United States. Figures for 2002 are shown in table 2.

TABLE 2.—HORSE IMPORTS AND EXPORTS, 2002

Animals	Imports		Exports	
	Number	Value (in millions)	Number	Value (in millions)
Purebred	982	$9.79	6,124	$37.50
Nonpurebred	14,565	75.29	20,825	24.23
Total	15,547	85.08	26,949	61.73

Source: *World Trade Atlas*, June 2003.

Amount of Indemnity

Under this rule, the amount of indemnity will be the fair market value of each animal, minus salvage, if any, received for the animal. There will usually be no salvage value for sheep and goats destroyed because of *B. melitensis*, as the carcass would have to be buried, incinerated, or rendered after the animal was destroyed. Animals will have to be individually appraised before destruction to determine their fair market value. An independent appraiser selected by the Administrator and paid for by the United States Department of Agriculture will conduct all appraisals.

It is impossible to estimate indemnity expenditures, as market values vary depending upon the specific animal. However, as of January 1, 2002, the average national sales price per head of sheep was $94, while as of January 1, 2001, it was $100. These prices reflect the average of the sale of millions of slaughter sheep, and the sale of a few thousand registered breeding sheep.[7]

Average sales prices for goats, per head, vary greatly, depending on whether the animal is a slaughter goat, Angora goat, dairy goat, crossbred or purebred, etc.

There is much variation in the price of horses. In 1997, the average U.S. sales price for a horse was $3,165. Purebred horses are more expensive than nonpurebred. State average sales prices ranged between $794 and $18,795, with a median price of about $1,860 per horse. The median indicates that the average market value of a horse was above $1,860 per head in 50 percent of States and below $1,860 per head in 50 percent of States.

At this time, there are no goats, sheep, or horses in the United States known to be infected with *B. abortus* or *B. melitensis.* We estimate that fewer than a dozen herds, flocks, or individual animals will be eligible for indemnity under this rule prior to the eradication of brucellosis from the United States.

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

Executive Order 12372

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

[4] USDA, *FAS Trade Statistics.* Washington, DC: Foreign Agricultural Service, 2003.

[5] USDA, *1997 Census of Agriculture*, Washington, DC: NASS, 1997.

[6] Horse farms with less than $0.75 million in annual sales are classified as small entities according to the SBA size standards for animal production (13 CFR part 121). According to the *1997 Census of Agriculture*, an average farm had 6.5 horses, while according to the American Horse Council, 1.9 million people owned 6.9 million horses, yielding an average of 3.6 horses per owner.

[7] The average price for registered breeding sheep is in the range of $300, with some selling for thousands of dollars.

Executive Order 12988

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0185.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 51

Animal diseases, Cattle, Goats, Hogs, Horses, Indemnity payments, Reporting and recordkeeping requirements, Sheep.

■ Accordingly, we are amending 9 CFR part 51 as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

■ 1. The authority citation for part 51 continues to read as follows:

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

§§ 51.1 through 51.10 [Designated as subpart A]

■ 2. Sections 51.1 through 51.10 are designated as Subpart A—Indemnity for Cattle, Bison, and Swine.

§ 51.1 [Amended]

■ 3. In § 51.1, in the definition of *Permit*, the word ''Part'' is removed and the word ''subpart'' added in its place.

■ 4. A new Subpart B—Indemnity for Sheep, Goats, and Horses, §§ 51.20 through 51.33, is added to read as follows:

Subpart B—Indemnity for Sheep, Goats, and Horses

Sec.

51.20 Definitions.
51.21 Cooperation with States.
51.22 Payment to owners for goats, sheep, and horses destroyed.
51.23 Eligibility for indemnity.
51.24 Maximum per-head indemnity amounts.
51.25 Proof of destruction.
51.26 Record of tests.
51.27 Identification of goats, sheep, and horses to be destroyed.
51.28 Moving goats, sheep, and horses to be destroyed.
51.29 Destruction of animals; time limit.
51.30 Claims for indemnity.
51.31 Disinfecting premises, conveyances, and materials.
51.32 Claims not allowed.
51.33 Multiple indemnity payments.

§ 51.20 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Affected herd/flock. Any herd or flock in which any cattle, bison, breeding swine, sheep, or goat has been classified as a brucellosis reactor and which has not been released from quarantine.

Animal. Sheep, goats, and horses.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

Appraisal. An estimate of the fair market value of an animal to be destroyed because of brucellosis.

Brucellosis exposed. Except for brucellosis reactors, animals that are part of a herd known to be affected, or are in a quarantined feedlot or a quarantined pasture, or are brucellosis suspects, or that have been in contact with a brucellosis reactor for a period of 24 hours or more, or for a period of less than 24 hours if the brucellosis reactor has aborted, calved, or farrowed within the past 30 days or has a vaginal or uterine discharge.

Brucellosis reactor animal. (1) Any sheep or goat that has been determined by a designated brucellosis epidemiologist [1] to be affected with brucellosis, based on test results, herd/flock history, and/or culture results. Any test used for cattle and bison under the APHIS official brucellosis eradication program (*see* part 78 of this chapter) may be used, but test results must be interpreted by a designated brucellosis epidemiologist.

(2) Any horse that has been determined by a designated brucellosis epidemiologist to be affected with brucellosis, based on epidemiological information or culture results, or positive results for brucellosis in accordance with one of the following tests:

Test	Positive results
Standard plate test (SPT)	If antibody titer positive at 1:100 dilution or higher.
Standard tube test (STT)	If antibody titer positive at 1:100 dilution or higher.
Rivanol test	If antibody titer positive at 1:50 dilution or higher.
Particle concentration fluorescence immunoassay (PCFIA)	If reading is 0.3 or lower.
Complement fixation test (CF)	If reading is 2+:20 dilution.

(3) Any cattle, bison, or swine classified as a brucellosis reactor as provided in the definition of official test in § 78.1 of this chapter.

Condemn. The determination made by an APHIS representative, State

[1] Requirements for designated brucellosis epidemiologists are contained in Veterinary Services Memorandum No. 551.10. A copy of this memorandum may be obtained from an APHIS representative, the State animal health official, or a State representative.

representative, or accredited veterinarian that animals for which indemnity is sought under this subpart will be destroyed.

Designated brucellosis epidemiologist. An epidemiologist selected by the State animal health official and the Veterinarian in Charge to perform the functions required. The regional epidemiologist and the APHIS brucellosis staff must concur in the selection and appointment of the designated epidemiologist.

Destroyed. Condemned under State authority and slaughtered or otherwise dies.

Flock. Any group of sheep maintained on common ground for any purpose, or two or more groups of sheep under common ownership or supervision, geographically separated but which have an interchange or movement of animals without regard to health status.

Herd. Any group of goats, or mixed sheep and goats, maintained on common ground for any purpose, or two or more groups of goats, or two or more groups of mixed sheep and goats, under common ownership or supervision, geographically separated but which have an interchange or movement of animals without regard to health status.

Herd/flock depopulation. Removal by slaughter or other means of destruction of all sheep or goats in a flock or herd, or from a specific premises or under common ownership prior to restocking such premises with new animals.

Mortgage. Any mortgage, lien, or interest that is recorded under State law or identified in the indemnity claim form filed in accordance with this subpart, and held by any person other than the one claiming indemnity.

Official seal. A serially numbered metal strip consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened, and is applied by a representative of the Veterinarian in Charge or the State animal health official.

Owner. Any person who has legal or rightful title to sheep, goats, and horses, whether or not the animals are subject to a mortgage.

Permit. An official document for movement of animals under this subpart issued by an APHIS representative, State representative, or accredited veterinarian listing the disease status and identification of the animal, where consigned, cleaning and disinfecting requirements, and proof of slaughter certification.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity.

Registered sheep and goats. Sheep and goats for which individual records of ancestry are recorded and maintained by a breed association whose purpose is the improvement of the species, and for which individual registration certificates are issued and recorded by such breed association.

State. Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other territory or possession of the United States.

State representative. An individual employed in animal health activities by a State or a political subdivision thereof, and who is authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Veterinarian in Charge. The APHIS veterinary official who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State or area concerned, or any person authorized to act for the Veterinarian in Charge.

§ 51.21 Cooperation with States.

The Administrator has been delegated the authority to cooperate with the proper State authorities in the eradication of brucellosis and to pay indemnities for the destruction of brucellosis-reactor animals or brucellosis-exposed animals.

§ 51.22 Payment to owners for goats, sheep, and horses destroyed.

(a) The Administrator may authorize the payment of Federal indemnity by the U.S. Department of Agriculture to any owner whose goats, sheep, or horses are destroyed after having been approved for destruction by APHIS.[1] Goats or sheep must be destroyed as part of a whole herd/flock depopulation to be eligible for Federal indemnity.

(b) The amount of Federal indemnity will be determined in accordance with the regulations in this part that were in effect on the date infected animals were found, or the date that the whole-herd/flock depopulation or destruction of individual animals was approved.

(c) Prior to payment of indemnity, proof of destruction must be furnished to the Veterinarian in Charge.

§ 51.23 Eligibility for indemnity.

Owners of animals destroyed because of brucellosis are eligible to receive Federal indemnity for their animals if the animals are:

(a) Sheep and goats in an affected herd or flock;

(b) Sheep and goats that were obtained from a herd or flock that was subsequently found to be an affected herd or flock. Epidemiological information such as test results, herd/flock history, and related evidence will be used to establish a probable date when the herd or flock was first affected with brucellosis. Animals removed from the herd or flock after that date will be considered exposed to the disease and eligible for indemnity; those removed before that date will not;

(c) Individual horses that have been found to be brucellosis reactor animals.

§ 51.24 Maximum per-head indemnity amounts.

Owners of the types of animals listed in § 51.22 of this subpart are eligible to receive Federal indemnity for their animals. All animals must be individually appraised to determine their fair market value. The indemnity amount will be the appraised value minus the salvage value of the animal, up to a maximum of $20,000 per animal in the case of horses. An independent appraiser selected by the Administrator will conduct appraisals. APHIS will pay the cost of appraisals.

§ 51.25 Proof of destruction.

The Veterinarian in Charge will accept any of the following documents as proof of destruction:

(a) A postmortem report;

(b) A meat inspection certification of slaughter;

(c) A written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animals;

(d) A written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animals;

(e) A permit (VS Form 1–27) consigning the animal from a farm or livestock market directly to a slaughter establishment; or

(f) In unique situations where none of the documents listed above are available, other similarly reliable forms of proof of destruction.

(Approved by the Office of Management and Budget under control number 0579–0185)

[1] The Administrator will authorize payment of Federal indemnity by the U.S. Department of Agriculture as provided in § 51.24: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) in States or areas not under Federal quarantine; (c) in States requesting payment of Federal indemnity; and (d) in States not requesting a lower rate.

§ 51.26 Record of tests.

An APHIS representative, State representative, or accredited veterinarian will compile, on an APHIS-approved form, a complete test record for each animal. The claimant must provide any information necessary to complete the form. The test record must include the type of test and the test results for each animal. It must also include the individual identification of each tested animal. Any unique, individually numbered identification is acceptable. The animal's owner and the appropriate State veterinarian's office will each receive a copy of the test record.

(Approved by the Office of Management and Budget under control number 0579–0185)

§ 51.27 Identification of goats, sheep, and horses to be destroyed.

The claimant must ensure that any goats, sheep, and horses for which indemnity is claimed are marked with unique, individually numbered identification showing they are to be destroyed. This must be done within 15 days after the animals are condemned. The Veterinarian in Charge may extend the time limit to 30 days when the Veterinarian in Charge receives a request for extension prior to the expiration date of the original 15-day period, and when the Veterinarian in Charge determines that the extension will not adversely affect the brucellosis eradication program. However, the Administrator may extend the time limit beyond 30 days when unusual or unforeseen circumstances occur that prevent or hinder the identification of the animal within 30 days, such as, but not limited to, floods, storms, or other Acts of God, which are beyond the control of the owner, or when identification is delayed due to requirements of another Federal agency.

(Approved by the Office of Management and Budget under control number 0579–0185)

§ 51.28 Moving goats, sheep, and horses to be destroyed.

Goats, sheep, and horses to be destroyed because of brucellosis must be accompanied by a permit and either:

(a) Accompanied directly to slaughter by an APHIS or State representative; or

(b) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

(Approved by the Office of Management and Budget under control number 0579–0185)

§ 51.29 Destruction of animals; time limit.

(a) The claimant must ensure that goats, sheep, and horses infected with or exposed to *B. abortus* are either:

(1) Sold under permit to a recognized slaughtering establishment;

(2) Moved to an approved stockyard for sale to a recognized slaughtering establishment; or

(3) Destroyed and buried, incinerated, or rendered in accordance with applicable State law.

(b) The claimant must ensure that goats and sheep destroyed because of *B. melitensis* are destroyed and buried, incinerated, or rendered in accordance with applicable State law.

(c) Indemnity will be paid under this part only if the animals are destroyed within 15 days after the date they are marked with identification showing they are to be destroyed. However, the Veterinarian in Charge may extend the time limit to 30 days if:

(1) The animals' owner asks the Veterinarian in Charge for an extension before the initial 15-day period expires, or the animals were sold for slaughter before the original 15-day period expires; and

(2) The Veterinarian in Charge determines that extending the time limit will not adversely affect the Brucellosis Eradication Program.

(d) The Administrator may extend the time limit beyond 30 days when unusual and unforeseen circumstances occur that prevent or hinder the destruction of the animals within 30 days, such as, but not limited to, floods, storms, or other Acts of God, which are beyond the control of the owner, or when destruction is delayed due to requirements of another Federal agency.

(Approved by the Office of Management and Budget under control number 0579–0185)

§ 51.30 Claims for indemnity.

(a) Claims for indemnity for goats, sheep, and horses destroyed because of brucellosis must be made using an indemnity claim form furnished by APHIS. On the form, the owner of the animals must certify whether the animals are subject to a mortgage. If the owner states there is a mortgage, the claim form must be signed by the owner and by each mortgage holder, consenting to the payment of any indemnity allowed to the owner. Payment will be made only if the claimant has submitted a complete indemnity claim form to the Veterinarian in Charge and the claim has been approved by the Veterinarian in Charge or by an APHIS representative designated by him or her. The Veterinarian in Charge or an APHIS representative designated by the Veterinarian in Charge will record on the APHIS indemnity claim form the amount of Federal and State indemnity payments that appear to be due to the owner of the animals. The owner of the animals will receive a copy of the completed APHIS indemnity claim form. The owner is responsible for paying all fees for holding the animals on the farm pending disposal and for all trucking fees.

(b) Claims for indemnity for registered sheep and registered goats must be accompanied by the animal's registration papers, issued in the name of the owner. If the registration papers are unavailable or if the animal is less than 1 year old and not registered at the time the claim for indemnity is submitted, the Veterinarian in Charge may grant a 60-day extension or the Administrator may grant an extension longer than 60 days for the presentation of registration papers. Any animal that is not registered but is eligible for registration at the time the claim is submitted will be considered unregistered unless the animal has been in the flock for less than 12 months.

(Approved by the Office of Management and Budget under control number 0579–0185)

§ 51.31 Disinfecting premises, conveyances, and materials.

All premises, including all structures, holding facilities, conveyances, and materials contaminated because they have been used by animals destroyed because of brucellosis, must be properly cleaned and disinfected in accordance with recommendations of the APHIS or State representative. Cleaning and disinfecting must be completed within 15 days from the date the animals were removed from the premises, except that the Veterinarian in Charge may extend the time limit for disinfection to 30 days when he or she receives a request prior the expiration date of the original 15 days, and when the Veterinarian in Charge determines that an extension will not adversely affect the Brucellosis Eradication Program. The Administrator may extend the time limit beyond 30 days when unusual and unforeseen circumstances occur that prevent or hinder disinfection of the premises, conveyances, and materials within 30 days, such as, but not limited to floods, storms, or other Acts of God, which are beyond the control of the owner. A premises may be exempted from such cleaning and disinfecting requirements if the APHIS or State representative recommends it in writing and the Veterinarian in Charge approves.

(Approved by the Office of Management and Budget under control number 0579–0185)

§ 51.32 Claims not allowed.

Claims for indemnity for goats, sheep, and horses destroyed because of brucellosis will not be allowed if any of the following circumstances exist:

(a) The claimant has failed to comply with any of the requirements of this part;

(b) The claim is based on a brucellosis test, and the person who administered the test was not properly trained, authorized, or certified at the time of the test;

(c) Testing of goats, sheep, and horses in the herd or flock for brucellosis was not done under APHIS or State supervision, or by an accredited veterinarian;

(d) There is substantial evidence that the claim is an unlawful or improper attempt to obtain indemnity; or

(e) If, at the time of test or condemnation, the animals belonged to or were upon the premises of any person to whom they had been sold for slaughter, shipped for slaughter, or delivered for slaughter.

§ 51.33 Multiple indemnity payments.

APHIS has indemnity programs for several other livestock diseases. However, if a claim is paid for indemnity for animals destroyed because of brucellosis, no other claims for indemnity will be paid for the same animals.

Done in Washington, DC, this 7th day of July, 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15804 Filed 7–12–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 03–009–2]

Classical Swine Fever Status of Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for importing animals and animal products by adding Chile to the list of regions we recognize as free of classical swine fever (CSF). We are taking this action at the request of the Government of Chile and after conducting a risk evaluation that indicates that Chile is free of this disease. We are also adding Chile to a list of CSF-free regions whose exports of live swine, pork, and pork products to the United States must meet certain certification requirements to ensure their freedom from CSF, and amending those requirements to accommodate the addition of Chile to the list. These actions relieve restrictions on the importation into the United States of pork, pork products, live swine, and swine semen from Chile while continuing to protect against the introduction of this disease into the United States.

EFFECTIVE DATE: July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Charisse Cleare, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever (ASF), classical swine fever (CSF), and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.9 of the regulations restricts the importation into the United States of pork and pork products from regions where CSF is known to exist. Section 94.10 of the regulations prohibits, with certain exceptions, the importation of swine that originate in or are shipped from or transit any region in which CSF is known to exist. Sections 94.9 and 94.10 provide that CSF exists in all regions of the world except for certain regions listed in those sections.

On November 13, 2003, we published in the **Federal Register** (68 FR 64274–64282, Docket No. 03–009–1) a proposal to amend the regulations by adding Chile to the list of regions we recognize as free of CSF. We also proposed to add Chile to a list of CSF-free regions whose exports of live swine, pork, and pork products to the United States must meet certain certification requirements to ensure their freedom from CSF, and to amend those requirements to accommodate the addition of Chile to the list. In addition, we proposed to amend those certification requirements to require, for pork and pork products from a region listed in § 94.24, an additional statement that the swine from which the pork and pork products were derived have not lived in a region affected with CSF.

We solicited comments concerning our proposal for 60 days ending January 12, 2004. We received three comments by that date. They were from an importer and from associations of pork producers. Two of the commenters supported the proposed rule. The third commenter asked for additional information regarding several issues in the proposed rule. These issues are discussed below by topic.

The commenter requested additional information about the ongoing surveillance that Chile's Agricultural and Livestock Service (Servicio Agricola y Ganadero, SAG) conducts for CSF in Chilean commercial swine. The commenter stated that data referred to in material supporting Chile's request to be considered free of CSF are several years old and appear to be ''point-in-time'' samples related to managing and eliminating the last outbreaks of CSF in Chile in 1995 and 1996. The commenter asked whether there is a plan for federally funded, routine, ongoing surveillance for commercial and noncommercial populations of swine in Chile. The commenter also wanted to know whether both swine held on breeding farms and swine intended for slaughter were being sampled as part of the testing and what specific level of detection the current testing supports.

As stated in the evaluation that we conducted regarding the CSF status of Chile, SAG tested swine on 321 family farms, located in all 13 regions of Chile, for CSF in 2000 and 2001. The number of samples totaled 1,705. In addition, the evaluation referred to serological data for 2002 that SAG provided. Those data included samples taken at both commercial premises and backyard (family) premises that possessed or raised swine. These data reflected testing performed from January to December 2002. We based our determination that Chile is free of CSF on these data, not the data from the earlier testing conducted after the last outbreaks of CSF in Chile to which the commenter refers.

Chile does have a plan for federally funded, routine, ongoing surveillance for CSF in both commercial and noncommercial populations of swine. Both swine held on breeding farms and swine held on commercial properties that send swine for slaughter at export facilities are tested using an enzyme-linked immunosorbent assay for CSF under the surveillance plan.

As to the specific level of detection, the sampling design for 2002 was based on two sets of high-risk herds. In the

first set, the sampling design for herds that were considered high risk due to their proximity to certain areas (airports, seaports, land borders, garbage dumps, or owners with a history of feeding waste to pigs) was intended to detect a 20 percent within-herd prevalence. In the second set, the sampling design for herds considered high risk due to a history of past positive serology was intended to detect a 1 percent within-herd prevalence level.

The commenter also asked whether there is a plan for federally funded, routine, ongoing surveillance for wild boars in Chile, stating that it did not appear that a surveillance program had been developed or conducted for CSF or other communicable diseases of swine in the wild boar population. The commenter stated that the wild boar population should be thoroughly assessed for possible infection by CSF and other communicable diseases of swine before the Animal and Plant Health Inspection Service (APHIS) declares Chile free of CSF.

As of December 2002, SAG had not performed surveillance for CSF in the free-range wild boar population. However, SAG performed surveillance for CSF at wild boar operations in Chile, based on the rationale that animals at these operations originated as wild animals and have been in captivity for several generations.

APHIS has no evidence that suggests that CSF is present in or has ever been present in feral swine in Chile. We consider this situation to be analogous to conditions in the United States. There is no evidence to suggest that CSF is present in feral swine within the continental United States. Therefore, APHIS does not conduct surveillance for CSF in feral swine within the continental United States at this time. Under the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures and the principle of national treatment in the WTO General Agreement on Tariffs and Trade, APHIS must establish requirements for the importation of animals and animal products that are no more restrictive than the requirements APHIS imposes on the interstate movement of animals and animal products. Given these circumstances, APHIS does not believe it would be appropriate to require Chile to conduct CSF surveillance in its wild boar population. We are making no changes to the proposed rule in response to this comment.

Given the situation discussed above, the commenter requested assurance that wild boar in Chile pose a negligible, minimal risk of transmitting diseases to commercial swine. The commenter cited recent experiences in European countries as indicating that the two populations may be linked with respect to CSF transmission.

As we discussed in the proposed rule, several circumstances mitigate the risk of disease transmission, if any disease were to be present, from wild boar to commercial swine in Chile. There are few commercial swine operations in those regions of Chile where there are concentrated populations of wild boar; rather, family farms are usually prevalent in such regions. Even if CSF or another communicable disease of swine were present in the wild boar population, it is unlikely that such a disease would be transmitted from wild boar to commercial swine facilities because of the biosecurity measures in place at those facilities. In addition, the mountainous habitat of the wild boars and the areas of Chile devoted to domestic swine production are separated by forests, which the wild boar do not enter because there is no food for them in the forests.

In the proposed rule, we stated that the official diagnostic laboratory of SAG in Santiago does not isolate the causative agent for CSF because the biosecurity level of the laboratory is not sufficient to allow use of live CSF virus, which is necessary to confirm a diagnosis of CSF. This means that Chile must use a laboratory in Spain to confirm a diagnosis of CSF. We explained further that the biosecurity controls Chile imposes when a suspected case of CSF is discovered would be effective at containing the spread of a possible CSF infection even without an immediate confirmation of a CSF diagnosis. The commenter agreed with APHIS on this point, but requested that we discuss whether confirmatory testing for FMD and ASF could be accomplished within Chile. If confirmatory testing for these diseases could not be accomplished within Chile, the commenter asserted, the importation of live swine, pork, and pork products from Chile would pose a risk to the health of U.S. swine.

We consider Chile to be free of both FMD and ASF. In making the determination that these diseases do not exist in Chile, we considered Chile's diagnostic capabilities for these diseases, in the same way that we considered Chile's diagnostic capability for CSF in the proposed rule. When we determined that Chile was free from FMD and ASF, we evaluated Chile's diagnostic capabilities for these diseases and determined that they were satisfactory. If we were to determine that Chile's diagnostic capabilities for either of these diseases were inadequate at some point in the future, we would undertake separate rulemaking to amend § 94.1 (which lists regions free of FMD and rinderpest) or § 94.8 (which lists regions where ASF exists) accordingly. We are making no changes to the proposed rule in response to this comment.

The commenter noted that the United States is free of blue-eye disease (BED), and that BED appears to be a disease concern elsewhere. Given that live swine from Chile would be allowed to be imported into the United States if Chile was declared free of CSF, the commenter was concerned about the BED status of Chilean swine.

At this time, APHIS has no evidence that BED is present in Chile. If the commenter has such evidence, we would be willing to consider it. The proposed rule was prompted by a request from Chile to evaluate its CSF status; the risk evaluation and proposed rule addressed the risk of a possible CSF introduction into the United States via swine, pork, or pork products imported from Chile. If it becomes necessary to restrict imports of Chilean swine, pork, or pork products due to BED, we will undertake separate rulemaking to restrict their importation or, in the case of live swine, use our authority under § 93.504(a)(3) to deny the swine a permit for importation into the United States due to communicable disease conditions in Chile.

The commenter asked that APHIS clarify the circumstances that prompt us to conduct a qualitative risk assessment rather than a quantitative risk assessment. The commenter stated that semi-quantitative or quantitative analyses allow for a more standardized risk evaluation and allow stakeholders to more easily compare risks and determine what level of risk APHIS considers acceptable. The commenter also questioned the value of qualitative risk assessments, stating that such assessments rely too heavily on the information gathered by a small site visit team, despite the obvious skills of the site team members.

APHIS' decision on whether to conduct a qualitative or quantitative risk assessment when evaluating the disease status of a region is dependent primarily on two factors. One of these is the disease conditions in the region that has requested to be evaluated regarding its disease status. Regions that request to be declared free of a disease typically have not reported an outbreak of the relevant disease in many years and do not allow vaccination, which might mask disease. Such regions may be considered to pose a relatively low risk for disease

presence. For such regions, APHIS has historically conducted qualitative analyses when evaluating their disease status. Chile's last outbreak of CSF occurred in 1996, and Chile no longer vaccinates swine for CSF; these considerations indicated to us that a qualitative risk assessment was appropriate.

The second factor is whether or not we perceive that there may be underlying risk in the region. Regions for which quantitative analyses are conducted are typically those for which a qualitative evaluation has suggested that the region poses a higher level of risk than that described above. Risks of trade in commodities from the higher-risk regions often lend themselves to evaluation by a quantitative risk analysis model. However, no evidence gathered during the qualitative risk assessment for Chile indicated that such underlying risks exist in Chile for CSF. Based on these considerations, we conducted a qualitative risk assessment to evaluate whether Chile is free from CSF.

APHIS is preparing a description of its regionalization process, which will be posted on the Veterinary Services Web site when it is finalized. An announcement of its availability will be published in the **Federal Register** in the near future. Among other things, the description will outline the way in which APHIS conducts and applies risk analyses to assist with the decisionmaking process for regionalization.

We are, however, making minor editorial changes to the regulatory text to improve clarity.

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule adds Chile to the lists of regions considered free of CSF and allows pork, pork products, live swine, and swine semen to be imported into the United States from Chile, subject to certain conditions. We have determined that approximately 2 weeks are needed to ensure that APHIS and Department of Homeland Security-Bureau of Customs and Border Protection personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

Under the regulations in 9 CFR part 94, the importation into the United States of live swine, pork, pork products, and swine semen that originates in or transits any region where CSF exists is generally prohibited, except for certain pork products processed in accordance with the regulations. Furthermore, even if a region is considered free of CSF, the importation of pork and pork products from that region may be restricted, depending on the region's proximity to or trading relationships with regions where CSF exists. CSF is a transmissible animal disease with potentially serious consequences for international trade of animals and animal products.

The Agriculture and Livestock Service of the Government of Chile asked APHIS to evaluate Chile's CSF status. APHIS conducted a site visit in Chile and, using data from this site visit and data supplied by the Government of Chile, performed a subsequent risk evaluation that indicated that Chile is free of CSF. This final rule, therefore, recognizes Chile as free of CSF. However, since Chile shares borders with regions that the United States does not recognize as free of CSF, imports live swine from a region that the United States does not recognize as free of CSF, and imports certain products from regions affected with CSF under conditions that are less restrictive than those in our regulations in 9 CFR part 94, we are also adding certification requirements for live swine, pork, and pork products imported into the United States from Chile to ensure their freedom from CSF.

In 1997, Chile had 105,665 swine farms on which 1.7 million swine were raised. There were 289 commercial premises, which represented 69 percent of Chile's hog facilities.[1] In the United States in 2000, on the other hand, there were 98,460 swine producers raising about 59,407,000 swine valued at $4.26 billion.[2] Chile has never exported live swine to the United States. In 1998, the United States imported from Chile 18 metric tons of frozen swine edible offal (Harmonized Tariff Schedule [HS] code number 020649). No other pork meat or any other pork product has been imported by the United States from Chile since then (table 1).

Frozen and dried pork accounts for 87 percent of all Chilean exports of pork and pork products; the remaining 13 percent consists of either fresh or chilled pork. In 2000, Chile exported 33,900 metric tons of pork. Of this, 30.1 metric tons was cooked pork, which was exported either frozen or dried (table 2). That same year, the United States imported 368,700 metric tons of pork, more than 10 times the total of Chile's pork exports.

On average, between 1998 and 2001, Chile's global exports of live swine amounted to approximately 0.3 percent of the volume of U.S. imports of live swine (tables 3 and 4). Specifically, Chile's global exports of live swine were 0.28 percent of the volume of U.S. imports of live swine in 1998, 0.33 percent in 1999, 0.39 percent in 2000, and 0.32 percent in 2001. Between 1998 and 2001, the volume of Chile's exports of pork and pork products to the world was, on average, equivalent to 9 percent of the volume of U.S. imports of pork and pork products.

TABLE 1.—U.S. IMPORTS OF PORK AND PORK PRODUCTS

Commodity (by HS 6-digit category)	Origin of U.S. imports	Import volume by year (in metric tons)			
		1998	1999	2000	2001
Swine carcasses, fresh or chilled (HS 020311)	World	10,555	11,206	4,542	1,676
Swine carcasses, frozen (HS 020321)	World	68	46	70	39

[1] APHIS, Veterinary Services/Trade in Animals and Animal Products Branch.

[2] USDA, ''Agricultural Statistics 2000,'' page VII–18. Washington, DC, National Agricultural Statistics Service, 2000.

TABLE 1.—U.S. IMPORTS OF PORK AND PORK PRODUCTS—Continued

Commodity (by HS 6-digit category)	Origin of U.S. imports	Import volume by year (in metric tons)			
		1998	1999	2000	2001
Swine hams, fresh or chilled (HS 020312)	World	48,976	61,099	76,469	75,482
Swine hams, with bone in (HS 020322)	World	10,023	7,977	5,533	4,470
Swine edible offal, fresh or chilled (HS 020630)	World	10,065	9,499	15,557	20,904
Swine edible offal, except for liver, frozen (HS 020649)	World (except Chile).	4,281	4,437	4,138	4,092
	Chile	18	0	0	0
		(0.4%)			
Swine livers, frozen (HS 020641)	World	248	98	29	264
Swine hams/shoulders, salted, dried (HS 021011)	World	818	1,555	1,659	1,280
Swine bellies, salted and dried, bacon (HS 021012)	World	10,073	16,673	21,720	19,836
Swine meat, except ham, salted, dried, smoked (HS 021019)	World	3,768	3,440	4,725	6,709
Swine fresh cuts (NES) (HS 020319)	World	87,434	116,325	148,401	163,131
Swine frozen cuts (NES) (HS 020329)	World	60,137	69,625	85,900	80,175
Total quantity		246,464	301,980	368,743	378,058

Source: USDA/Foreign Agricultural Service (FAS) Global Agricultural Trade System using data from the United Nations (UN) Statistical Office.
NES = not elsewhere specified.

TABLE 2.—CHILEAN EXPORTS OF PORK AND PORK PRODUCTS

Commodity (by HS 6-digit category)	Export volume by year (in metric tons)			
	1998	1999	2000	2001
Swine carcasses, fresh or chilled (HS 020311)	4,741	645	21	455
Swine carcasses, frozen (HS 020321)	108	80	6	164
Swine hams, fresh or chilled (HS 020312)	0	146	790	797
Swine hams, with bone in (HS 020322)	661	201	456	5,357
Swine edible offal, fresh or chilled (HS 020630)	3	5	104	103
Swine edible offal, except for liver, frozen (HS 020649)	4,888	5,331	5,677	7,261
Swine livers, frozen (HS 020641)	248	98	29	264
Swine bellies, salted & dried, bacon (HS 021012)	11	3	2	2
Swine fresh cuts (NES) (HS 020319)	0	865	2,638	2,448
Swine frozen cuts (NES) (HS 020329)	7,857	5,587	9,070	17,049
Total quantity	18,517	12,961	18,793	33,900

Source: FAS Global Agricultural Trade System using data from the UN Statistical Office.
NES = not elsewhere specified.

TABLE 3.—U.S. IMPORTS OF LIVE SWINE

Swine (by HS 6-digit category)	1998	1999	2000	2001
Pure-bred (HS–010310) [1]				
Quantity (swine)	415	594	4,585	22,178
Value	$70,000	$182,000	$1,117,000	$5,080,000
Non-pure-bred category A (HS–010391) [2]				
Quantity (metric tons)	20,383	29,978	2,336,048	42,276
Value	$38,993,000	$51,200,000	$72,285,000	$103,168,000
Non-pure-bred category B (HS–010392) [3]				
Quantity (metric tons)	318,246	259,024	2,016,931	280,621
Value	$249,787,000	$175,100,000	$217,977,000	$249,754,000
Total value	$288,850,000	$226,482,000	$291,379,000	$358,002,000

[1] Imported from Canada, Denmark, and United Kingdom.
[2] Imported from Canada, Denmark, and Australia.
[3] Imported from Canada, Denmark, Norway, Australia, and United Kingdom.
Source: FAS Global Agricultural Trade System using data from the UN Statistical Office.

TABLE 4.—CHILEAN EXPORTS OF LIVE SWINE

Swine (by HS 6-digit category)	1998	1999	2000	2001
Pure-bred (HS–010310)				
Quantity (metric tons)	95	([1])	([1])	([1])

TABLE 4.—CHILEAN EXPORTS OF LIVE SWINE—Continued

Swine (by HS 6-digit category)	1998	1999	2000	2001
Value	$759,000	$688,000	$1,126,000	$1,132,000
Non-pure-bred, category A (HS–010391)				
Quantity (metric tons)	0	(1)	0	0
Value	0	$25,000	0	0
Non-pure-bred, category B (HS–010392)				
Quantity (metric tons)	30	(1)	0	0
Value	$44,000	$45,000	0	0
Total value	$803,000	$758,000	$1,126,000	$1,132,000

[1] Unknown.
Source: FAS Global Agricultural Trade System using data from the UN Statistical Office.

Economic Effects on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. Domestic swine producers and processors of pork and pork products, as well as brokers, agents and others in the United States who would become involved in any future importation and sale of swine, pork, and pork products from Chile, are most likely to be directly affected by this change to Chile's CSF status. The number and size of the entities that may become involved in any future importation and sale of swine (or products) from Chile is unknown. However, it is reasonable to assume that most will be small, based on the Small Business Administration's standards, since most businesses are classified as small under those standards.

From an economic standpoint, this change in Chile's CSF status should have little or no effect on domestic entities in the United States. This is because exports from Chile in quantities sufficient to have a significant effect on the U.S. market are unlikely. We do not anticipate that any U.S. entities, small or otherwise, will experience any significant economic effects as a result of this action.

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

Executive Order 12988

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0235.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.9 [Amended]

■ 2. In § 94.9, paragraph (a) is amended by adding the word ''Chile;'' after the word ''Canada;''.

§ 94.10 [Amended]

■ 3. In § 94.10, paragraph (a) is amended by adding the word ''Chile;'' after the word ''Canada;''.

■ 4. Section 94.24 is revised to read as follows.

§ 94.24 Restrictions on the importation of live swine, pork, or pork products from certain regions free of classical swine fever.

The regions listed in paragraph (a) of this section are recognized as free of classical swine fever (CSF) in §§ 94.9(a) and 94.10(a) but either supplement their pork supplies with fresh (chilled or frozen) pork imported from regions considered to be affected by CSF, or supplement their pork supplies with pork from CSF-affected regions that is not processed in accordance with the requirements of this part, or share a common land border with CSF-affected regions, or import live swine from CSF-affected regions under conditions less restrictive than would be acceptable for importation into the United States. Thus, there exists a possibility that live swine, pork, or pork products from the CSF-free regions listed in paragraph (a) of this section may be commingled with live swine, pork, or pork products from CSF-affected regions, resulting in a risk of CSF introduction into the United States. Therefore, live swine, pork, or pork products and shipstores, airplane meals, and baggage containing pork or pork products, other than those articles regulated under parts 95 or 96 of this chapter, may not be imported into the United States from a region listed in paragraph (a) of this section unless the requirements in this section, in addition to other applicable requirements of part 93 of this chapter and part 327 of this title, are met.

(a) Regions subject to the requirements of this section: Chile and

the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa.

(b) *Live swine.* The swine must be accompanied by a certification issued by a full-time salaried veterinary officer of the national government of the region of export. Upon arrival of the swine in the United States, the certification must be presented to an authorized inspector at the port of arrival. The certification must identify both the exporting region and the region of origin as a region designated in §§ 94.9 and 94.10 as free of CSF at the time the swine were in the region and must state that:

(1) The swine have not lived in a region designated in §§ 94.9 and 94.10 as affected with CSF.

(2) The swine have never been commingled with swine that have been in a region that is designated in §§ 94.9 and 94.10 as affected with CSF;

(3) The swine have not transited a region designated in §§ 94.9 and 94.10 as affected with CSF unless moved directly through the region to their destination in a sealed means of conveyance with the seal intact upon arrival at the point of destination; and

(4) The conveyances or materials used in transporting the swine, if previously used for transporting swine, have been cleaned and disinfected in accordance with the requirements of § 93.502 of this chapter.

(c) *Pork or pork products.* The pork or pork products must be accompanied by a certification issued by a full-time salaried veterinary officer of the national government of the region of export. Upon arrival of the pork or pork products in the United States, the certification must be presented to an authorized inspector at the port of arrival. The certification must identify both the exporting region and the region of origin of the pork or pork products as a region designated in §§ 94.9 and 94.10 as free of CSF at the time the pork or pork products were in the region and must state that:

(1) The pork or pork products were derived from swine that were born and raised in a region designated in §§ 94.9 and 94.10 as free of CSF and were slaughtered in such a region at a federally inspected slaughter plant that is under the direct supervision of a full-time salaried veterinarian of the national government of that region and that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the regulations in § 327.2 of this title;

(2) The pork or pork products were derived from swine that have not lived in a region designated in §§ 94.9 and 94.10 as affected with CSF;

(3) The pork or pork products have never been commingled with pork or pork products that have been in a region that is designated in §§ 94.9 and 94.10 as affected with CSF;

(4) The pork or pork products have not transited through a region designated in §§ 94.9 and 94.10 as affected with CSF unless moved directly through the region to their destination in a sealed means of conveyance with the seal intact upon arrival at the point of destination; and

(5) If processed, the pork or pork products were processed in a region designated in §§ 94.9 and 94.10 as free of CSF in a federally inspected processing plant that is under the direct supervision of a full-time salaried veterinary official of the national government of that region.

(Approved by the Office of Management and Budget under control numbers 0579–0230 and 0579–0235)

Done in Washington, DC, this 7th day of July 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15805 Filed 7–12–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–54–AD; Amendment 39–13729; AD 2004–14–20]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Model 525 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA supersedes Airworthiness Directive (AD) 2003–21–07, which applies to certain The Cessna Aircraft Company (Cessna) Model 525 airplanes. AD 2003–21–07 currently requires you to disengage the pitch trim circuit breaker and AP servo circuit breaker and then tie strap each of them to prevent them from being engaged. Not utilizing this equipment prevents a single-point failure. This AD is the result of Cessna having now developed and made changes in the design of the affected trim printed circuit board (PCB) assembly to allow the use of the assembly and the prevention of the single-point failure, and identification of additional airplanes that have the same unsafe condition. Consequently, this AD requires you to remove and replace an old trim PCB assembly with a new design assembly or modify an old trim PCB assembly to the new design. We are issuing this AD to correct this single-point failure in the electric pitch trim system, which will result in a runaway pitch trim condition where the pilot could not disconnect using the control wheel autopilot/trim disconnect switch. Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

DATES: This AD becomes effective on August 23, 2004.

As of August 23, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–6000; facsimile: (316) 517–8500.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–54–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? A report of an accident involving a Cessna Model 525 airplane where the pilot reported a problem with the pitch trim system, and later Cessna and FAA analysis that revealed the potential for a single-wire shorting caused us to issue AD 2003–21–07, Amendment 39–13342 (68 FR 60028, October 21, 2003). AD 2003–21–07 currently requires you to do the following on Cessna Model 525 airplanes:

—Disengage the pitch trim circuit breaker and AP servo circuit breaker; and

—Tie strap each of them to prevent them from being engaged.

What has happened since AD 2003–21–07 to initiate this action? AD 2003–21–07 is considered an interim action since compliance corrected the condition where the control wheel

autopilot/trim disconnect switch did not stop the runaway condition. However, AD 2003–21–07 did not correct the issue of the single-point failure while still utilizing the desired equipment. Cessna has now developed and made changes in the design of the affected trim printed circuit board (PCB) assembly to eliminate the single-point failure while allowing the use of the equipment, and identified additional airplanes that have the same unsafe condition.

What is the potential impact if FAA took no action? Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Model 525 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 11, 2004 (69 FR 6585). The NPRM proposed to supersede AD 2003–21–07 with a new AD that would require you to:

—Remove any 6518351–3 or 6518351–5 trim PCB assembly and replace with a 6518351–10 (EX) trim PCB assembly; or

—Modify the 6518351–8 trim PCB assembly to a 6518351–10 trim PCB assembly.

Comments

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

Conclusion

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

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

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

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 251 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification of the 6518351–8 trim PCB assembly to a 6518351–10 trim PCB assembly. We have no way of determining the number of airplanes that may need this modification:

Labor cost	Parts cost	Total cost per airplane
4 workhours × $65 per hour = $260	$2,995	$2,995 + $260 = $3,255.

We estimate the following costs to accomplish the replacement of any 6518351–3 or 6518351–5 trim PCB assembly with a 6518351–10 (EX) trim PCB assembly. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $65 per hour = $130	$2,995	$2,995 + $130 = $3,125.

What is the difference between the cost impact of this AD and the cost impact of AD 2003–21–07? The estimated cost impact of AD 2003–21–07 on each of the 116 airplanes in the U.S. registry affected by AD 2003–21–07 is $65. This is to disengage the pitch trim circuit breaker and AP servo circuit breaker and then tie strap each of them to prevent them from being engaged.

The estimated cost of this AD is $3,125 or $3,255 on each of 251 airplanes in the U.S. registry to do the replacement or modification of the trim PCB assembly.

Compliance Time of This AD

What is the compliance time of this AD? The compliance time of this AD is ''within the next 24 calendar months after the effective date of this AD or within 300 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first.''

Why is the compliance time of this AD presented in both hours TIS and calendar time? A single-wire shorting to 28 volts or a failure of a relay that results in the relay contacts remaining closed is a direct result of airplane operation. For example, either failure could occur on an affected airplane within a short period of airplane operation while you could operate another affected airplane for a considerable amount of time without experiencing either failure. Therefore, to assure that either failure is detected and corrected in a timely manner without inadvertently grounding any of the affected airplanes, we are using a compliance time based upon both hours TIS and calendar time.

Regulatory Findings

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

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

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–54–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–21–07, Amendment 39–13342 (68 FR 60028, October 21, 2003), and by adding a new AD to read as follows:

2004–14–20 The Cessna Aircraft Company: Amendment 39–13729; Docket No. 2003–CE–54–AD; Supersedes AD 2003–21–07; Amendment 39–13342.

When Does This AD Become Effective?

(a) This AD becomes effective on August 23, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2003–21–07.

What Airplanes Are Affected by This AD?

(c) This AD affects Model 525 airplanes with the following serial numbers that are certificated in any category:

(1) Group 1 (maintains the actions from AD 2003–21–07): 525–0001, 525–0002, and 525–0004 through 525–0159.

(2) Group 2: 525–0160 through 525–0359.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of Cessna having now developed and made changes in the design of the affected trim printed circuit board (PCB) assembly to allow the use of the assembly and the prevention of the single-point failure, and identification of additional airplanes that have the same unsafe condition. The actions specified in this AD are intended to correct this single-point failure in the electric pitch trim system, which will result in a runaway pitch trim condition where the pilot could not disconnect using the control wheel autopilot/trim disconnect switch. Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) *For Group 1 airplanes only:* Disengage the PITCH TRIM circuit breaker located on the left circuit breaker panel. Install a tie strap (part number (P/N) MS3367–1–4 or equivalent part number) on the shaft of the PITCH TRIM circuit breaker to prevent the circuit breaker from being engaged.	Within 5 calendar days or 10 hours time-in-service after October 22, 2003–21–07), whichever occurs first.	Not Applicable.
(2) *For Group 1 airplanes only:* Disengage the AP SERVOS circuit breaker located in the right circuit breaker panel. Install a tie strap (P/N MS3367–1–4 or equivalent part number) on the shaft of the AP SERVOS circuit breaker from being engaged.	Within 5 calendar days or 10 hours time-in-service after October 22, 2003 (the effective date of AD 2003–21–07), whichever occurs first.	Not Applicable.
(3) The Minimum Crew portion of Section II—Operating Limitations of the Airplane Flight Manual (AFM) provides information on applicable operating limitations with the autopilot inoperable.	Not Applicable	Not Applicable.
(4) All affected airplanes were originally equipped with a P/N 6518351–3 or P/N 65138351–5 Trim PCB Assembly. If a P/N 6518351–8 Trim PCB Assembly is installed, contact the Wichita Aircraft Certification Office at the address in paragraph (f) of this AD to determine if the installed P/N 6518351–8 Trim PCB assembly is an alternative method of compliance to this AD.	Not Applicable	Not Applicable.
(5) Cessna Citation Alert Service Letter ASL525–27–02, dated October 10, 2003, contains information related to this subject.	Not Applicable	Not Applicable.
(6) *For both Group 1 and Group 2 airplanes:* Do the trim PCB assembly change as follows: (i) Modify the 6518351–8 trim PCB assembly to a 6518351–10 trim PCB assembly; or (ii) Replace any 6518351–3 or 6518351–5 trim PCB assembly with a 6518351–10 (EX) trim PCB assembly.	Within the next 24 calendar months after August 23, 2004 (the effective date of this AD) or within 300 hours time-in-service (TIS) after August 23, 2004 (the effective date of this AD), whichever occurs first, unless already done.	Follow the ACCOMPLISHMENT INSTRUCTIONS paragraph of Cessna Citation Service Bulletin No. SB525–27–17, dated December 9, 2003.
(7) *For both Group 1 and Group 2 airplanes:* Remove any tie strap (P/N MS3367–1–4 or equivalent part number) on the AP SERVOS and PITCH TRIM circuit breakers. (Required by AD 2003–21–07.).	Before further flight after the modification or replacement of the trim PCB assembly required by paragraph (e)(6)(i) or (e)(6)(ii) of this AD.	Follow the ACCOMPLISHMENT INSTRUCTIONS paragraph of Cessna Citation Service Bulletin No. SB525–27–17, dated December 9, 2003.

Actions	Compliance	Procedures
(8) *For both Group 1 and Group 2 airplanes:* Do not install any 6518351–8, 6518351–3, or 6518351–5 trim PCB assembly.	As of August 23, 2004 (the effective date of this AD).	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA.

(1) For information on any already approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4107.

(2) Alternative methods of compliance approved for AD 2003–21–07 are not approved as alternative methods of compliance for this AD.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Cessna Citation Service Bulletin No. SB525–27–17, dated December 9, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–6000; facsimile: (316) 517–8500. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Issued in Kansas City, Missouri, on July 1, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15666 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–58–AD; Amendment 39–13730; AD 2004–14–21]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. Models S10, S10–V, and S10–VT Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Stemme GmbH & Co. Models S10, S10–V, and S10–VT sailplanes. This AD requires you to remove the drive shaft assembly and ship it to the service department of Stemme GmbH & Co. The engine is mounted behind the two side-by-side seats. The engine combined with the carbon fiber drive shaft turn the centrifugally extended propeller. After an initial visual inspection, the service department will perform an operational check to determine whether the drive shaft can be further used or must be replaced. Once corrective action is identified, a drive shaft will be shipped to you for installation. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct incorrectly glued drive shafts, which could result in drive shaft failure. During self-takeoff or critical periods of landing, failure of the drive shaft could lead to loss of control of the sailplane.

DATES: This AD becomes effective on August 21, 2004.

As of August 21, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Stemme GmbH & Co. AG, Flugplatzstraße F 2, Nr. 7, D–15344 Strausberg, Germany.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–58–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Stemme GmbH & Co. Models S10, S10–V, and S10–VT sailplanes. The LBA reports that two drive shafts have failed during normal operation of the sailplane. The flanges of the drive shafts started to rotate within the carbon fiber reinforced plastics-tube (CFRP-tube), while the drive shafts still appeared to be intact when looking at them from the outside. The metal flanges on both ends of the drive shafts might not have been properly glued to the CFRP-tube.

What is the potential impact if FAA took no action? Incorrectly glued drive shafts could result in drive shaft failure. This failure could lead to loss of control of the sailplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Stemme GmbH & Co. Models S10, S10–V, and S10–VT sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 16, 2004 (69 FR 74). The NPRM proposed to require you to remove the drive shaft assembly and ship it to the service department of Stemme GmbH & Co. After an initial visual inspection, the service department will perform an operational check to determine whether the drive shaft can be further used or must be replaced. Once corrective action is taken, the NPRM also proposed to require you to install the returned drive shaft.

Comments

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

Conclusion

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

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

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

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many sailplanes does this AD impact? We estimate that this AD affects 57 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to remove the drive shaft, ship it to and from manufacturer's service department, and install the drive shaft after manufacturer's inspection is complete:

Labor cost	Parts cost	Shipping cost to and from manufacturer	Total cost per sailplane	Total cost on U.S operations
6 workhours × $65 per hour = $390	N/A	$1,080	$1,470	$83,790

We estimate the following costs for the manufacturer to do the inspection and any necessary repairs that will be required based on the results of this inspection. We have no way of determining the number of sailplanes that may need this repair:

Labor cost	Parts cost	Total cost per sailplane
Inspection and testing by manufacturer—$210	N/A	$210
Replacement of drive shaft—labor is included in the parts cost	$5,780	5780

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003-CE–58-AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–14–21 Stemme GmbH & Co.: Amendment 39–13730; Docket No. 2003–CE–58–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on August 21, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

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

Models	Serial nos.
(1) S10–VT	11–001 through 11–055, 11–057, 11–058, and 11–060 through 11–066;
(2) S10–V	14–003, 14–004, 14–007, 14–014, 14–015, and 14–018 through 14–030, as well as conversion serial numbers 14–028M, 14–036M, and 14–038M; and 10–08 and 10–13.
(3) S10	10–08 and 10–13.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified in this AD are intended to identify incorrectly glued drive shafts, which could result in drive shaft failure. This failure could lead to loss of control of the sailplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Remove the drive shaft and ship it to the service department of Stemme GmbH & Co. for inspection at the following address: Stemme GmbH & Co. AG, Flugplatzstraße F 2, Nr. 7, D–15344 Strausberg, Germany. The sailplane's Component History Card and information about the current operating times (time since new, time since overhaul) must be included.	Do within 50 hours time-in-service after August 21, 2004 (the effective date of this AD).	Follow the procedures in the Stemme GmbH & Co. Service Bulletin A31–10–058, dated November 8, 2001.
(2) Install the drive shaft after Stemme GmbH & Co. has performed the inspections, determined corrective action, and returned the drive shaft.	Before further flight after receiving the returned drive shaft.	Follow the procedures in the Stemme GmbH & Co. Service Bulletin A31–10–058, dated November 8, 2001.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Gregory M. Davison, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Stemme GmbH & Co. Service Bulletin A31–10–058, dated November 8, 2001. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Stemme GmbH & Co., Flugplatzstraße F 2, Nr. 7, D–15344 Strausberg, Germany. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Is There Other Information That Relates to This Subject?

(h) LBA Airworthiness Directive No. 2002–113, dated May 2, 2002, and Stemme GmbH & Co. Service Bulletin A31–10–058, dated November 8, 2001, also address the subject of this AD.

Issued in Kansas City, Missouri, on June 30, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15667 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–12–AD; Amendment 39–13717; AD 2004–14–08]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 and A310 series airplanes, that requires modification of the attachment system of the insulation blankets of the forward cargo compartment and related corrective action. This action is necessary to prevent failure of the attachment system of the cargo insulation blankets, which could result in detachment and consequent tearing of the blankets. Such tearing could result in blanket pieces being ingested into and jamming the forward outflow valve of the pressure regulation subsystem, which could lead to cabin depressurization and adversely affect continued safe flight of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 17, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 and A310 series airplanes was published in the **Federal Register** on April 6, 2004 (69 FR 17996). That action proposed to require modification of the attachment system of the insulation blankets of the forward cargo compartment and related corrective action.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Revised Service Information

Since issuance of the proposed AD, the manufacturer has revised the referenced service information. Therefore, we have changed paragraph (a) of this final rule to refer to Airbus Service Bulletins A300–21–6045 (for Model A300–600 series airplanes) and A310–21–2059 (for Model A310 series airplanes), both Revision 02, both dated March 27, 2003, for accomplishment of the modification of the attachment system of the insulation blankets of the

forward cargo compartment. We have also noted that accomplishment of the modification before the effective date of this AD using Revision 01 of the service bulletins is acceptable for compliance with that paragraph. Revision 02 has been identified as mandatory and contains procedures that are essentially the same as those in Revision 01 (referenced in the proposed AD as the appropriate source of service information for accomplishment of the actions).

Conclusion

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

Cost Impact

We estimate that 149 airplanes of U.S. registry will be affected by this AD, that it will take about 3 work hours per airplane to accomplish the modification, and that the average labor rate is $65 per work hour. Required parts will cost about $198 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $58,557, or $393 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–14–08 Airbus: Amendment 39–13717. Docket 2003–NM–12–AD.

Applicability: Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600), and A310 series airplanes; certificated in any category; on which Airbus Modification 12340 or 12556 has not been done; and A310 series airplanes on which Airbus Modification 3881 has been done.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the attachment system of the cargo insulation blankets, which could result in detachment and consequent tearing of the blankets, resulting in blanket pieces being ingested into and jamming the forward outflow valve of the pressure regulation subsystem, which could lead to cabin depressurization and adversely affect continued safe flight of the airplane, accomplish the following:

Modification

(a) Within 1 year after the effective date of this AD: Modify the attachment system of the insulation blankets of the forward cargo compartment by doing all the applicable actions per the Accomplishment Instructions of Airbus Service Bulletin A300–21–6045 (for Model A300–600 series airplanes) or A310–21–2059 (for Model A310 series airplanes), both Revision 02, both dated March 27, 2003, as applicable. Repair any damaged insulation blanket before further flight, per the applicable service bulletin. Actions accomplished before the effective date of this AD per Airbus Service Bulletin A300–21–6045 or A310–21–2059, both Revision 01, both dated May 22, 2002, are acceptable for compliance with the corresponding action required by this paragraph.

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.

Incorporation by Reference

(c) The actions shall be done in accordance with Airbus Service Bulletin A300–21–6045, Revision 02, dated March 27, 2003; or Airbus Service Bulletin A310–21–2059, Revision 02, dated March 27, 2003; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–626(B) R1, dated March 19, 2003.

Effective Date

(d) This amendment becomes effective on August 17, 2004.

Issued in Renton, Washington, on June 29, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15366 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–82–AD; Amendment 39–13722; AD 2004–14–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–

100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes, that requires inspection of fire extinguisher bottles in the engine and the auxiliary power unit (APU) to determine the part number; and replacement of the fire extinguisher bottles with new fire extinguisher bottles, if necessary. This action is necessary to prevent fractured discharge heads, which could cause the fire extinguishing agent to leak, which could result in an uncontrolled engine fire that could spread to the strut and wing, or an uncontrolled APU fire that could spread to the airplane structure. This action is intended to address the identified unsafe condition.

DATES: Effective August 17, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; or Kidde Aerospace, 4200 Airport Drive NW., Wilson, North Carolina 27896–8630; as applicable. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4086; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes was published in the **Federal Register** on December 8, 2003 (68 FR 68306). That action proposed to require inspection of fire extinguisher bottles in the engine and the auxiliary power unit (APU) to determine the part number; and replacement of the fire extinguisher bottles with new fire extinguisher bottles, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Proposed AD Not Applicable to Fleet

One commenter states that the proposed AD does not apply to its fleet.

Request To Relax Compliance Time for Replacements

Two commenters requested that the FAA relax the requirement to replace any affected fire extinguisher bottles prior to further flight after inspecting to determine the bottles' part number. The commenters state that it is more efficient to inspect first and replace the components later. The commenters further state that many repair stations are qualified to do the inspections, while few of them have the required replacement fire extinguisher bottles on hand because these parts are not widely stocked. The commenters state that the replacements could be accomplished more quickly if any repair station could inspect the fire extinguisher bottles for the part number, rather than only those that have the required replacements. This would allow an operator to know ahead of time how many bottles to procure, and would preclude grounding airplanes and causing schedule disruptions while the required replacement is obtained. This commenter does not believe that safety would be compromised by removing the requirement to replace the fire extinguisher bottles before further flight.

We do not agree with the request to relax the compliance time for replacements. In developing the proposed compliance time of two years for the inspections and any necessary replacements ''prior to further flight,'' we considered the safety implications, the average utilization of the affected fleet, the practical aspects of an orderly inspection of the fleet during regular maintenance periods, and the availability of required parts. Our intent in proposing two years for the inspections was to allow operators to do the inspections and any necessary replacements during a scheduled maintenance visit. This would allow operators to plan ahead to have sufficient replacements on hand or readily available without grounding the airplane or disrupting schedules should the fire extinguisher bottle need to be replaced. In addition, we do not allow airplanes with known deficient engine fire extinguisher bottles to operate; the master minimum equipment list (MMEL) does not allow airplanes to be dispatched with one engine fire extinguisher bottle that is inoperative. We have not revised the compliance time for the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 346 airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,055, or $65 per airplane.

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

Regulatory Impact

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

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

Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–14–13 Boeing: Amendment 39–13722. Docket 2003–NM–82–AD.

Applicability: Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes, as listed in Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fractured discharge heads, which could cause the fire extinguishing agent to leak, which could result in an uncontrolled engine fire that could spread to the strut and wing, or an uncontrolled auxiliary power unit (APU) fire that could spread to the airplane structure, accomplish the following:

Inspection and Replacement

(a) Within two years after the effective date of this AD: Perform an inspection to determine the part number (P/N) of the fire extinguisher bottles in the engine and the APU per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003.

Note 1: Boeing Alert Service Bulletin 747–26A2272 refers to Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002; and Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002; as additional sources of service information for accomplishment of the inspection and replacement, if necessary, for Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes; as applicable.

(1) If no ''Pre SB A820400–26–432'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002, is found installed; and if no ''Pre SB A830800–26–433'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002, is found installed; no further action is required by this paragraph.

(2) If any ''Pre SB A820400–26–432'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002, is found installed; or if any ''Pre SB A830800–26–433'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002, is found installed; prior to further flight, replace the fire extinguisher bottle with a new fire extinguisher bottle having the ''Post SB'' P/N listed in Table 2 of the applicable Kidde Aerospace service bulletin. Do the actions per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003.

Parts Installation

(b) As of the effective date of this AD, no person may install on any airplane a Kidde Aerospace fire extinguisher bottle with any ''Pre SB A820400–26–432'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002; or any ''Pre SB A830800–26–433'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002.

Alternative Methods of Compliance

(c) 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.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(e) This amendment becomes effective on August 17, 2004.

Issued in Renton, Washington, on June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15512 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–339–AD; Amendment 39–13727; AD 2004–14–18]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –106 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, and –106 airplanes, that requires repetitive detailed inspections of the left and right aileron tab actuator arm channels for cracking, and corrective actions if necessary. This proposal also provides an optional terminating action for the repetitive inspections. This action is necessary to prevent increased roll forces due to cracking of the left and right aileron tab actuator arms, which could be interpreted by the pilot as a flight control problem and might lead to loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 17, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 2004.

ADDRESSES: The service information referenced in this AD 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Richard Beckwith, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart

Ave., Westbury, NY 11590; telephone (516) 228–7306; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102, -103, and -106 airplanes was published in the **Federal Register** on May 5, 2004 (69 FR 25041). That action proposed repetitive detailed inspections of the left and right aileron tab actuator arm channels for cracking, and corrective actions if necessary. That action also proposed an optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

We estimate that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish each required repetitive inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,950, or $65 per airplane, per inspection.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–14–18 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–13727. Docket 2002–NM–339–AD.

Applicability: Model DHC–8–102, –103, and –106 airplanes; serial numbers 3 through 119 inclusive; without Bombardier Modification 8/0864 incorporated; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent increased roll forces due to cracking of the left and right aileron tab actuator arm channels, which could be interpreted by the pilot as a flight control problem and might lead to loss of control of the airplane, accomplish the following:

Inspection and Corrective Actions

(a) Within 500 flight hours after the effective date of this AD, perform a detailed inspection of the left and right aileron tab actuator arm channels for cracking, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–07, Revision ''F,'' dated March 27, 2002.

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 no cracked actuator arm channel is found, repeat the inspection at intervals not to exceed 500 flight hours, until paragraph (a)(2) or (b) of this AD has been accomplished.

(2) If any cracked actuator arm channel is found, prior to further flight, accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD. Accomplishment of paragraph (a)(2)(i) or (a)(2)(ii) terminates the repetitive inspections required by paragraph (a)(1) of this AD for the repaired or replaced aileron tab only.

(i) Replace the actuator arm channel with a new actuator arm channel; install a reinforcing angle on the new actuator arm channel; and replace the balance weight arm with a new balance weight arm; in accordance with Part A of the Accomplishment Instructions of the service bulletin.

(ii) Replace the aileron tab with a new, improved aileron tab in accordance with Part C of the Accomplishment Instructions of the service bulletin.

Optional Terminating Action

(b) Reinforcement of both actuator arm channels with reinforcing angles and installation of new balance weight arms in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 8–57–07, Revision ''F,'' dated March 27, 2002; or replacement of the aileron tabs with new, improved tabs in accordance with Part C of the Accomplishment Instructions of that service bulletin; constitutes terminating action for the repetitive inspections required by paragraph (a)(1) of this AD.

Part Installation

(c) As of the effective date of this AD, no person may install any actuator arm channel or any aileron tab on any airplane except in accordance with paragraph (a)(2) or (b) of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(e) The actions shall be done in accordance with Bombardier Service Bulletin 8–57–07, Revision ''F,'' dated March 27, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal

Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–29, dated May 22, 2002.

Effective Date

(f) This amendment becomes effective on August 17, 2004.

Issued in Renton, Washington, on June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15513 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–39–AD; Amendment 39–13726; AD 2004–14–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes; Equipped With Pratt & Whitney JT9D–7R4 or 4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300–600 and A310 series airplanes, that currently requires deactivating both thrust reversers and revising the airplane flight manual (AFM) to ensure safe and appropriate performance during certain takeoff conditions. This amendment requires installing modifications that will add an independent third line of defense on the thrust reversers, which would enhance their redundancy and terminate the requirements of the existing AD. The actions specified by this AD are intended to prevent in-flight deployment of the thrust reversers, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 17, 2004.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of August 17, 2004.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 28, 1998 (63 FR 70637, December 22, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: 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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–25–51, amendment 39–10952 (63 FR 70637, December 22, 1998), which is applicable to certain Airbus Model A300–600 and A310 series airplanes, was published in the **Federal Register** on April 14, 2003 (68 FR 17893). The action proposed to require deactivating both thrust reversers and revising the airplane flight manual (AFM) to ensure safe and appropriate performance during certain takeoff conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for Proposed AD

One commenter supports the AD as proposed. Air Transport Association (ATA) reports that its members generally support the intent of the rulemaking.

Request To Extend Compliance Time

One commenter, an operator, is concerned that the proposed 1-year compliance time would result in grounded airplanes, and requests that the compliance time be extended from 12 months to 3 years. The operator reports that no thrust reversers have deployed in flight, uncommanded, on its affected airplanes. The operator notes that all of its PW4000-powered A310/A300–600 airplanes and engine spares have been modified, but hardware changes were often needed for configuration compatability. Further, because the modification was done during the 180-day passenger-to-freighter conversion process, the hardware changes were handled within the scheduled time with no unscheduled downtime. However, unlike its PW4000-powered fleet, the operator states that all of its PW JT9D–7R4-powered airplanes are in operational service and are to be modified during a shorter maintenance visit. The operator concludes that a 3-year compliance time for the modification would minimize the economic impact on operators'without compromising safety, since the repetitive inspections required by AD 98–25–51 would still be in force until the modification is done.

We partially agree with the request. We have previously issued an alternative method of compliance (AMOC) for the requirements of AD 98–25–51. The AMOC, based on a method developed cooperatively between the airframe and engine manufacturers, allows the thrust reversers to be reactivated in accordance with an FAA-approved program of parts replacement and repetitive inspections. However, because of the severe consequences associated with an in-flight thrust reverser deployment, we cannot increase the compliance time to 3 years, as the operator requests. Nonetheless, to avoid airplanes being grounded until the modification can be done, we agree to extend the compliance time for the modification from 1 year to 18 months. We have determined that this extension will not adversely affect safety. Paragraph (c) of this final rule has been changed accordingly. We have advised the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, of this change.

Request To Ensure Compliance Time After a Certain Date

One commenter, the manufacturer, considers the proposed compliance time appropriate, but requests a deadline not

earlier than June 30, 2004, to correspond to the compliance time mandated by French airworthiness directive 2001–523(B), dated October 31, 2001. In light of the compliance time discussion above, the new compliance time for this AD will not take effect until after June 30, 2004.

Request To Refer to AOTs

One commenter, the manufacturer, states that Airbus All Operators Telex (AOT) 78–09 (currently at Revision 3, dated June 29, 1999) has been considered as an approved AMOC for the requirements of AD 98–25–51 to allow the thrust reversers to be reactivated. The manufacturer notes that the proposed AD does not refer to Airbus AOT 78–09, or to AOT 78–10, which is referenced in AOT 78–09 and provides details for an exhaustive check of the thrust reverser electrical circuit as part of the reactivation control program/reinforcement against power supply loss. We infer that the manufacturer requests that we revise the proposed AD to refer to these AOTs and give credit for paragraphs (a) and (b) of the proposed AD for airplanes on which the actions specified in AOT 78–09 have been done.

We partially agree with the request; however, the actions specified in AOT 78–09 alone are insufficient to address the unsafe condition. We approved the AMOC to AD 98–25–51 to allow reactivation of the thrust reversers in accordance with Revision 3 of Airbus AOT 78–09, but the AOT does not contain all the AMOC requirements. The referenced AMOC involves certain tests, checks, maintenance actions, and parts changes to each individual thrust reverser. The AMOC is conditional on a stow-latching minimum-force check being done after the serialized selector solenoid valve is installed. That check is not specified in the AOT. We agree that most of the thrust reverser reactivation program is defined in Airbus AOT 78–09, Revision 3; however, additional actions are included in the complete AMOC, so the accomplishment of the AOT actions alone cannot be considered an approved AMOC to this AD. In addition, the reference to AOT 78–10—through AOT 78–09—is sufficient for purposes of this AD. However, we have added a new Note 3 in this final rule to clarify the purpose of the AMOC and its relationship to the AOT, and reidentified subsequent notes.

Request To Revise Description of Unsafe Condition

One commenter, the manufacturer, finds that the term ''unsafe condition'' is inappropriately used in the preamble to the proposed AD. The manufacturer takes exception to the characterization of the modification as being necessary to address the unsafe condition. The manufacturer asserts that the reactivation program restores the level of safety required to satisfy the original design requirements for the thrust reverser sytem, and adds that the modification was developed to add a supplementary level of protection against inadvertent deployment of the thrust reversers.

We do not agree that the term ''unsafe condition'' is inappropriate as it is used in the proposed AD. The requirements of AD 98–25–51 (deactivating both thrust reversers and revising the airplane flight manual) are intended to prevent in-flight deployment of the thrust reversers and consequent reduced controllability of the airplane. The subsequently issued AMOC (discussed previously) was intended as an interim action only. Although we recognize the improved reliability provided to the thrust reverser system by the reactivation program, we have determined that the basic two-line-of-defense architecture does not adequately address the system's vulnerability to damage and long-term maintainability. Therefore, the modification is necessary to prevent the identified unsafe condition. No change to the final rule is necessary regarding this issue.

Request To Revise Estimated Costs

Airbus reports that the estimated costs associated with the proposed modification have been revised. We have revised the Cost Impact section accordingly in this final rule.

Request To Include Certain Parts Costs

One commenter, an operator, states that the proposed AD understates the estimated costs associated with the modification because certain parts specified in Pratt & Whitney Service Bulletins PW7R4 A78–179 and JT9D–7R4–A73–80 were not considered. The operator asserts that the proposed AD accounts only for the labor hours, not the parts costs, associated with the actions specified in those service bulletins. The commenter provides its actual costs incurred to modify one of its airplanes, and compares those costs to the cost estimates of the proposed AD.

We agree that the parts costs may be underestimated in the proposed AD. While the commenter's total parts cost was $114,622 with Pratt & Whitney Service Bulletin PW7R4A78–179 included, we estimate that the parts costs could be as high as $120,000, depending on the airplane configuration. We have revised the Cost Impact section accordingly in this final rule.

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and AMOCs. However, for clarity and consistency in this final rule, we have retained the language of the proposed AD regarding that material.

Change in Labor Rate

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

This AD affects about 38 airplanes of U.S. registry. The FAA provides the following cost estimates for the actions specified in this AD:

COST ESTIMATES

Action	Model/series	Work hours	Hourly labor rate	Parts cost	Cost per airplane
Actions currently required by AD 98–25–51					
Thrust reverser deactivation	All	2	$65	$0	$130
AFM revision	All	1	65	0	65
Modification (listed by Service Bulletin)					
A310–78–2018	A310–222 and –322	1,439	65	53,400	146,935
A310–78–2019	A310–324 and –325	1,515	65	49,702	148,177
A310–78–2020	A310–221 and –222	1,273	65	51,088	133,833
A300–78–6017	A300 B4–620	823	65	51,215	104,710
A300–78–6018	A300 B4–622R	1,318	65	48,664	134,334
A300–78–6020	A300 B4–622	937	65	52,688	113,593

Operators should note that, if the actions specified in Pratt & Whitney Service Bulletins PW7R4 A78–179 and JT9D–7R4–A73–80 have not been previously accomplished, the total parts costs associated with the required modification could be as high as $120,000 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–10952 (63 FR 70637, December 22, 1998), and by adding a new airworthiness directive (AD), amendment 39–13726, to read as follows:

2004–14–17 Airbus: Amendment 39–13726. Docket 2002–NM–39–AD. Supersedes AD 98–25–51, Amendment 39–10952.

Applicability: The airplanes, certificated in any category, in the following table:

Model—	Equipped with—	Except those modified in accordance with Airbus service bulletin—	Or modified in accordance with Airbus production modification—
A300 B4–620	PWJT9D–7R4 series engines.	A300–78–6017, dated August 6, 2001	12261, 12264, and 12265.
A300 B4–622	PW4000 series engines.	A300–78–6020, dated August 10, 2001	12262, 12263, 12265, and 12377; or 12262, 12263, and 12266.
A300 B4–622R	PW4000 series engines.	A300–78–6018, dated July 17, 2001	12262, 12263, 12265, and 12377; or 12262, 12263, and 12266.
A310–221	PWJT9D–7R4 series engines.	A310–78–2020, dated June 1, 2001	12261, 12264, and 12265.
A310–222	PWJT9D–7R4 series engines.	A310–78–2020 or A310–78–2018, both dated June 1, 2001.	12261, 12264, and 12265.
Airbus Model A310–324 and –325.	PW4000 series engines.	A310–78–2019, dated May 2, 2001	12262, 12263, 12265, and 12377; or 12262, 12263, and 12266.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 98–25–51

(a) Within the next 4 flight cycles after December 28, 1998 (the effective date of AD 98–25–51, amendment 39–10952), deactivate both thrust reversers in accordance with Airbus All Operators Telex (AOT) 78–08, dated November 30, 1998.

(b) Within the next 4 flight cycles after December 28, 1998, revise the Limitations Section of the Airplane Flight Manual (AFM) to include the following:

''The takeoff performance on wet and contaminated runways with thrust reversers deactivated shall be determined in accordance with Airbus Flight Operations Telex (FOT) 999.0124/98, dated November 30, 1998, as follows:

For takeoff on wet runways, use performance data in accordance with paragraph 4.1 of the FOT.

For takeoff on contaminated runways, use performance data in accordance with paragraph 4.2 of the FOT.

[**Note:** This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

Note 2: The ''FCOM'' referenced in Airbus Flight Operations Telex (FOT) 999.0124/98, dated November 30, 1998, is Airbus Industrie Flight Crew Operating Manual (FCOM), Revision 27 for Airbus Model A310 series airplanes and Revision 22 for A300–600 series airplanes. (The revision number is indicated on the List of Effective Pages (LEP) of the FCOM.)

Note 3: FAA letter ANM–01–116–63, dated April 4, 2001, was issued to Airbus to allow reactivation of thrust reversers in accordance with Airbus AOT 78–09, Revision 3, dated June 29, 1999, if the stow-latching minimum-force check is done after the serialized selector solenoid valve is installed. Achievement of these conditions is considered an acceptable method of compliance for paragraphs (a) and (b) of this AD, and is available for use by all operators of all affected airplanes.

New Requirements of This AD

Modification

(c) Within 18 months after the effective date of this AD, install modifications related to an independent third line of defense on the thrust reversers, in accordance with the applicable service bulletin listed in Table 2 of this AD. The modifications involve retrofit of a new electrical circuit at four locations and installation of the synchronous shaft lock system and connection to the new electrical circuit. After the modifications have been installed, the thrust reversers may be reactivated, and the AFM limitation specified by paragraph (b) of this AD may be removed from the AFM. Table 2 follows:

TABLE 2.—SERVICE INFORMATION FOR MODIFICATION

For Airbus model—	Equipped with model—	Install the modification in accordance with Airbus service bulletin—
A300 B4–620 airplanes	PWJT9D–7R4 series engines	A300–78–6017, dated August 6, 2001.
A300 B4–622 airplanes	PW4000 series engines	A300–78–6020, dated August 10, 2001.
A300 B4–622R airplanes	PW4000 series engines	A300–78–6018, dated July 17, 2001.
A310–221 series airplanes	PWJT9D–7R4 series engines	A310–78–2020, dated June 1, 2001.
A310–222 series airplanes	PWJT9D–7R4 series engines	A310–78–2020 or A310–78–2018, both dated June 1, 2001.
A310–322 series airplanes	PWJT9D–7R4 series engines	A310–78–2018, dated June 1, 2001.
Airbus Model A310–324 and –325 series airplanes.	PW4000 series engines	A310–78–2019, dated May 2, 2001.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–25–51, amendment 39–10952, are approved as alternative methods of compliance with the requirements of paragraphs (a) and (b) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions must be done in accordance with the applicable service bulletin listed in Table 3 of this AD.

TABLE 3.—SERVICE INFORMATION INCORPORATED BY REFERENCE

Service information	Date
Airbus All Operators Telex 78–08	November 30, 1998.
Airbus Service Bulletin A300–78–6017	August 6, 2001.
Airbus Service Bulletin A300–78–6018	July 17, 2001.
Airbus Service Bulletin A300–78–6020	August 10, 2001.
Airbus Service Bulletin A310–78–2018	June 1, 2001.
Airbus Service Bulletin A310–78–2019	May 2, 2001.
Airbus Service Bulletin A310–78–2020	June 1, 2001.

(1) The incorporation by reference of the service information listed in Table 4 of this AD is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 4.—NEW SERVICE INFORMATION

Service information	Date
Airbus Service Bulletin A300–78–6017	August 6, 2001.
Airbus Service Bulletin A300–78–6018	July 17, 2001.
Airbus Service Bulletin A300–78–6020	August 10, 2001.
Airbus Service Bulletin A310–78–2018	June 1, 2001.
Airbus Service Bulletin A310–78–2019	May 2, 2001.
Airbus Service Bulletin A310–78–2020	June 1, 2001.

(2) The incorporation by reference of Airbus All Operators Telex 78–08, dated November 30, 1998, was approved previously by the Director of the Federal Register as of December 28, 1998 (63 FR 70637, December 22, 1998).

(3) Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 5: The subject of this AD is addressed in French airworthiness directive 2001–523(B), dated October 31, 2001.

Effective Date

(g) This amendment becomes effective on August 17, 2004.

Issued in Renton, Washington, on June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15514 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30418; Amdt. No. 3100]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective July 13, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 2004.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

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

The Rule

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

which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on July 2, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective August 5, 2004*

Eagle, CO, Eagle County Regional, LOC/DME–C, Amdt 2B
Eagle, CO, Eagle County Regional, LOC–B, Amdt 1C
Portland, ME, Portland Intl Jetport, ILS OR LOC RWY 29, Amdt 1
Olive Branch, MS, Olive Branch, RNAV (GPS) RWY 18, Amdt 1
Olive Branch, MS, Olive Branch, RNAV (GPS) RWY 36, Orig
Olive Branch, MS, Olive Branch, ILS OR LOC RWY 18, Amdt 1
Olive Branch, MS, Olive Branch, NDB RWY 18, Amdt 5
Olive Branch, MS, Olive Branch, NDB RWY 36, Amdt 6
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, VOR/DME RWY 28, Amdt 10
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, NDB RWY 34, Amdt 18
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, RNAV (GPS) RWY 16, Orig
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, RNAV (GPS) RWY 28, Orig
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, RNAV (GPS) RWY 34, Orig
Carlsbad, NM, Cavern City Air Terminal, GPS RWY 21, Amdt 1, CANCELLED
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 6L, Amdt 1
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 6R, Amdt 19; ILS RWY 6R (CAT II), Amdt 19; ILS RWY 6R (CAT III), Amdt 19
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC/DME RWY 24R, Amdt 2
Salem, OR, McNary Fld, RNAV (GPS) Y RWY 31, Orig
Salem, OR, McNary Fld, RNAV (GPS) Z RWY 31, Amdt 1
Quakertown, PA, Quakertown, VOR RWY 29, Amdt 1
Quakertown, PA, Quakertown, NDB RWY 29, Amdt 10
Quakertown, PA, Quakertown, RNAV (GPS) RWY 29, Orig
Fort Worth, TX, Fort Worth Alliance, ILS OR LOC RWY 34R, Amdt 5
Lancaster, TX, Lancaster, NDB RWY 31, Amdt 2
Lancaster, TX, Lancaster, RNAV (GPS) RWY 31, Orig
Sheboygan, WI, Sheboygan County Memorial, VOR RWY 3, Amdt 7
Sheboygan, WI, Sheboygan County Memorial, VOR RWY 21, Amdt 7
Sheboygan, WI, Sheboygan County Memorial, NDB RWY 21, Amdt 1
Sheboygan, WI, Sheboygan County Memorial, ILS OR LOC RWY 21, Amdt 1
Sheboygan, WI, Sheboygan County Memorial, RNAV (GPS) RWY 21, Orig

** * * Effective September 2, 2004*

Indianapolis, IN, Mount Comfort, VOR RWY 34, Amdt 2
Indianapolis, IN, Mount Comfort, RNAV (GPS) RWY 16, Orig
Indianapolis, IN, Mount Comfort, RNAV (GPS) RWY 34, Orig

** * * Effective September 30, 2004*

Allakaket, AK, Allakaket, RNAV (GPS) RWY 5, Orig
Allakaket, AK, Allakaket, RNAV (GPS) RWY 23, Orig
Waynesboro, GA, Burke County, NDB RWY 8, Amdt 2B
Waynesboro, GA, Burke County, RNAV (GPS) RWY 8, Orig
Waynesboro, GA, Burke County, RNAV (GPS) RWY 26, Orig
Roswell, NM, Roswell International Air Center, VOR–B, Amdt 1
Lubbock, TX, Lubbock Intl, ILS OR LOC RWY 26, Amdt 2B

The FAA published an Amendment in Docket No. 30416, Amdt No. 3099 to Part 97 of the Federal Aviation Regulations (Vol 69, FR No. 123, Page 36009; dated June 28, 2004) under Section 97.33 effective 5 Aug 2004, which is hereby rescinded:

Allakaket, AK, Allakaket, RNAV (GPS) RWY 5, Orig
Allakaket, AK, Allakaket, RNAV (GPS) RWY 23, Orig

[FR Doc. 04–15643 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260 and 1274

RIN 2700–AC79

NASA Grant and Cooperative Agreement Handbook—Property Reporting

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adopts as final the interim rule published in the **Federal Register** (69 FR 5016) on February 3, 2004, which amended the NASA Grant and Cooperative Agreement Handbook to require earlier submission of annual property inventory reports.

This final rule makes additional changes to reflect the revised reporting date in instructions and one table which were omitted in the interim rule.

EFFECTIVE DATE: July 13, 2004.

FOR FURTHER INFORMATION CONTACT: Paul Brundage, NASA Headquarters, Code HC, Washington, DC, (202) 358–0481, e-mail: *paul.d.brundage@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Management and Budget has required NASA to complete its annual financial statements sooner.

Since recipients maintain NASA's official records for its assets in their possession, NASA uses the data contained in recipients' reports for annual financial statements and property management. As a result, NASA is changing the date for submission of annual Inventory Reports from October 31 to October 15 of each year.

NASA published an interim rule in the **Federal Register** (69 FR 5016) on February 3, 2004. No public comments were received in response to the interim rule. However, the interim rule failed to revise the property reporting date in sections 1260.74, Property use, disposition, and vesting of title; 1260.75, Summary of Report Requirements; and 1274.933. This final rule revises these dates consistent with the interim rule. This change is consistent with the intent and changes made in the interim rule and therefore, publication for public comment is not considered necessary.

This final rule is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it requires no additional work.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management (OMB) and Budget under 44 U.S.C. 3501, *et. seq.*

List of Subjects in CFR Parts 1260 and 1274

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

Interim Rule Adopted as Final With Changes

■ Accordingly, the interim rule amending 14 CFR parts 1260 and 1274 which was published at 69 FR 5016 on February 3, 2004, is adopted as a final rule with the following changes:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

■ 1. The authority citation for 14 CFR Part 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*), and OMB Circular A–110.

■ 2. In §1260.74 revise paragraph (b)(2)(vii) to read as follows:

§ 1260.74 Property use, disposition, and vesting of title.

* * * * *

(b) * * *

(2) * * *

(vii) Recipients shall submit annually a NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form, the provisions of 48 CFR (NFS) 1845.71 and any supplemental instructions that may be issued by NASA for the current reporting period. The original NF 1018 shall be submitted to the center Deputy Chief Financial Officer, Finance, with three copies sent concurrently to the center industrial property officer. The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. Negative reports (*i.e.* no reportable property) are required. The information contained in the reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. A final report is required within 30 days after expiration of the agreement.

* * * * *

■ 3. In section 1260.75 revise paragraph (b)(12) to read as follows:

§ 1260.75 Summary of report requirements.

* * * * *

(b) * * *

(12) An Annual NASA Form 1018, NASA Property in the Custody of Contractors, is required for all grants and cooperative agreements with commercial organizations. The reports are due October 15th of each year. Negative reports (*i.e.* no reportable property) are required.

* * * * *

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

■ 4. The authority citation for 14 CFR Part 1274 continues to read as follows:

Authority: 42 U.S.C. 2451, *et seq.* and 31 U.S.C. 6301 to 6308.

■ 5. In section 1274.933 revise the date of the provision to read ''July 2004,'' and in the table for the report titled ''NASA Form 1018 Property in the Custody of Contractors'' revise the second column entry (Frequency) by removing ''October 31'' and adding ''October 15'' in its place.

[FR Doc. 04–15734 Filed 7–12–04; 8:45 am]

BILLING CODE 7510–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 34–49973, IC–26493]

Delegations of Authority to the Director of the Division of Market Regulation, the Director of the Division of Investment Management and the Director of the Office of Compliance Inspections and Examinations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its rules to delegate authority to the Director of the Division of Market Regulation and the Director of the Division of Investment Management to consult, and, where applicable, to the Director of the Office of Compliance Inspections and Examinations to notify and consult on behalf of the Commission pursuant to section 18(t)(1) of the Federal Deposit Insurance Act, sections 5318A(a)(4), 5318A(e)(2), and 5318(h)(2) of the Bank Secrecy Act, and the provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 requiring consultation with the Commission. The Commission is further amending its rules to delegate authority to the Director of the Office of Compliance Inspections and Examinations to notify and consult on behalf of the Commission pursuant to section 17(b)(1)(B) of the Securities Exchange Act of 1934.

DATES: *Effective Date:* July 13, 2004.

FOR FURTHER INFORMATION CONTACT: For information regarding the delegation of authority to the Director of the Division of Market Regulation, contact Brian Bussey, Assistant Chief Counsel, or David Blass, Attorney, at (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001. For

information regarding the delegation of authority to the Director of the Division of Investment Management, contact Hunter Jones, Associate Director, or Robert Kim, Attorney, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506. For information regarding the delegation of authority to the Director of the Office of Compliance Inspections and Examinations, contact John Walsh, Chief Counsel, at (202) 942–7400, Office of the Chief Counsel, Office of Compliance Inspections and Examinations, 901 E Street, NW., Washington, DC 20549–0001.

SUPPLEMENTARY INFORMATION: Section 18(t)(1) of the Federal Deposit Insurance Act,[1] sections 5318A(a)(4), 5318A(e)(2) and 5318(h)(2) of the Bank Secrecy Act[2] (''Bank Secrecy Act''), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001[3] (the ''USA PATRIOT Act'') require consultation between the Commission and various other agencies of the Federal government. Section 17(b)(1)(B) of the Securities Exchange Act of 1934[4] (''Exchange Act'') requires the Commission to give notice and deliver other information to the Commodity Futures Trading Commission.

The Commission is adopting amendments to Rule 30–3[5] of its Rules of Organization and Program Management governing delegations of authority to the Director of the Division of Market Regulation, Rule 30–5[6] governing delegations of authority to the Director of the Division of Investment Management, and Rule 30–18[7] governing delegations of authority to the Director of the Office of Compliance Inspections and Examinations.

The Commission is amending Rule 30–3 to redesignate paragraph (g) as paragraph (j), and add new paragraphs (g), (h) and (i) to authorize the Director of the Division of Market Regulation to consult on behalf of the Commission with other agencies of the Federal government pursuant to section 18(t)(1) of the Federal Deposit Insurance Act, sections 5318A(a)(4), 5318A(e)(2) and 5318(h)(2) of the Bank Secrecy Act, and provisions of the USA PATRIOT Act requiring consultation with the Commission, with respect to matters that relate to the responsibilities of the Director of the Division of Market Regulation described in 17 CFR 200.19a.[8] The Commission is amending Rule 30–5 to redesignate paragraphs (g), (h), (i), (j) and (k) as paragraphs (i), (j), (k), (l) and (m), and add new paragraphs (g) and (h) to authorize the Director of the Division of Investment Management to consult on behalf of the Commission with other agencies of the Federal government pursuant to sections 5318A(a)(4), 5318A(e)(2) and 5318(h)(2) of the Bank Secrecy Act and provisions of the USA PATRIOT Act requiring consultation with the Commission, with respect to matters that relate to the responsibilities of the Director of the Division of Investment Management described in 17 CFR 200.20b. The Commission is also amending paragraph (c) of Rule 30–18 to authorize the Director of the Office of Compliance Inspections and Examinations to notify and consult with the Commodity Futures Trading Commission pursuant to section 17(b)(1)(B) of the Exchange Act.

This delegation of authority is intended to conserve Commission resources by permitting the Director of the Division of Market Regulation, the Director of the Division of Investment Management and the Director of the Office of Compliance Inspections and Examinations to fulfill the Commission's consultation and notice provision requirements. Nevertheless, the staff may submit matters to the Commission for consideration, as it deems appropriate.

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedures Act,[9] that these amendments relate solely to agency organization, procedure or practice, and do not relate to a substantive rule. Accordingly, notice, opportunity for public comment and publication of the amendment prior to its effective date are unnecessary. Similarly, the requirements of the Regulatory Flexibility Act[10] do not apply.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

Text of Amendment

■ In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1. The authority citation for Part 200, subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.30–3 is amended by redesignating current paragraph (g) as paragraph (j), adding new paragraph (g) and adding paragraphs (h) and (i) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(g) To consult on behalf of the Commission pursuant to section 18(t)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(t)(1)) with respect to matters described in § 200.19a.

(h) To consult on behalf of the Commission pursuant to sections 5318A(a)(4), 5318A(e)(2) and 5318(h)(2) of the Bank Secrecy Act (31 U.S.C. 5318A(a)(4), 5318A(e)(2) and 5318(h)(2)) with respect to matters described in § 200.19a.

(i) To consult on behalf of the Commission pursuant to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), as amended (Pub. L. 107–56 (2001), 115 Stat. 272) with respect to matters described in § 200.19a.

* * * * *

■ 3. Section 200.30–5 is amended by redesignating current paragraphs (g), (h), (i), (j) and (k) as paragraphs (i), (j), (k), (l) and (m) respectively, and adding new paragraphs (g) and (h) to read as follows:

[1] 12 U.S.C. 1828(t)(1).

[2] Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314; 5316–5332.

[3] Pub. L. 107–56 (2001), 115 Stat. 272.

[4] 15 U.S.C. 78q(b)(1)(B) (as added by section 204 of the Commodity Futures Modernization Act of 2000, Pub. L. 106–554 (2000)).

[5] 17 CFR 200.30–3.

[6] 17 CFR 200.30–5.

[7] 17 CFR 200.30–18.

[8] Pursuant to Rules 30–3(a)(75) and 30–3(a)(76), the Commission has delegated to the Director of the Division of Market Regulation the authority to publish notices of proposed rule changes filed pursuant to section 19(b)(7) of the Exchange Act relating to security futures products and to abrogate such proposed rule changes. That delegation includes the authority to consult on behalf of the Commission with the Commodity Futures Trading Commission on matters arising under section 19(b)(7) of the Exchange Act with regard to abrogating proposed rule changes.

[9] 5 U.S.C. 553(b)(3)(A).

[10] 5 U.S.C. 601 *et seq.*

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(g) To consult on behalf of the Commission pursuant to sections 5318A(a)(4), 5318A(e)(2) and 5318(h)(2) of the Bank Secrecy Act (31 U.S.C. 5318A(a)(4), 5318A(e)(2) and 5318(h)(2)) with respect to matters described in § 200.20b.

(h) To consult on behalf of the Commission pursuant to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), as amended (Pub. L. 107–56 (2001), 115 Stat. 272) with respect to matters described in § 200.20b.

* * * * *

■ 4. Section 200.30–18 is amended by redesignating the text of paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2) to read as follows:

§ 200.30–18 Delegation of authority to Director of the Office of Compliance Inspections and Examinations.

* * * * *

(c) * * *

(2) Pursuant to section 17(b)(1)(B) of the Exchange Act (15 U.S.C. 78q(b)(1)(B)), prior to any examination of a broker or dealer registered pursuant to section 6(g) of the Exchange Act (15 U.S.C. 78f(g)) or a national securities association registered pursuant to section 15A(k) of the Exchange Act (15 U.S.C. 78o–3(k)), to notify and consult with the Commodity Futures Trading Commission regarding the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens.

* * * * *

Dated: July 7, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15782 Filed 7–12–04; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31, 301, and 602

[TD 9136]

RIN 1545–BA17

Information Reporting and Backup Withholding for Payment Card Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions. This document also contains final regulations relating to the IRS TIN Matching Program. The regulations in this document affect payors (and their authorized agents) and payees of certain reportable payments and provide guidance necessary to comply with the law.

DATES: *Effective date:* These regulations are effective July 13, 2004.

Applicability dates: The amendments to § 31.3406(g)–1 are applicable for payments made on or after January 1, 2005. The amendments to § 301.6724–1 are applicable for information returns required to be filed, and information statements required to be furnished, after December 31, 2005. Section 31.3406(j)–1(a) and (f) are applicable January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Donna Welch, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1819.

The collection of information is in § 31.3406(g)–1(f)(3). This information is necessary to notify a cardholder/payor that a merchant/payee is not a qualified payee for purposes of the regulations. This information will alert a cardholder/payor that backup withholding under section 3406 may apply for future reportable payments. The collection of information is voluntary to obtain a benefit. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting burden: 11,750,000 hours.

Estimated average annual burden per respondent: 5,875 hours.

Estimated number of respondents: 2,000.

Estimated annual frequency of responses: monthly.

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

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

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

Background

This document contains amendments to 26 CFR part 31 relating to backup withholding and the IRS TIN Matching Program under section 3406 of the Internal Revenue Code (Code). It also contains amendments to 26 Part 301 relating to waivers under section 6724 of information reporting penalties under sections 6721 and 6722.

Section 6041(a) requires persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of $600 or more in any one taxable year to file information returns with the IRS and to furnish information statements to payees. Among other items, the payor must include the payee's name and taxpayer identification number (TIN) on the information return and the information statement.

In general, section 6721(a)(1) imposes a $50 penalty for each failure to file an information return on or before the required filing date, for any failure to include all of the information required to be shown on the return, or for the

inclusion of incorrect information. Section 6724(a) provides that no penalty will be imposed under section 6721 if it is shown that the failure is due to reasonable cause and not to willful neglect.

Section 3406(a)(1) requires a payor to withhold on any reportable payment (as defined in section 3406(b)(1)) if (1) the payee fails to furnish the payee's TIN to the payor as required or (2) the Secretary notifies the payor that the TIN furnished by the payee is incorrect. Section 3406(a)(1) also requires withholding in certain other situations that are not addressed in these regulations. Section 3406(i) provides that the Secretary shall prescribe the regulations necessary or appropriate to carry out the purposes of section 3406.

A payment card transaction is a transaction in which a cardholder/payor uses a payment card to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment. A payment card is a card (or an account) that (1) is issued by a payment card organization or one of its members, affiliates, or licensees to a cardholder/payor and (2) represents, upon presentation to a merchant/payee, an agreement of the cardholder to pay the merchant through the payment card organization. A payment card organization is an entity that sets the standards and provides the mechanism, acting directly or indirectly through its members, affiliates, or licensees, for effectuating payment between a purchaser and a merchant in a payment card transaction.

Information reporting compliance is difficult in payment card transactions because an invoice may not be issued, and the employee representing the cardholder/payor in the transaction may not request and obtain the name/TIN combination of the merchant/payee at the time of the transaction. In addition, backup withholding may be difficult because a merchant receives payment from the payment card organization within a few days after the transaction, but the cardholder does not pay the payment card organization until after it receives a payment card monthly billing statement.

The Temporary and Proposed Regulations

On January 31, 2003, temporary regulations relating to the IRS TIN Matching Program were published in the **Federal Register** (TD 9041; 68 FR 4922). The temporary regulations permit a payor's authorized agent to participate in the IRS TIN Matching Program on behalf of the payor. Under the authority of these temporary regulations, the IRS issued Rev. Proc. 2003–9 (2003–1 C.B. 516) that allows payors' authorized agents, as well as all payors, to participate in the IRS TIN Matching Program.

A notice of proposed rulemaking (REG–116641–01) cross-referencing the temporary regulations was also published in the **Federal Register** (68 FR 4970) for January 31, 2003. The notice of proposed rulemaking contained additional proposed rules relating to the information reporting and backup withholding requirements for payment card transactions effectuated through a Qualified Payment Card Agent (QPCA).

The proposed regulations provide limited exceptions to the backup withholding requirements for payment card transactions. The principal exception applies if the payment is made through a QPCA and the payee is a qualified payee.

A payee is qualified for this purpose if, at the time of the payment, the QPCA has validated the payee's TIN through the IRS TIN Matching Program or if the payment is made during the six-month period following the date on which the QPCA first obtained the payee's TIN (six-month grace period). Under the proposed regulations, a QPCA must notify a cardholder/payor of any merchant/payees that are not qualified payees. The notice must appear on the billing information for the payment.

The proposed regulations provide a second exception for payments to persons other than qualified payees. Under this exception, reportable payments made through a QPCA are exempt from backup withholding if the payment is made within 60 days after the date of the first payment with respect to which the QPCA is required to provide notification to the payor that the payee is not a qualified payee.

In addition, the proposed regulations provide that cardholder/payors may establish reasonable cause for a failure to include all of the information required to be shown on their information returns, or for the inclusion of incorrect information, based on reliance on merchant/payee TINs supplied through a QPCA.

The proposed regulations provide that the rules relating to backup withholding and information reporting for payment card transactions apply during 2004. The temporary rule permitting agents to participate in the TIN matching program was effective January 31, 2003.

A public hearing was held on the proposed regulations on May 2, 2003. The IRS also received written and electronic comments responding to the notice of proposed rulemaking.

Explanation of Provisions and Summary of Comments

After consideration of all the comments, the proposed regulations relating to the backup withholding requirements for payment card transactions effectuated through a QPCA and the reasonable cause exception to information reporting penalties are adopted as revised by this Treasury decision. The revisions are discussed below. The temporary amendments to the regulations relating to the IRS TIN Matching Program are also adopted as final regulations and the corresponding temporary regulations are removed.

1. Backup Withholding

Several commentators recommended that the final regulations eliminate the qualified payee requirement and provide a complete exemption from backup withholding for payment card transactions made through a QPCA. One commentator noted that § 31.3406(g)–2(e) of the regulations provides that a real estate reporting person is not required to backup withhold on a real estate transaction subject to reporting under section 6045. As an alternative to backup withholding, this commentator suggested that the QPCA should provide a list to the IRS of the merchant/payees for whom the QPCA cannot obtain valid TINs. The commentator further suggested that the IRS should impose penalties on the merchant/payees who fail to furnish valid TINs, rather than require backup withholding.

The regulatory exception for real estate transactions is based on section 3406(h)(5)(D), which provides that, except as otherwise provided in regulations, a real estate broker (as defined in section 6045(e)(2)) is not a broker for purposes of section 3406. The Code also includes limited grants of regulatory authority to except otherwise reportable payments from backup withholding in section 3406(b)(5) (relating to payments that do not exceed $10) and in section 3406(g) (relating to payments to specified payees). The IRS and the Treasury Department do not view these limited grants of regulatory authority as authorizing a regulatory exemption for a broad class of transactions, which according to the comments involve payments of over $100 billion per year, regardless of the payee's identity or compliance with its tax obligations. Therefore, the final regulations do not adopt the recommendation for a complete exemption from backup withholding for payment card transactions made through a QPCA.

Several comments criticized the specific rules for determining whether a payee is a qualified payee and when backup withholding is required with respect to a payee who is not qualified. In general, the commentators viewed these rules as incompatible with current business practice because they require QPCAs to evaluate the status of payees at the time of each transaction and to communicate to cardholders through the billing process. The commentators suggested various changes to conform the rules to current business practices.

The IRS and the Treasury Department agree that the rules should accommodate current business practices to the extent practicable but believe some of the suggestions in the comments go beyond what is necessary and provide excessive periods of exemption from backup withholding for noncompliant payees. Accordingly, the final regulations include a number of new rules to address the commentators' concerns but do not adopt all of the specific changes suggested in the comments.

As suggested in the comments, the final regulations eliminate the requirement that QPCAs include information regarding payee status with the billing statement furnished to the payor. Instead, the final regulations require that the information be furnished within four months of the date of the payment and permit the information to be furnished as part of a quarterly or other regular report of payee data to the cardholder. To eliminate the need to evaluate the status of payees at the time of each payment, the final regulations permit QPCAs to treat all payments made during a calendar quarter or any shorter reporting period as being made on the last day of the period. Thus, for a QPCA choosing this treatment, a payee will be treated as a qualified payee with respect to all payments during the period if the QPCA obtains and verifies the payee's TIN at any time before the end of the period. Similarly, payments will be treated as being made on the last day of the reporting period for purposes of determining whether they are made within the six-month grace period. In this case, however, the regulations also provide that the grace period with respect to a payee will be treated as beginning not on the date of the first payment to the payee but on the first day of the reporting period in which the QPCA makes the payment.

The 60-day exception from backup withholding for payments made to persons that are not qualified payees is also modified to reflect the new rules for determining payee status and notifying cardholders. The exception in the final regulations applies to purchases made no later than two months after the last date for providing the first notice informing the cardholder that the payee is not a qualified payee.

One commentator suggested that a QPCA should be allowed to furnish information regarding payee status electronically on a secure website. The IRS and the Treasury Department are continuing to consider this comment and may issue further guidance on this issue.

Several commentators requested that the final regulations clarify that the individual to whom the card is issued is not the cardholder/payor if another person is responsible for paying the charges on the card. The commentators were concerned that employees might be treated as cardholders in situations where payment cards are issued to employees of the person responsible for paying charges on the card. The final regulations provide the requested clarification.

Several commentators requested that the final regulations clarify that a QPCA may act directly or indirectly through its members, affiliates, or licensees. The final regulations also provide this clarification.

Several commentators requested clarification of the cardholder/payor's obligations if the payor receives notification that a payee is not a qualified payee. Under the final regulations, backup withholding may be required for purchases made more than two months after the last date for furnishing the first notification that the payee is not a qualified payee. For purchases after that date, the payor must backup withhold on any reportable payment unless it has obtained the payee's TIN in accordance with the generally applicable rules under section 3406 or the QPCA has remedied the failure that caused the disqualification by obtaining and verifying the payee's TIN. If the payor is required to backup withhold and ordinarily uses a payment method incompatible with backup withholding, the continued use of that payment method will not relieve the payor of its backup withholding obligation. (See section 3406(h)(10), which provides payments subject to backup withholding are treated as wages paid by an employer to an employee; and section 3403, which provides that an employer is liable for taxes required to be withheld and deducted.)

2. Effective Dates

Because the proposed rules relating to backup withholding and information reporting for payment card transactions were not finalized before the beginning of 2004, their effective dates have been delayed. The final rules relating to backup withholding will apply to payments made after 2004 and final rules relating to information reporting will apply to returns due after 2005. The temporary rule permitting agents to participate in the TIN matching program is adopted as a final regulation with no change to its effective date of January 31, 2003.

One payment card organization suggested that the IRS repropose the regulations or issue them with an effective date of not less than two years after publication. The comment noted that reproposing the regulations would provide an opportunity for further study and comment and would provide time to test the rules in a pilot program. This suggestion was not adopted. The IRS and the Treasury Department recognize that providing an opportunity for further comment may result in improved rules, but there is no assurance that this will be the case. The IRS and the Treasury Department believe that the indeterminate benefit suggested in the comment does not outweigh the certainty that the suggested delay would deny payors any benefit from the backup withholding exception and penalty relief contained in the final regulations during the period of the delay.

Other Guidance

The IRS is also issuing two revenue procedures to implement the rules contained in the final regulations. The first of these revenue procedures sets forth the requirements that a payment card organization must satisfy to obtain an IRS determination that it is a QPCA. The revenue procedure also provides that a QPCA may act on behalf of a cardholder/payor for purposes of soliciting, collecting, and validating the names/TINs of the merchant/payees and on behalf of a merchant/payee for purposes of furnishing the payee's name and TIN to the cardholder/payor.

The second revenue procedure provides an optional procedure for payors and their authorized agents to use in determining whether payment card transactions are reportable under section 6041 or section 6041A and are reportable payments for purposes of the IRS TIN Matching Program. In general, this revenue procedure classifies businesses by Merchant Category Codes (MCCs), or other equivalent Industry Codes, according to whether they predominantly furnish services (for which payments are reportable) or predominantly provide goods (for which payments are not reportable). Under the

revenue procedure, payment card organizations would be permitted to assign MCCs, or other equivalent Industry Codes, to payees and payors would be permitted to rely on the assigned codes for information reporting and TIN matching purposes.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6) that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. The reporting burden affects payment card organizations and financial institutions that issue payment cards. Most payment card organizations and payment card issuers are large businesses. To the extent that small financial institutions have a reporting burden, the burden is expected to be insignificant. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of the regulations is Donna Welch, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 31

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

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 31, 301, and 602 are amended as follows:

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

■ **Paragraph 1.** The authority citation for part 31 is amended by removing the entry for section 31.3406(j)–1T to read in part as follows:

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

■ **Par. 2.** Section 31.3406(g)–1 is amended by adding paragraph (f) to read as follows:

§ 31.3406(g)–1 Exceptions for payments to certain payees and certain other payments.

* * * * *

(f) *Special rule for certain payment card transactions*—(1) *In general.* No withholding under section 3406 is required for a reportable payment made through a payment card organization if the payment is made on or after January 1, 2005, the organization is a Qualified Payment Card Agent (QPCA), and—

(i) The payee is a qualified payee (as defined in paragraph (f)(2)(vi) of this section) with respect to the payment; or

(ii) The cardholder/payor made the purchase to which the payment relates no later than two months after the last date prescribed under paragraph (f)(3) of this section for furnishing the QPCA's first notification to the cardholder/payor that the payee is not a qualified payee.

(2) *Definitions*—(i) *Payment card defined.* For purposes of this section, a *payment card* is a card (or an account) issued by a payment card organization, or one of its members, affiliates, or licensees, to a cardholder/payor which, upon presentation to a merchant/payee, represents an agreement of the cardholder to pay the merchant through the payment card organization.

(ii) *Payment card organization defined.* For purposes of this section, a *payment card organization* is an entity that sets the standards and provides the mechanism, either directly or indirectly through members, affiliates, or licensees, for effectuating payment between a purchaser and a merchant in a payment card transaction. A payment card organization acting directly or indirectly through its members, affiliates, or licensees generally provides such a payment mechanism by issuing payment cards, enrolling merchants as authorized acceptors of payment cards for payment for goods or services, and ensuring the system conducts the transactions in accordance with prescribed standards for payment card transactions.

(iii) *Payment card transaction defined.* For purposes of this section, a *payment card transaction* is a transaction in which a cardholder/payor uses a payment card to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment.

(iv) *Cardholder/payor defined.* For purposes of this section, a *cardholder/payor* is the person that agrees to make payments through the payment card organization. Thus, in the case of a payment card issued to an employee of a person that agrees to make payments through the payment card organization, the employer rather than the employee is the cardholder/payor.

(v) *Qualified Payment Card Agent (QPCA) defined.* For purposes of this section, a *Qualified Payment Card Agent* (QPCA) is a payment card organization that has a current QPCA determination from the Internal Revenue Service (IRS) under applicable procedures (see § 601.601(d)(2) of this chapter).

(vi) *Qualified payee defined.* For purposes of this section, a payee is a *qualified payee* with respect to a reportable payment if—

(A) At the time the QPCA makes the payment, the QPCA has obtained the payee's TIN and the payee's TIN has been validated through the IRS TIN Matching Program; or

(B) The QPCA makes the payment during the six-month period beginning on the date on which the QPCA first makes a payment to the payee.

(3) *Notification of payee status.* In the case of a payment to a payee other than a qualified payee as defined in paragraph (f)(2)(vi) of this section with respect to the payment, the QPCA acting directly or indirectly through its members, affiliates, or licensees must notify the payor that the payee is not a qualified payee. The notification must be furnished during the four-month period beginning on the date on which the QPCA makes the payment. Notification may be provided in a quarterly or other regular report of payee data to the cardholder/payor and may consist of an asterisk, footnote, or other mark next to the payee's name, with the text of the notification at the bottom of the page or at the end of the list of payee data. Notification by the QPCA that a payee is not a qualified payee does not constitute notice by the IRS that the payee's TIN is incorrect for purposes of section 3406(a)(1)(B) and § 31.3406(d)–5.

(4) *Time of payment.* A QPCA that makes reports to cardholders on the basis of a calendar quarter or any shorter period (the reporting period) may choose to treat all payments made during the reporting period as being made on the last day of the period for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section. If the QPCA treats payments as being made on the last day of a reporting period, the six-month period in paragraph (f)(2)(vi) of this section and the four-month period in paragraph (f)(3) of this section are treated as beginning on the first day of the reporting period in which the QPCA makes the payment that would otherwise begin the six-month or four-month period.

(5) *Examples.* The following examples illustrate the rules of this section. For purposes of the examples, assume that Q meets all requirements and fulfills all duties necessary to obtain a QPCA determination from the IRS. The examples are as follows:

Example 1. (i) Q, a QPCA, enrolls Merchant X on January 20, 2005, to accept the Q payment card as a means for obtaining payment. (The results in this example are the same whether the acts attributed to Q are performed by Q itself or by a member, affiliate, or licensee of Q.) At the time of enrollment, Q obtains Merchant X's taxpayer identification number (TIN). Merchant X is a sole proprietor engaged in the trade or business of repairing automobiles and trucks. Q's first payment to Merchant X for purchases through the payment card is made on January 31, 2005.

(ii) On March 1, 2005, Q issues a Q payment card to Customer A to use for the purchase of goods or services in the course of its trade or business from merchants that accept the Q payment card. During 2005, Customer A uses Q payment card to purchase repairs to A's vehicles from Merchant X on April 29, 2005, July 29, 2005, and December 19, 2005. Q makes payments for the repairs on May 2, 2005, August 1, 2005, and December 20, 2005. Q provides reports of payee data to each of its cardholders, including Customer A, on the 15th of April, July, October, and January for the quarter ending on the last day of the preceding month, but does not choose to treat payments as being made on the last day of the quarter for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section.

(iii) On March 15, 2005, Q attempts to validate Merchant X's name/TIN through the IRS TIN Matching Program. On March 20, 2005, the IRS notifies Q that the name/TIN furnished by Merchant X does not match IRS data. On June 15, 2005, and September 15, 2005, Q makes further unsuccessful attempts to validate Merchant X's name/TIN through the IRS TIN Matching Program.

(iv) Under paragraph (f)(2)(vi)(B) of this section, Merchant X is treated as a qualified payee for the six-month period beginning on January 31, 2005 (the date of Q's first payment to Merchant X), and ending on July 30, 2005. Accordingly, the payment on May 2, 2005, is a payment to a qualified payee and, under paragraph (f)(1)(i) of this section, is not subject to backup withholding.

(v) Q has not validated Merchant X's TIN at the time of the payments on August 1, 2005, and December 20, 2005. Accordingly, under paragraph (f)(3) of this section, Q must notify Customer A within four months of each of these payments that Merchant X is not a qualified payee with respect to the payments. In the case of the August 1 payment, the notification must be furnished no later than November 30, 2005. Q may provide the notification in its quarterly report of payee data for the July-September quarter furnished on October 15, 2005.

(vi) Although Merchant X is not a qualified payee with respect to the payments on August 1, 2005, and December 20, 2005, paragraph (f)(1)(ii) of this section provides that backup withholding is not required for purchases made no later than two months after the last date prescribed for furnishing the first notification that Merchant X is not a qualified payee. The last date for furnishing the first notification is November 30, 2005, and the two-month period expires on January 30, 2006. Because the payments relate to purchases on July 29, 2005, and December 19, 2005, backup withholding is not required with respect to either payment. Backup withholding may be required with respect to any payment Customer A makes through the Q payment card for purchases from Merchant X after January 30, 2006, unless Q has previously succeeded in validating Merchant X's TIN.

Example 2. (i) Assume the same facts as in example (1) except that Q chooses to treat payments as being made on the last day of the quarter for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section.

(ii) The payment Q makes on January 31, 2005, is treated under paragraph (f)(4) of this section as being made on March 31, 2005. Similarly, the payments made on May 2, 2005, August 1, 2005, and December 20, 2005, are treated as being made on June 30, 2005, September 30, 2005, and December 31, 2005.

(iii) Under paragraphs (f)(2)(vi)(B) and (f)(4) of this section, Merchant X is treated as a qualified payee for the six-month period beginning on January 1, 2005 (the beginning of the reporting period during which Q makes the first payment to Merchant X), and ending on June 30, 2005. Accordingly, the payment treated as made on June 30, 2005, is a payment to a qualified payee and, under paragraph (f)(1)(i) of this section, is not subject to backup withholding.

(iv) Q has not validated Merchant X's TIN at the time of the payments that are treated as being made on September 30, 2005, and December 31, 2005. Accordingly, under paragraphs (f)(3) and (f)(4) of this section, Q must notify Customer A within four months of the beginning of each reporting period during which Q makes these payments that Merchant X is not a qualified payee with respect to the payments. In the case of the September 30 payment, the notification must be furnished no later than October 31, 2005. Q may provide the notification in its quarterly report of payee data for the July-September quarter furnished on October 15, 2005.

(v) Although Merchant X is not a qualified payee with respect to the payments that are treated as being made on September 30, 2005, and December 31, 2005, paragraph (f)(1)(ii) of this section provides that backup withholding is not required for purchases made no later than two months after the last date prescribed for furnishing the first notification that Merchant X is not a qualified payee. The last date for furnishing the first notification is October 31, 2005, and the two-month period expires on December 31, 2005. Because the payments relate to purchases on July 29, 2005, and December 19, 2005, backup withholding is not required with respect to either payment. Backup withholding may be required with respect to any payment Customer A makes through the Q payment card for purchases from Merchant X after December 31, 2005, unless Q has previously succeeded in validating Merchant X's TIN.

§ 31.3406(j)–1T [Removed]

■ **Par. 3.** Section 31.3406(j)–1T is removed.

■ **Par. 4.** Section 31.3406(j)–1 is amended by revising paragraphs (a) and (f) to read as follows:

§ 31.3406(j)–1 Taxpayer Identification Number (TIN) matching program.

(a) *The matching program.* Under section 3406(i), the Commissioner has the authority to establish Taxpayer Identification Number (TIN) matching programs. The Commissioner may prescribe in a revenue procedure (*see* § 601.601(d)(2) of this chapter) or other appropriate guidance the scope and the terms and conditions of participating in any TIN matching program. In general, under a matching program, prior to filing information returns with respect to reportable payments as defined in section 3406(b)(1), a payor of those reportable payments who is entitled to participate in the matching program may contact the Internal Revenue Service (IRS) with respect to the TIN furnished by a payee who has received or is likely to receive a reportable payment. The IRS will inform the payor whether or not a name/TIN combination furnished by the payee matches a name/TIN combination maintained in the data base utilized for the particular matching program. For purposes of this section, the term payor includes an agent designated by the payor to participate in TIN matching on the payor's behalf.

* * * * *

(f) *Effective date.* The last sentence in paragraph (a) of this section is applicable on January 31, 2003. All other provisions of this section are applicable on and after June 18, 1997.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 5.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 6.** Section 301.6724–1 is amended by:

■ 1. Revising the introductory language of paragraph (c)(6).

■ 2. Adding paragraphs (e)(1)(vi)(H) and (f)(5)(vii).

The revision and additions read as follows:

§301.6724–1 Reasonable cause.

* * * * *

(c)* * *

(6) *Actions of the payee or any other person.* In order to establish reasonable cause under paragraph (c)(1) of this section due to the actions of the payee or any other person, such as a broker as defined in section 6045(c) or a Qualified Payment Card Agent (QPCA) as defined in § 31.3406(g)–1(f)(2)(v) of this chapter, providing information with respect to the return or payee statement, the filer must show either—

* * * * *

(e) * * * (1) * * *

(vi) * * *

(H) In the case of information returns required to be filed, and information statements required to be furnished, after December 31, 2005, the filer—

(*1*) Satisfies the solicitation requirements of paragraphs (e)(1)(i) and (ii) of this section with respect to a payment made through a QPCA if the filer relies in good faith on the QPCA to solicit, record, validate, and furnish the payee's TIN; and

(*2*) Satisfies the solicitation requirement of paragraph (e)(1)(iii) of this section with respect to such a payment if, on or before December 31 of the year immediately succeeding the calendar year in which the payment is made, the filer undertakes a solicitation of the payee's TIN or receives from the QPCA a TIN that the filer believes in good faith to be the payee's correct TIN.

* * * * *

(f) * * *

(5) * * *

(vii) In the case of information returns required to be filed, and information statements required to be furnished, after December 31, 2005, the filer—

(A) Satisfies the solicitation requirement of paragraph (f)(1)(i) of this section with respect to a payment made through a QPCA if the filer relies in good faith on the QPCA to solicit, record, validate, and furnish the payee's TIN; and

(B) Satisfies the solicitation requirement of paragraph (f)(1)(ii) or (iii) of this section, whichever is applicable, with respect to such a payment if, after the date the filer is notified that the account of the payee contains an incorrect TIN and on or before the date by which the applicable requirement must be satisfied, the filer solicits the payee's correct TIN in a manner that satisfies the applicable requirement or receives from the QPCA a TIN that the filer believes in good faith to be the payee's correct TIN.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 7.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 8.** In § 602.101, paragraph (b) is amended by revising the entry for 31.3406(g)-1 in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
31.3406(g)-1	1545–0096 1545–0112 1545–1819
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved by: July 1, 2004.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–15751 Filed 7–12–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 302

[BOP–1115–F]

RIN 1120–AB15

Comments on UNICOR Business Operations: Clarification of Addresses

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) changes the addresses of the Chief Operating Officer and the Board of Directors of Federal Prison Industries, Inc. (also known as UNICOR), to correct and update them.

DATES: This rule is final August 12, 2004.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau changes the addresses of the Chief Operating Officer and the Board of Directors of Federal Prison Industries, Inc. (also known as UNICOR), to correct and update them. We assure the public that any mail sent to the addresses in the current regulation has been and will continue to be routed to the currently correct rooms.

We published this change as an interim final rule on January 9, 2004 (69 FR 1524). We received no comments. We therefore adopt this change as final.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule has no costs associated with it, and benefits include informing the public of the correct addresses for UNICOR.

Executive Order 13132

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

Regulatory Flexibility Act

The Director of the Bureau of Prisons reviewed this regulation under the Regulatory Flexibility Act (5 U.S.C. 605(b)) and certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of

the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

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 it 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 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.

List of Subjects in 28 CFR Part 302

Administrative practice and procedure.

Harley G. Lappin,

Director, Bureau of Prisons.

[FR Doc. 04–15810 Filed 7–12–04; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–025]

Drawbridge Operation Regulations; Rigolets Pass, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the U.S. 90 Swing Bridge across the Rigolets Pass, mile 6.2 between New Orleans, Orleans Parish and St. Tammany Parish, Louisiana. This deviation allows the bridge to remain closed to navigation from Monday, July 26, 2004 until Thursday, July 29, 2004. The deviation is necessary to repair and replace electrical conduit on the bridge.

DATES: This deviation is effective from 8 a.m. on Monday, July 26, 2004 until 4 a.m. on Thursday, July 29, 2004.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development (LDOTD) has requested a temporary deviation in order to remove and replace electrical conduit on the U.S. 90 Swing Bridge across the Rigolets Pass, Mile 6.2, between New Orleans, Orleans Parish and St. Tammany Parish, Louisiana. The repairs are necessary to ensure the safe operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8 a.m. on Monday, July 26, 2004 until 4 a.m. on Thursday, July 29, 2004.

The bridge has a vertical clearance of 14 feet above mean high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation at the site of the bridge consists mainly of commercial and recreational fishing vessels and recreational pleasure craft. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. Alternate routes are available through the Chef Menteur Pass. The bridge will not be able to open for emergencies; however, work will be postponed if a tropical weather system is approaching.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 30, 2004.

Marcus Redford,

Bridge Administrator.

[FR Doc. 04–15846 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–167]

RIN1625–AA00

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

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending safety Zone regulations for the Atlantic Intracoastal Waterway (AIWC) and connecting waters, in the vicinity of Marine Corps Base Camp Lejeune, North Carolina. The amendment provides for closures of the AICW of up to 4 hours. The amendment also revises contact phone numbers for Marine Safety Office Wilmington listed in the regulation.

DATES: This rule is effective as of August 12, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–167 and are available for inspection or copying at Coast Guard Marine Safety Office, 721 Medical Center Drive Suite 100, Wilmington, NC, 38401 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 18, 2004 we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Atlantic Intracoastal Waterway, vicinity of Marine Corps Base Camp Lejeune, North Carolina in the **Federal Register** (69 FR 12812). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The existing regulations do not account for live firing of weapons from Naval vessels located offshore on the Atlantic Ocean. Projectiles from these live fire operations sometimes travel across the AICW to the impact area on Camp Lejeune. Current Naval weapons training and ammunition certification requirements necessitate extended periods of live fire. AICW closure periods longer than those currently specified in the existing regulations are necessary to ensure the safety of vessesls in this area and facilitate military training and ammunition certification processes.

This regulation includes a revision of 33 CFR 165.514(c)(2) and the addition of 33 CFR 165.514(c)(3) allowing for closure of the AICW for periods of up to 4 hours for Naval gunnery live fire exercises. This regulation also revises the contact number for the COTP at the Marine Safety Office Wilmington in 33 CFR 165.514(d).

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This rule only affects a small portion, less than two miles, of the AICW in North Carolina. This rule has been tailored in scope to impose the least impact on maritime interests, yet provide the level of safety necessary for such an event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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. The Coast Guard expects a minimal economic impact on a substantial number of small entities due to this rule because little commercial traffic transits this area of the AICW. Also, on average, a very small amount of recreational traffic travels this portion of the AICW.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 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 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 create 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. 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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this 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)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

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

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

* * * * *

(b) *Regulations.* * * *

(c) *General information.*

(1) *Announcements.* * * *

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

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

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

Dated: June 22, 2004.

Jane M. Hartley,

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

[FR Doc. 04–15847 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251, 261, and 295

RIN 0596–AB74

Land Uses; Special Uses Requiring Authorization

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is revising regulations that govern the issuance and administration of special use authorizations on National Forest System lands to clarify categories of activities for which a special use authorization is required. In particular, this final rule clarifies requirements regarding the issuance of special use authorizations for activities involving National Forest System roads and trails. The revised regulations promote consistency in the special uses program, improve the agency's ability to resolve management issues by requiring permits in certain situations, and reduce the agency's administrative costs by eliminating the need to issue a Forest order to require a special use permit in certain situations and by providing the authorized officer with the discretion to waive the requirement for a special use authorization when issuance of a permit serves no management purpose. The final rule also adds definitions to part 251, revises definitions in part 261, and revises the heading of part 295 to ensure consistent terminology in all three parts.

DATES: *Effective Date:* This rule is effective August 12, 2004.

ADDRESSES: The rulemaking record for this final rule contains all the documents pertinent to this rulemaking. These documents are available for inspection and copying at the office of the Director, Recreation and Heritage Resources Staff, Forest Service, USDA, 4th Floor Central, Sidney R. Yates Federal Building, 1400 Independence Ave., SW., Washington, DC, during regular business hours (8:30 a.m. to 4 p.m.), Monday through Friday, except holidays. Those wishing to inspect these documents are encouraged to call ahead (202) 205–1399 to facilitate access to the building.

Any other documents not in the rulemaking record that were requested in the comments on the proposed rule are beyond the scope of this rulemaking conducted pursuant to 5 U.S.C. 553(c). Those interested in obtaining these documents may request them under the Freedom of Information Act by writing to the USDA Forest Service, Freedom of Information Act/Privacy Act Branch, Office of Regulatory and Management Services, 1400 Independence Ave., SW., Mail Stop 1143, Washington, DC 20250–1143.

Several agency directives are being revised for consistency with this final rule, and the directive changes are described in the preamble to this final rule. These directives, which include amendments to Forest Service Manual (FSM) 2350, 2710, and 2730, and other agency directives referenced in the preamble, are available electronically on the World Wide Web at *http://www.fs.fed.us/im/directives.* These amendments are numbered as 2300–2004–1, 2700–2004–1, and 2700–2004–2.

FOR FURTHER INFORMATION CONTACT: Carolyn Holbrook, Recreation and Heritage Resources Staff, (202) 205–1399, or Melissa Hearst, Lands Staff, (202) 205–1196.

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1. Background

Special Uses Program

Forest Service regulations at 36 CFR part 251, subpart B, govern authorizations for occupancy and use of National Forest System lands. Section 251.50 of this subpart characterizes as ''special uses'' all uses of National Forest System lands, improvements, and resources, except those authorized by the regulations governing the disposal of timber (part 223), disposal of minerals (part 228), and the grazing of livestock (part 222). The regulation requires an authorization for all ''special uses,'' with certain exceptions.

Approximately 72,000 special use authorizations are in effect on National Forest System lands. These uses cover a variety of activities ranging from individual private uses to large-scale commercial facilities and public services. Examples of authorized land uses include road rights-of-way accessing private residences and non-Federal lands, domestic water supplies and water conveyance systems, utility rights-of-way, communications uses, ski areas, resorts, marinas, outfitting and guiding services, and public parks and campgrounds. About 6,000 special use proposals are submitted to the agency annually by various entities wanting to use and occupy National Forest System lands.

Need for Revised Rule

The current regulation at § 251.50(d) provides that a special use authorization is not required for use of National Forest System roads and trails, unless mandated by an order issued pursuant to § 261.50 or a regulation issued pursuant to § 261.70. Two courts have construed this provision as not requiring an authorization for special uses that occur on National Forest System roads and trails and have invalidated orders issued pursuant to § 261.50 that required a permit for special uses occurring on National Forest System roads. These rulings have created a gap in regulatory coverage that is resulting in management inconsistencies for certain types of special use activities.

Additionally, the agency prefers not to regulate uses when it is unnecessary to establish terms and conditions to protect National Forest System lands and resources or to avoid conflict with agency programs or operations.

2. Public Comments on the Proposed Rule and Department Responses

Overview

On January 22, 2003, the Forest Service published the proposed rule in the **Federal Register** (68 FR 2948) and sought public comment in adopting regulations for the revision of parts 251, 261, and 295 to clarify when a special use authorization is required. Additionally, these proposed regulatory revisions would allow the agency to exempt uses from the permit requirement when it is unnecessary to establish terms and conditions to protect National Forest System lands and resources or to avoid conflict with agency programs or operations. The proposed rule gave the authorized officer the discretion to waive the special use authorization requirement in such circumstances and specified criteria upon which the authorized officer could determine that a special use authorization is not required.

During the 60-day comment period on the proposed rule that ended on March 24, 2003, the agency received five requests for an extension of the comment period. Respondents indicated that, due to the complexity of the proposed regulations, additional time was needed. The Forest Service did not extend the comment period because the agency does not agree that the proposed regulation was complex and because litigation involving certain aspects of the proposed rule is being stayed pending conclusion of this rulemaking.

The proposed rule was posted electronically on the World Wide Web on the **Federal Register** site at *www.gpoaccess.gov* and on the FirstGov e-rulemaking site at *www.regulations.gov.* The agency also posted the proposed rule on its World Wide Web site for special uses at *www.fs.fed.us/recreation/permits.* The Forest Service received 4,055 letters or electronic messages in response to the proposed rule. Each respondent was grouped in one of the following categories:

Business (association, chamber of commerce)—1
Commercial Recreation Permit Holder—20
Individual (unaffiliated or unidentifiable)—3,993
Multiple Use/Wise Use Organization—1
Other (unidentified organizational type)—3
Place-Based Group—1
Preservation/Conservation Organization—20
Recreational Organization—13
State Government—1

The 4,055 respondents represented 50 States, the District of Columbia, Puerto Rico, and 25 foreign countries.

The majority of comments were from organizations and individuals who were concerned about the environmental impact of the agency's not requiring a permit for routine operation or maintenance of rights-of-way. Most of these comments took the form of a standard letter or a letter substantially similar to many other comment letters.

There were many comments from recreational organizations and individuals concerned about recreational use of National Forests. Two primary subcategories of this group were motorized recreational users and recreational clubs. One State agency also submitted comments.

Holders of commercial recreation permits (specifically, outfitting and guiding permits), an industry organization, and individuals representing permit holders were another well-represented group among respondents.

Some respondents offered general comments either supporting or not supporting the proposed rule. Many respondents offered specific comments about sections of the proposed rule that they would like to see revised. Many respondents offered specific comments about current regulations, other rulemaking efforts, or existing Forest Service policy that are beyond the scope of this rulemaking. Nonresponsive comments also included those comments expressing a dislike for the Forest Service or the Federal Government in general and those

comments not received in a timely manner.

Table I, which appears at the end of this final rule, has been prepared as an aid to the reader in understanding changes between the previous rule, the proposed rule, and the final rule. This table is not part of the final rule.

Response to General Comments

Comment. One respondent observed that research shows an overall trend of increasing recreation activities that supports finalizing this rule, and believed that the proposed rule would enhance the Forest Service's authority to manage National Forest land and resources to reduce impacts on the National Forest System.

Response. The Department agrees that recreation use is increasing in the National Forests. In some areas increased use has resulted in more user conflicts, increased resource impacts, and safety concerns. The rule provides the authority needed to manage special uses occurring on National Forest System roads and trails to minimize user conflicts, resource impacts, and safety concerns.

Comment. Several respondents observed that the current rules are working well and that there is no need to change them.

Response. The Department disagrees that there is no need to change the current regulations. There are several reasons for the revisions. First, an increasing number of people engaged in commercial recreation events and outfitting and guiding are relying on the regulatory gap in the current rule to conduct activities without a special use authorization. Sometimes these activities include the use of National Forest System lands outside the rights-of-way for National Forest System roads and trails. Monitoring these uses to determine whether the use is confined to a road or trail right-of-way is costly and often impractical. Requiring a special use authorization for the most common types of special uses that use and occupy National Forest System roads and trails will eliminate the need to conduct field monitoring to make such determinations.

Second, conducting one of these types of special uses on a National Forest System road or trail without an authorization exposes the United States to potential liability. Special use authorizations contain indemnification and insurance requirements and other provisions that protect the United States from claims of liability.

Third, the regulatory gap creates an uneven playing field among businesses, some of which obtain a special use authorization and pay a land use fee, while others do not. Additionally, the public should realize a market value return for commercial uses of Federal lands, which can be achieved only by requiring a special use authorization.

Comment. Several respondents were concerned that the rule would decrease competition and thus would cause economic harm to their community. They believed that commercial outfitters supply needed jobs and that this rule would put some of them out of business, causing the loss of jobs.

Response. The Department disagrees with this assertion. It is not the intent of the rule to put entities out of business, but rather to provide for greater equity among entities that conduct special uses on National Forest System roads and trails and those that do not.

The direct effect of this final rule is to require a special use authorization for outfitting and guiding, and other specifically enumerated special uses even when those activities are conducted exclusively on National Forest System roads or trails. Therefore, as a result of the final rule, some special uses that currently do not require a special use authorization will require one.

Individuals or entities that conduct outfitting and guiding without a special use authorization (because they assert that they are conducting those activities within the confines of a National Forest System road or trail) are attracting clients and conducting a viable business because of the amenities that National Forest System landscapes and resources offer, yet they are not paying a land use fee and are not required to carry liability insurance or indemnify the United States. Those who conduct outfitting and guiding under a special use authorization must comply with its terms and conditions, which generally include paying a land use fee, carrying liability insurance, and indemnifying the United States. This disparity gives unauthorized operators an unfair economic advantage over authorized businesses.

Comment. One respondent stated that documents on which the agency relies to make evaluations and form conclusions should be provided.

Response. The rulemaking record for this final rule contains all the documents pertinent to this rulemaking. These documents are available for inspection and copying at the location listed in the **ADDRESSES** section. Any other documents requested in comments on this rulemaking are beyond the scope of rulemaking conducted pursuant to 5 U.S.C. 553(c). Respondents interested in obtaining either category of documents may request them under the Freedom of Information Act by writing to the location listed in the **ADDRESSES** section for Freedom of Information Act requests.

Proposed Rule Preamble

Comment. One respondent stated that there is no regulatory gap, that the playing field is not uneven, and that any inconsistent treatment among outfitters has resulted from the agency's failure to apply the current regulation. Others observed that the proposed rule would promote consistency and fair treatment of commercial service providers and other groups using National Forest System lands, thus ensuring that the Forest Service administers the commercial use of roads and trails in a fair and equitable manner.

Response. The Department disagrees that there is no regulatory gap and agrees that this rule will promote consistency and fairness among commercial service providers. A number of current outfitting and guiding permit holders commented that this regulatory change will be beneficial to commercial permit holders. The regulatory gap creates an uneven playing field among businesses, some of which operate under a special use authorization and pay a land use fee, while others do not. Not paying a fee gives an unfair economic advantage to those who are not currently required to obtain a special use authorization. The value of these uses of National Forest System roads and trails is directly attributable to amenities associated with the National Forest System lands and resources these roads and trails traverse. The public should realize a market value return for these special uses of National Forests, which can be achieved only by requiring a special use authorization and assessing a land use fee.

Comment. One respondent stated that increased use warranting this rule change is not evident. Conversely, another respondent observed that there is now a near constant flow of traffic that has become a problem to residents. This respondent noted that commercial tour jeeps are presenting safety problems, as well as noise disturbance, and that user conflicts and resource damage are resulting from the increase in unregulated use.

Response. The Department does not agree that use levels do not support the need to regulate. The agency needs to regulate these uses of National Forest System roads and trails to accomplish management objectives and to reduce impacts to National Forest System lands

and resources. The demand for uses of National Forest System lands and resources has increased in recent years. Along with the increase in demand, there are growing conflicts among users and competing interests in the use of a limited land base and its resources. In some cases, the demand is so great that it is necessary to limit use. When an area becomes popular, uncontrolled use can result in land and resource impacts, user conflicts, or increased vehicular and pedestrian traffic, with associated safety concerns on National Forest System roads and trails. In several instances, the courts have ordered the Forest Service to regulate these uses when these conditions exist. Finally, site-or area-specific evaluation of use levels is not the subject of this rulemaking. Such evaluations are conducted through the forest planning or project decisionmaking process.

Comment. One respondent stated that intensive monitoring warranting this rule change is not evident, and another asserted that the proposed rule would increase the Forest Service's monitoring costs.

Response. The Department disagrees with these assertions. While organizers of recreation events or outfitters and guides may assert that their activities are confined only to a road or trail, often these activities include the use and occupancy of National Forest System lands adjacent to or well beyond the rights-of-way for those roads or trails. Determining whether a special use is confined to a road or trail right-of-way (that is, determining whether a special use authorization is necessary) requires intensive, case-specific monitoring. The final rule will eliminate the need for this monitoring by requiring a special use authorization for all six types of special uses, regardless of whether they occur on or off National Forest System roads and trails.

Monitoring a special use to determine whether it goes beyond the confines of a National Forest System road or trail, and therefore requires a special use authorization, should be distinguished from monitoring compliance with a special use authorization. There may be a modest increase in the costs of monitoring compliance with special use authorizations associated with the small increase in the number of authorizations that will be required pursuant to § 251.50(d) of the final rule. This modest increase in costs will be more than offset by the savings that will be realized by eliminating the need to monitor these six types of special uses when they occur primarily on a National Forest System road or trail, and by the other regulatory benefits achieved through the rulemaking that were previously identified.

Comment. One respondent stated that the issue of invalidated closure orders is local in scope and does not warrant a change in the national rule.

Response. The Department disagrees with this assertion. The need to regulate special uses on National Forest System roads and trails has surfaced in several Forest Service Regions. The issuance of a May 21, 1996, letter by the Deputy Chief of the National Forest System clarifying the current regulation shows that this issue has been a concern to the agency for many years at the national level. The 1996 Washington Office letter provides that special use authorizations for special uses occurring solely on National Forest System roads and trails may be required pursuant to a forest order issued under 36 CFR part 261, subpart B. However, courts have invalidated these orders.

Comment. One respondent stated that a recent U.S. General Accounting Office report shows off-road vehicles, such as snowmobiles, are permitted in nearly 50 percent of the areas managed by the Forest Service. Therefore, this respondent stated that the rule is needed to put in place clear, consistent terminology to govern treatment of forest roads.

Response. Regulation of off-highway vehicle use is beyond the scope of this rulemaking. However, the Department agrees that clear, consistent definitions for forest road or trail, National Forest System road, and National Forest System trail are needed for this rulemaking.

Comment. One respondent asserted that dual-sport motorcycle events do not have significant impacts on the environment.

Response. The final rule will require a special use authorization for the six types of special uses, including recreation events, occurring on National Forest System roads and trails to serve the purposes identified in the proposed rule, that is, (1) promoting fairness and consistency in authorizing uses; (2) obtaining market value for the use of National Forest System lands; (3) mitigating traffic and safety concerns; (4) managing impacts on National Forest System lands and resources; (5) avoiding and resolving conflicts among users and administrative activities; and (6) requiring insurance and indemnification of the United States. The potential for impacts on National Forest System resources associated with specific recreation events, such as dual-sport motorcycle activities, and the measures needed to mitigate such impacts, are identified through a site-specific environmental analysis in response to applications for such uses. The final rule does not change that process, which is set out in Forest Service Handbook (FSH) 1909.15.

Comment. One respondent stated that there would be an increase in do-it-yourself jeep touring in private or rented vehicles.

Response. The final rule will require a special use authorization for the six types of special uses occurring on National Forest System roads and trails. This requirement will serve the purposes identified in the proposed rule and outlined in the preceding response, that is, to promote fairness and consistency in authorizing uses, obtain market value for the use of National Forest System lands, manage impacts on lands and resources, avoid and resolve conflicts among users and administrative activities, and require insurance and indemnification of the United States. The statement that touring in private or rented vehicles will increase as a result of this requirement is speculative and thus cannot be addressed in this response.

Comment. One respondent stated that the Forest Service has not made a case that there are unacceptable impacts on roads resulting from the current rule.

Response. Mitigating adverse impacts on roads is not a rationale for this rulemaking. Rather, the final rule is intended to provide greater consistency in regulating six types of special uses of National Forest System lands, including instances in which those types of uses occur exclusively within the rights-of-way of National Forest System roads or trails.

Comment. One respondent stated that it is not clear how much damage is caused by commercial non-recreational activities and how much by commercial recreation groups, noncommercial groups, and individuals.

Response. As previously stated, addressing adverse impacts on roads and trails is not one of the reasons for this rulemaking. The Forest Service evaluates the physical impacts caused by the use of its roads and trails, user conflicts, and public safety through monitoring and site-specific environmental analyses. The agency protects its investment in these facilities through an operation and maintenance program. Additionally, the Forest Service has the authority to require those who use National Forest System roads for commercial purposes to maintain the roads commensurate with their use. Such authority is provided in the National Forest Roads and Trails Act of 1964 and is outside the scope of this rulemaking.

Comment. One respondent stated that if roads and trails are unsafe for motorized use or may be damaged by motorized use, they can be closed by order or regulation. Therefore, this regulation is unnecessary.

Response. The Department agrees that unsafe roads and trails may be closed by order or regulation, but disagrees that this authority renders the final rule unnecessary. This final rule will not regulate road use or maintenance, but will require the regulation of six types of special uses wherever they occur on National Forest System lands, including those within the rights-of-way of National Forest System roads and trails (but not of roads under the jurisdiction of a State, County, or local public road authority). Regulating special uses on National Forest System roads and trails will enable the agency to administer those uses more consistently; to obtain market value for those uses, where applicable; to manage impacts on National Forest System lands and resources; to eliminate or mitigate conflicts among users and administrative activities; and to require insurance and indemnification of the United States. It is not the purpose of this final rule to address roads and trails that are unsafe for motorized use or that may be damaged by motorized use.

Comment. One respondent stated that it is not likely that there is Government liability for the use of roads.

Response. One rationale for this rulemaking is to minimize the liability of the United States associated with special uses occurring on National Forest System roads and trails, not the liability of the United States associated with the general public's use of National Forest System roads. The Department believes that the United States has greater protection from liability when a special use occurring on National Forest System roads and trails is being conducted pursuant to a special use authorization that contains indemnification, insurance, and other liability provisions.

Comment. One respondent observed that the hazards posed by outfitters and guides stopping on the road to unload passengers or equipment would not be eliminated by the proposed rule change and should be addressed through issuance of orders.

Response. The Department disagrees with these comments and believes that a special use authorization and associated operating plan are the most effective way to address appropriate methods for outfitters and guides to operate on National Forest System roads. Moreover, Forest orders would not address the other purposes of this rulemaking.

Comment. Several respondents expressed concern that it is too much to ask private citizens to indemnify the United Sates and carry insurance because no one can assume the risk of being in a park. These respondents believed that insurance for informal events is unaffordable and requested that the Forest Service clarify what constitutes a group event requiring insurance.

Response. Regulations at § 251.56(d)(1) require all holders of special use authorizations to indemnify the United States for any and all injury, loss, or damage the United States may suffer as a result of claims, demands, losses, or judgments caused by the holder's use and occupancy. Accordingly, all special use authorizations contain indemnification provisions. Many special use authorizations also contain insurance provisions that effectuate the indemnification requirement. The Department disagrees that a requirement to secure liability insurance will be burdensome for recreation events in most situations.

There is no insurance requirement for noncommercial group uses. A noncommercial group use is a special use involving 75 or more people, where no entry or participation fee is charged and no goods or services are sold. If an entry or a participation fee is charged or goods or services are sold, generally insurance will be required.

Comment. Several respondents were concerned that the Forest Service cannot fit permit processing into its program of work and that the proposed rule would increase, not reduce, permit workload.

Response. The Department acknowledges that workload in processing special use applications is an issue and is conducting a separate rulemaking to implement its statutory authority to recover costs associated with processing special use applications.

The Department disagrees that the Forest Service will not be able to undertake the workload associated with this rule. Currently the Forest Service is administering 7,322 outfitting and guiding permits and 1,911 recreation event permits. During fiscal year 2002, the Forest Service issued 2,353 outfitting and guiding permits, 971 recreation event permits, 381 commercial filming permits, 315 still photography permits, and 642 noncommercial group use permits. The agency estimates that it will receive fewer than 50 additional outfitting and guiding special use applications and 40 additional recreation event applications annually as a result of this rule. It is unlikely that there will be much of an increase in applications for commercial filming or still photography because when these activities occur on National Forest System roads or trails, they generally involve the use of National Forest System lands outside the right-of-way for the roads or trails and therefore are already authorized under a special use authorization. There may be an increase in noncommercial group use applications as a result of this rule if organizers of recreation events, to avoid having to pay a land use fee and the cost of insurance, redesign their activities so that they are not charging entry or participation fees, thus making their activities qualify as noncommercial group uses. There will be no increase as a result of this rule in applications for special use authorizations issued under § 251.110(d) for a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use, as the agency has been issuing these authorizations pursuant to 16 U.S.C. 3210(a).

Specific Sections by Part

Part 251—Land Uses

Section 251.50(a). This section of the rule defines the type of activities on National Forest System lands that are classified as ''special uses.''

Comment. One respondent stated that the word ''unless'' in the last sentence is confusing and may lead people to determine for themselves whether or not an authorization is required.

Response. The Department disagrees that the word ''unless'' in the last sentence needs to be changed. This language in the current rule has not been proposed for change. Section 251.50, paragraphs (c) through (e), enumerate the bases for waiver of the special use authorization requirement. Those proposing to use and occupy National Forest System lands are required under § 251.54(a) to contact the Forest Service in advance of the proposed use and occupancy, at which time applicable requirements can be discussed.

Section 251.50(b). This section of the rule prescribes authorization requirements during emergency situations.

Comment. One respondent stated that temporary occupancy of National Forest System lands in an emergency should not require a permit and suggested that ''temporary'' be defined as ''lasting no

longer than is necessitated by the nature and character of the emergency leading to the occupancy.'' This respondent suggested striking the sentence, ''Those temporarily occupying National Forest System lands without a special use authorization assume liability and must indemnify the United States for all injury, loss, or damage arising in connection with the temporary occupancy.''

Response. The Department agrees that temporary occupancy of National Forest System lands without a special use authorization is appropriate in limited circumstances and subject to specific conditions, as enumerated in the final rule. The Department disagrees that temporary occupancy should never require a special use authorization.

Under the final rule, temporary occupancy without a special use authorization is allowed when necessary for the protection of life and property in emergencies, as long as a special use authorization is applied for and obtained at the earliest opportunity, unless waived pursuant to § 251.50(c) through (e). Emergency situations often last longer than originally anticipated. Requiring a special use authorization allows the agency to specify terms and conditions of the occupancy, and to require changes in the temporary occupancy for conformance to the terms and conditions.

The Department disagrees that ''temporary'' needs to be defined, as the rule will require those temporarily occupying National Forest System lands to obtain a special use authorization at the earliest opportunity. Moreover, in the final rule, paragraph (b) of § 251.50 has been revised to add the phrase ''when necessary'' as a qualifier to temporary occupancy without an authorization; the phrase ''is applied for and'' has been inserted before ''obtained at the earliest opportunity'' to clarify that a proponent must apply for a special use authorization and that the authorized officer has the discretion to decide whether to allow the use to continue. Furthermore, the Department has added to paragraph (b) the sentence ''The authorized officer may, pursuant to § 251.56 of this subpart, impose in that authorization such terms and conditions as are deemed necessary or appropriate and may require changes to the temporary occupancy to conform to those terms and conditions,'' to clarify further that the use may be conditioned and that modifications may be required if needed.

The Department disagrees that the sentence imposing liability on the temporary occupant should be stricken. This sentence was added to the proposed rule to clarify that the temporary occupant has liability similar to that imposed on holders of a special use authorization under § 251.56(d)(1) of the current rule.

Section 251.50(c). This section of the rule describes the types of noncommercial recreational activities for which a special use authorization is not required and the exceptions to those activities.

Comment. One respondent suggested that bicycling should be added to the list of noncommercial recreational activities for which a special use authorization is not required. Another respondent suggested that use of motorized off-highway vehicles should be added to the list. Additionally, one respondent requested that the language ''or similar recreational activity'' in the current regulation be retained.

Response. The Department disagrees with adding additional activities to the list of noncommercial recreational activities for which a special use authorization is not required. The list is not intended to be all-inclusive, but rather to identify examples of common recreational activities. Furthermore, the inclusion of mechanized and motorized activities to this list could lead to confusion in areas where mechanized and motorized equipment is prohibited, such as wild sections of wild and scenic rivers and designated wilderness areas. The phrase ''or similar recreational activity'' does not appear in § 251.50(c) of the current regulations.

Comment. One respondent requested removal of § 251.50(c)(1) from the rule.

Response. The Department disagrees that paragraph (c)(1) in § 251.50 of the proposed rule should be removed. This paragraph requires a special use authorization for noncommercial group uses. Other than a nonsubstantive change in sentence structure, paragraph (c)(1) of the proposed and final rules is identical to paragraph (c)(3) in the current rule. Since the requirement for a special use authorization for noncommercial group use was not proposed for change, it is beyond the scope of this rulemaking.

Section 251.50(d). This section of the rule addresses the need for a special use authorization for special uses occurring on National Forest System roads and trails.

Comment. Several respondents said that the agency should require a permit for special uses conducted on National Forest System roads and trails.

Response. The Department agrees. Furthermore, the Department is making a technical change to confirm its preexisting authority to issue special use authorizations under Section 1323(a) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3210(a), and 36 CFR 251.110(d). The Department is adding to the list in § 251.50(d)(1) of special uses occurring on National Forest System roads that require a special use authorization a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use.

Comment. One respondent said that the growing impact of motorized recreation and regulation of large group activities, whether commercial or noncommercial, is a concern, and therefore it is important and necessary to require special use permits for activities involving National Forest System roads and trails.

Response. The Department agrees that it needs to be able to manage commercial and noncommercial special uses occurring on National Forest System roads and trails and has therefore pursued this rulemaking.

Comment. One respondent stated that the proposed rule would require permits for businesses that have not previously been subject to permitting.

Response. The final rule will require special use authorizations for some businesses that have not previously had to obtain them, such as businesses engaged in outfitting and guiding, commercial filming, and still photography exclusively within the right-of-way of a National Forest System road or trail. However, the Forest Service estimates that the number of these new authorizations will be small: 50 for outfitting and guiding, an increase of 2 percent over the current number of outfitting and guiding authorizations, and 40 for recreation events, an increase of 4 percent. The number of new commercial filming and still photography authorizations is likely to be fewer than 10 for both activities combined.

Comment. One respondent stated that the use of National Forest System trails must remain exempt from the requirement for a special use permit.

Response. The Department disagrees that special uses occurring on National Forest System trails should remain exempt from the special use authorization requirement. The Forest Service is eliminating the exemption for special uses conducted on National Forest System trails because there is a potential for resource damage on trails that may not be designed or constructed for the level or type of use that occurs. Furthermore, it is unlikely that there are commercial uses of National Forest System trails that should be exempted

from the special use authorization requirement, as there are for many uses of National Forest System roads (such as the delivery of goods within and through the National Forests). Additionally, there have been several instances where courts have ordered the Forest Service to regulate special uses on trails.

Comment. One respondent requested that the Forest Service specify that use on a National Forest System trail does not require a special use permit unless it is commercial in nature. Several respondents stated that special use permits should not be required for noncommercial activities.

Response. Under the final rule, a noncommercial activity occurring on National Forest System trails that qualifies as a special use will require a special use authorization. One of these special uses is noncommercial group use. In addition, other noncommercial uses of a National Forest System trail could require a special use authorization in certain situations, such as still photography, or pursuant to an order issued under § 261.50 or a regulation issued under § 261.70. Under current law, a special use authorization is required for still photography and noncommercial group uses. Whether a special use authorization should be required for these activities is therefore beyond the scope of this rulemaking.

Comment. One respondent observed that special use permits should be required for commercial activities and/or recreation events. Another respondent stated that commercial users should pay a fee or tax.

Response. The final rule will require a special use authorization for recreation events and other commercial special uses occurring on National Forest System roads and trails. Most commercial special use authorizations require payment of a land use fee. The regulations governing land use fees are found at § 251.57. No changes to this section of the regulation were proposed as part of this rulemaking.

Comment. Several respondents asserted that a permit should not be required for public roads. They believe that if a road has been built, it should be open to all for free travel and suggested that this rule is a disturbing departure from the practice of all other government agencies, which allow free access on all public thoroughfares. Several respondents asserted that events conducted on forest roads and trails should not require fees because a gas tax and fees for off-highway vehicle stickers are already paid. One respondent stated that Forest Service roads have already been paid for. Another respondent stated that the proposed rule is just the first step to closing roads. Another stated that the requirement for permits for use of roads and trails runs counter to a Forest Service study that calls for reducing permit requirements for minor uses.

Response. The final rule will not require a special use authorization for use of public roads. Rather, the final rule will require a special use authorization for six types of special uses wherever they occur on National Forest System lands, including on National Forest System roads (but not on roads under the jurisdiction of a State, County, or local public road authority). This approach is consistent with that of other Federal land management agencies. For example, the Bureau of Land Management requires special recreation permits for commercial and competitive uses (43 CFR 8372.1).

The scope of this rulemaking does not include establishment of criteria for identifying which National Forest System roads should be closed or remain open.

The study being referred to, presumably, is the Forest Service's special uses reengineering study conducted in 1997. The study recommended that the Forest Service consider whether or not a special use authorization should be required for minor uses. Examples of minor uses mentioned in the study are mailboxes and private driveways. This recommendation is incorporated in paragraphs (e)(1) and (2) of § 251.50 in the final rule, which gives authorized officers the discretion to waive the requirement for a special use authorization for uses having nominal effects on National Forest System lands, resources, or programs, or for uses that are adequately regulated by another governmental entity.

However, the Department does not believe that the six special uses occurring on National Forest System roads and trails (outfitting and guiding, recreation events, noncommercial group uses, commercial filming, still photography, and a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use) are minor uses. The 1997 reengineering study did not address situations where regulatory authority needs to be expanded, as is the case for uses occurring on National Forest System roads and trails that are addressed in the final rule.

Comment. One respondent stated that there should be no permit requirement if people merely travel along a road and do not stop.

Response. of the objectives of this rulemaking is to provide greater equity in the agency's management of six types of special uses wherever they occur on National Forest System lands, including on National Forest System roads and trails (but not on roads under the jurisdiction of a State, County, or local public road authority), even if those engaging in these types of special uses do not stop along those roads or trails.

Comment. Several respondents proposed clarifying that the special use authorization requirement for outfitters and guides to use roads would not mandate a new or additional authorization for operations conducted on National Forest System roads or trails for which outfitters and guides already have authorizations. Accordingly, this respondent proposed adding the following to § 251.50(d): ''If a guiding or outfitting entity already holds a special use authorization for which use of National Forest System roads and trails is a necessary or integral part of the authorized activity, no additional or supplemental permit is needed.''

Response. The Department agrees that under the final rule, a new or supplemental special use authorization is not needed for outfitting and guiding conducted on a National Forest System road or trail that is already covered by a special use authorization or that may be covered by an amendment to an existing special use authorization. However, the Department disagrees that the language in paragraph (d)(1) should be revised. Training of special use permit administrators is a more appropriate way to achieve agency consistency in application of the final rule with respect to the issue identified in this comment.

Comment. Several respondents asserted that outfitters and guides should have to pay only a special use fee and not a road use fee. One respondent suggested clarifying that no special fee or assessment other than applicable special use permit fees would be assessed on outfitters and guides for the use of these roads.

Response. The authority in the final rule to regulate special uses occurring on National Forest System roads will not supplant Forest Service authority to regulate road use and to require commercial users to perform or pay for maintenance made necessary by their use of National Forest System roads under applicable laws, including the National Forest Roads and Trails Act of 1964 (FRTA). Rather, these two sets of authorities are complementary with

respect to activities occurring on National Forest System roads. For example, a separate road use permit could be issued to an entity (pursuant to FRTA and corresponding direction in Forest Service Manual (FSM) 7731.16 and Forest Service Handbook (FSH) 7709.59, section 24) concerning the responsibilities for commensurate maintenance made necessary by the entity's commercial use of a road, coincidentally with a special use authorization issued under the final rule. Alternatively, the operation and use of the road for commercial purposes, including terms and conditions that address cost-sharing for road maintenance, could be incorporated into a special use authorization issued under the final rule, which also would include a citation of the appropriate statutory authorities concerning road maintenance requirements.

Comment. The Forest Service cannot require a permit for activities conducted totally off National Forest System lands.

Response. The Forest Service generally does not regulate uses occurring entirely off National Forest System lands. Special uses conducted on National Forest System roads and trails are on National Forest System lands.

Comment. Several respondents stated that it is not clear which roads will require a permit and that it is not clear how commercial bus drivers will know when they have crossed onto Bureau of Land Management, State, or county roads.

Response. First, this final rule will require a special use authorization for five types of special uses wherever they occur on National Forest System lands, including on National Forest System roads and trails (but not on roads under the jurisdiction of a State, County, or local public road authority).

Second, the Department disagrees that it will be difficult to determine whether a special use authorization is required under the final rule. To comply with the special use authorization requirement under the final rule, it will not be necessary to know where National Forest System roads end and roads under other jurisdictions begin. It will be necessary to know only whether a noncommercial group use, recreation event, outfitting and guiding activity, commercial filming activity, or still photography activity, as defined in § 251.51 of the final rule, will be conducted in whole or in part on a National Forest System road. If so, a special use authorization will be required. National Forest System roads are enumerated in the forest transportation atlas for each National Forest (§ 212.2) and are commonly posted along the roadway with Forest Service signs. In addition, National Forest maps distinguish National Forest System roads from other types of roads through the use of symbols and colors.

Comment. One respondent observed that the proposed rule narrows the exemption from the permit requirement for roads and eliminates the exemption from the permit requirement for trails, but noted that the Forest Service designates some facilities as trails that could be considered roads.

Response. Regulations for the classification and management of roads and trails are found at 36 CFR part 212 and are beyond the scope of this rulemaking.

Comment. Several respondents observed that §§ 212.6, 251.53, and 251.54 and part 261 distinguish between road use and land use. One respondent commented that the regulation should clarify when a particular use should be regulated by a special use permit and when it should be subject to a cost-share agreement. Another respondent stated that use of the road network should not require a permit.

Response. The Department agrees that road use and land use are distinct and separate. However, special uses are land uses regardless of whether they occur on or off roads and trails. Under this final rule, the Forest Service will require special use authorizations and the fees for those authorizations under statutes governing use and occupancy of National Forest System lands. Specifically, for occupancy and use of National Forest System lands, the Forest Service will require special use authorizations and charge land use fees for commercial filming and still photography under the Act of May 26, 2000, 16 U.S.C. 460*l*–6d, for outfitting and guiding and recreation events under the Land and Water Conservation Fund Act, 16 U.S.C. 460*l*–6a(c), and for a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use under Section 1323(a) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3210(a). Permits for noncommercial group uses will be issued under the agency's Organic Act, 16 U.S.C. 551. No fee is assessed for noncommercial group use permits. Further authority for assessing land use fees is found in the Independent Offices Appropriations Act, 31 U.S.C. 9701, Office of Management and Budget Circular No. A–25, and § 251.57(a). For most types of special uses, land use fees are assessed annually. For temporary uses of less than one year, the land use fee is commonly assessed upon issuance of the authorization. These fees are based upon the market value of the authorized use of National Forest System lands.

The use, operation, and maintenance of National Forest System roads are regulated under separate authority at 16 U.S.C. 532 *et seq.* and 36 CFR part 212. When appropriate, commercial users may be required to contribute to the cost of road maintenance and reconstruction. For holders of special use authorizations, contributing to these costs may be accomplished by adding appropriate clauses to their authorization or by issuing a separate road use permit. To clarify the distinction between road use permits and special use authorizations, the Department has added ''sharing use of roads (part 212)'' to the list of uses not considered special uses in § 251.50(a).

Comment. One respondent pointed out that FSM 2719 and 2734.4 do not require a permit for the commercial use of forest development roads unless closed by order.

Response. The Department agrees that there is a discrepancy between the final rule and FSM 2719, paragraph 7. In addition, the Department believes that the introductory text to FSM 2719 is unclear and that paragraph 6 of FSM 2719 needs to be revised to be more consistent with the corresponding regulation at 36 CFR 251.50(c) and to reflect that noncommercial group use and still photography are not exempted from the special use authorization requirement. Consequently, the introductory text and paragraphs 6 and 7 will be revised, a new paragraph 8 will be added, and current paragraphs 8, 9, and 10 will be renumbered. The revised text of FSM 2719 reads as follows:

''Consult with the Office of the General Counsel on a case-by-case basis to confirm that a special use authorization is not required for a proposed use in any of the following categories:

''6. Noncommercial recreational activities, such as camping, picnicking, hiking, fishing, hunting, horseback riding, and boating, as well as noncommercial activities involving the expression of views such as assemblies, meetings, demonstrations, and parades, except for noncommercial group use and still photography. Noncommercial recreational activities that are exempted from the requirement for a special use authorization may require payment of a prescribed fee for use or occupancy of sites having an established schedule of fees.

''7. Temporary occupancy of National Forest System lands without a special use authorization when necessary for the protection of life and property in emergencies, if a special use authorization is applied for and obtained at the earliest opportunity, unless waived pursuant to Title 36, Code of Federal Regulation, section 251.50, paragraphs (c) through (e)(3) (36 CFR 251.50(c) through (e)(3)).

''8. Travel on National Forest System roads, unless the travel is for the purpose of engaging in a noncommercial group use, outfitting and guiding, a recreation event, commercial filming, or still photography, as defined in 36 CFR 251.51, for a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use, pursuant to 36 CFR 251.110(d), or authorization of that use is required by an order issued under 36 CFR 261.50 or by a regulation issued under 36 CFR 261.70.''

Additionally, the Department agrees that there is a discrepancy between the final rule and FSM 2734.4. Therefore, FSM 2734.4 will be revised to read as follows:

''Regulations at Title 36, Code of Federal Regulations, section 212.5(a)(1) (36 CFR 212.5(a)(1)) provide that traffic on National Forest System roads is subject to State laws where applicable, except when in conflict with the rules established under 36 CFR part 261. Regulations at 36 CFR 212.5(a)(2) enumerate specific traffic rules that apply on National Forest System roads unless different rules are established in 36 CFR part 261.

''Special use authorizations are not necessary for travel on National Forest System roads, unless:

''1. The travel is for the purpose of engaging in a noncommercial group use, outfitting and guiding, a recreation event, commercial filming, or still photography, as defined in 36 CFR 251.51, or for a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use, pursuant to 36 CFR 251.110(d); or

''2. A special use authorization is required by an order issued under 36 CFR 261.50 or by a regulation issued under 36 CFR 261.70.

''Special use authorizations issued pursuant to 36 CFR part 251, subpart B, should be distinguished from road use permits that are issued pursuant to 16 U.S.C. 532 and 36 CFR part 212. Road use permits may be issued for such activities as construction, reconstruction, grading, or snow removal.

''Special use authorizations are required for special uses conducted on National Forest System trails. The use of motor vehicles is prohibited on the Appalachian Trail, Pacific Crest Trail, and other Congressionally designated trails pursuant to 16 U.S.C. 1246(c) and on trails within Congressionally designated wilderness areas pursuant to 36 CFR 261.16. Motor vehicle use in other areas may be prohibited or restricted pursuant to 36 CFR 261.12 and 261.55.''

Comment. One respondent indicated that land use fees should not be grouped with road use fees because they are determined differently. Additionally, this respondent stated that it is not clear how market value would be determined for land use and road use.

Response. The Department agrees that land use fees should not be grouped with cost-sharing for road maintenance, and emphasizes that they are separate types of assessments. Forest Service regulations already provide for assessment of land use fees for special use authorizations at § 251.57. These fees are charged under various authorities, and fee systems have been established for the various types of special uses in FSM 2710 and 2720. There is no fee for noncommercial group use. The authority for cost-sharing for road maintenance is independent of the authorities to assess land use fees and accordingly is implemented under separate regulations at 36 CFR part 212.

Comment. Respondents asserted that the proposed rule would limit public access, would limit access for seniors and low-or fixed-income visitors, would limit access for church groups and charities, would restrict access to National Forest System roads and trails, or would eliminate most group travel activities. Other respondents suggested that the proposed rule would end use of National Forest System roads and trails by organized dual-sport events.

Response. The Department disagrees that the final rule will limit access to National Forest System lands in any of the ways identified in these comments. Rather, the final rule merely requires a special use authorization for six types of special uses wherever they occur on National Forest System lands, including on National Forest System roads and trails (but not on roads under the jurisdiction of a State, County, or local public road authority).

Comment. One respondent stated that ''use of'' should not be changed to ''travel on.''

Response. The Department disagrees with this comment. There are other activities associated with roads that are subject to the special use authorization requirement, such as construction of a road authorized under an easement. Substituting ''travel on'' for ''use of'' clarifies the agency's intent not to exempt these activities from the special use authorization requirement. Moreover, ''travel on'' more clearly describes the type of use of roads associated with noncommercial group use, outfitting and guiding, recreation events, commercial filming, still photography, and a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use.

Comment. Several respondents requested that the Forest Service not include in paragraph (d)(1) one or more of the following: noncommercial group use, recreation events, and still photography.

Response. The Department does not agree that noncommercial group use, recreation events, and still photography conducted on National Forest System roads and trails should be exempted from the special use authorization requirement. Each of these uses has characteristics that warrant management wherever these uses occur in the National Forest System, including on National Forest System roads and trails (but not on roads under the jurisdiction of a State, County, or local public road authority). Regulating these uses when they are conducted on National Forest System roads and trails meets the objectives of this rulemaking.

Section § 251.50(e). This section of the rule provides additional criteria to the authorized officer for determining when a special use authorization is required.

Comment. Several respondents requested removal of the phrase ''other than noncommercial group use.''

Response. The Department disagrees that the phrase ''other than noncommercial group use'' should be removed from the introductory text of paragraph (e). The Department does not intend the waiver provisions in paragraph (e) to apply to noncommercial group use. The criteria for waiver in paragraph (e) involve the exercise of discretion by the authorized officer. If these criteria were applied to noncommercial group use, they could render the permitting scheme for noncommercial group use unconstitutional. The criteria for requiring a special use permit for noncommercial group use are clearly

articulated elsewhere in part 251, subpart B.

Comment. Several respondents stated that there are no guidelines for the criteria for determining when a special use authorization is needed.

Response. The Department agrees that there is some ambiguity as to the basis upon which a determination to waive the special use authorization requirement will be made under paragraph (e) of § 251.50. Consequently, the Department is proposing to add ''based upon a review of a proposal'' to the introductory text of paragraph (e), so that it reads as follows: ''For proposed uses other than a noncommercial group use, a special use authorization is not required if, based upon a review of a proposal, the authorized officer determines that the proposed use has one or more of the following characteristics.'' This revision will ensure that the authorized officer is provided sufficient information about the proposed activity to determine whether a special use authorization is required.

Comment. One respondent stated that the proposed rule at paragraph (e) conflicts with § 261.10(a), which prohibits constructing, placing, or maintaining any kind of road, trail, or facilities on National Forest System lands without a special use authorization, contract, or approved operating plan.

Response. The Department agrees that there is a conflict between paragraph (e) in the proposed rule and § 261.10(a). Therefore, § 261.10(a) is being modified to read as follows: ''Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communications equipment, or other improvement on National Forest System lands or facilities without a special use authorization, contract, or approved operating plan, unless such authorization, contract, or operating plan is waived pursuant to § 251.50(e) of this chapter.''

Comment. The permit requirement should not be waived. Rather a permit should be required so that the activity will be subject to the National Environmental Policy Act (NEPA). It is the Forest Service's responsibility to review all project proposals for environmental impacts.

Response. Under the Forest Service's special use regulations at 36 CFR 251.54(e)(6) and (g)(1) and (2), environmental analysis under NEPA is not required until a special use proposal has met two levels of screening criteria. Paragraph (e)(3) of § 251.50 applies to special use proposals at the initial level of screening.

The Department appreciates the importance of compliance with NEPA and stresses that paragraph (e) is not intended to circumvent NEPA in any way. Rather, paragraph (e) is intended to dispense with the requirement for a special use authorization in specifically identified circumstances based on a case-specific determination by the Forest Service that there is no programmatic need for the authorization.

Section 251.50(e)(1). This section of the rule provides for waiver of the special use authorization requirement for uses with nominal effects.

Comment. Several respondents stated that the term ''nominal'' is vague and that a definition should be provided. Another stated that ''nominal effects'' is unclear. Yet another stated that research scientists should determine whether effects are nominal.

Response. The Department disagrees that the phrase ''nominal effects'' needs to be defined in this regulation. There is adequate guidance on effects in the Forest Service's Environmental Policy and Procedures Handbook (FSH 1909.15) and Forest Service Manual (FSM) 1950.

Comment. One respondent proposed that ornithological research be exempt from the permit requirement.

Response. The Department disagrees that ornithological research should be categorically exempt from the special use authorization requirement. Whether a specific ornithological research project is exempt from the special use authorization requirement would be determined based on the characteristics of that proposal in accordance with § 251.50(e) of the final rule.

Comment. One respondent stated that the phrase ''necessary to establish terms and conditions in a special use authorization * * * to avoid conflict with National Forest System programs'' most likely would be interpreted by the Forest Service to include any permitted outfitting and guiding operation, so that no proposed outfitting and guiding use would ever qualify for an exemption from the authorization requirement if it is perceived to be in competition with the activities of a permitted outfitter and guide.

Response. The Department disagrees with this characterization of how the Forest Service will interpret § 251.50(e)(1) of the final rule. Generally, outfitting and guiding will not qualify for an exemption from the special use authorization requirement under paragraph (e)(1) because an outfitting and guiding use generally has more than nominal effects on National Forest System lands, resources, and programs. For purposes of paragraph (e)(1), an example of the need to establish terms and conditions in a special use authorization to avoid conflict with agency programs or operations is when a proposed use would conflict with other uses or administrative use by the Forest Service.

Section 251.50(e)(2). This section of the rule provides for waiver of the special use authorization requirement for uses that are adequately regulated by a State agency or other Federal agency.

Comment. Several respondents stated that the Forest Service should not waive the permit requirement for activities that are regulated by State or other Federal agencies.

Response. The Department disagrees with this comment. In 1997 the Forest Service completed a reengineering study of its special uses program that recommended managing special uses in a more businesslike manner. The study found that authorizations are being issued for some special uses that are being regulated by other agencies in a manner that adequately protects National Forest System lands and resources and that avoids conflict with National Forest System programs or operations. The final rule will provide that if an authorized officer concludes that a use is being regulated by another Federal or State agency in a manner that adequately addresses National Forest System lands, resources, and management concerns, the authorized officer may waive the requirement for a special use authorization.

Comment. One respondent suggested adding ''or other Forest Service authorization or use agreement'' to the items that do not require a permit. Another suggested exempting from the permit requirement operations like grooming of snowmobile trails that are covered by an agreement.

Response. The Department believes that it would be unnecessary to add special uses that are already covered under a special use authorization to the provision in paragraph (e)(2) waiving the special use authorization requirement. Rather, the Department will emphasize to special use administrators that redundancy in permitting is not appropriate. It would not be appropriate to add ''use agreement'' to the waiver provision in paragraph (e)(2) because agreements, such as memoranda of understanding or memoranda of agreement, do not constitute special use authorizations. It also would not be appropriate to add grooming of snowmobile trails to the provision in paragraph (e)(2) because grooming of snowmobile trails is not always regulated by another

governmental entity and it is an activity that the Forest Service needs to regulate. This particular activity can be authorized in one of many ways. When the snowmobile trails to be groomed coincide with alignment of a National Forest System road, the activity could be authorized by a road use permit. More commonly, the activity is authorized by either a special use authorization issued specifically for the grooming activity, or by adding provisions to a special use authorization (or its operating plan) for another type of special use when, for example, the grooming activities are ancillary to the operation of a larger special use (such as a ski area or winter resort).

Section 251.50(e)(3). This section of the rule provides for waiver of the special use authorization requirement for routine operation or maintenance activities within the scope of an R.S. 2477 or R.S. 2339 right-of-way or within the express scope of a documented linear right-of-way that is not located in a Congressionally designated wilderness area.

Comment. Several respondents stated that claimed R.S. 2477 rights-of-way have been proven not to exist and that the existence of such a right-of-way is something a field official may be unable to determine without legal research. These respondents believed that claimants may assert rights that cannot be verified and that there is no requirement in the proposed rule that the claimed right-of-way be proven to exist on the ground before bulldozing can occur. One respondent expressed support for paragraph (e)(3) in the proposed rule because it would streamline the means to maintain R.S. 2477 rights-of-way. Several respondents stated that the proposed rule failed to define ''within the scope'' of an R.S. 2477 right-of-way and that the proposed rule did not specify the standards to be used to determine what is within the scope of an R.S. 2477 right-of-way.

Many respondents stated that it was not clear how the Forest Service would determine what constitutes a valid property right. They believed that the proposed rule fails to define the terms ''outstanding statutory right'' and ''outstanding property right,'' and that the latter term could refer to a property right that has not been finally adjudicated or decided. Several respondents indicated that it is not clear whether ''within the scope'' refers to a clearly articulated activity specified within a ''valid reserved, granted, or outstanding property right, such as a right-of-way, easement, or reservation,'' or whether the definition allows for a vague, general set of activities not directly specified in a property right.

One respondent expressed concern with the maintenance and improvement of rights-of-way in Congressionally designated wilderness and inventoried roadless areas and on other important public lands, such as national wild and scenic river corridors.

Another respondent stated that it is unclear how the Forest Service could be cognizant of a right-of-way holder's activities if the Forest Service concludes that an authorization is generally not required. Another stated that waiving the requirement for a special use authorization for certain operation or maintenance activities associated with property rights constitutes a give-away to industry. Several respondents believed that authorized officers should not be empowered to make a decision pertaining to what constitutes a routine operation or maintenance activity within the scope of a valid reserved or outstanding property right. Many respondents believed that the Forest Service should continue to require a special use permit for maintenance activities conducted within the scope of rights-of-way to protect land, streams, and wildlife habitat. These respondents believed that decisions to authorize operation or maintenance of R.S. 2477 rights-of-way should be subjected to public notice and comment pursuant to NEPA and expressed opposition to the exemption from the permit requirement in paragraph (e)(3).

Many respondents believed that the proposed rule fails to delineate or define what would constitute operation or maintenance, as opposed to construction, and stated that the proposed rule provides no guidance on or explanation of ''routine.'' One respondent stated that part 212 defines maintenance, but that these rules generally apply only to Forest Service numbered routes that are considered part of the Forest Service's road system, and thus do not apply to R.S. 2477 rights-of-way. Another respondent asked whether property right holders would be required to propose activities that are considered to be routine operation or maintenance within the scope of a right-of-way, or just those that are considered to be other than routine operation or maintenance or outside the scope of an existing right.

Response. The Department wishes to clarify that the criteria for determining whether an R.S. 2477 right-of-way has been established are beyond the scope of this rulemaking. Rather, only R.S. 2477 rights-of way that have been adjudicated by a court or otherwise recognized by the Forest Service will be subject to the waiver provision in paragraph (e)(3).

The Department agrees that clarification of paragraph (e)(3) is needed. The word ''right'' in the proposed rule has been replaced with ''right-of-way'' in the final rule to describe more clearly the nature of R.S. 2477 and R.S. 2339 rights-of-way. Additionally, the final rule adds the phrase ''routine operation or maintenance within the express scope of a documented linear right-or-way'' and adds a definition for linear right-of-way to delineate more clearly those activities that may be exempt from the special use authorization requirement. The word ''outstanding'' is superfluous and has been removed. Finally, the Department agrees that property interests located within Congressionally designated wilderness areas require closer scrutiny and that activities conducted in exercising those property interests should not be included in the exemption from the requirement for a special use authorization pursuant to paragraph (e)(3) of the final rule. Therefore, the phrase ''the proposed use is not situated in a Congressionally designated wilderness area'' has been added in the final rule to limit the waiver to those R.S. 2477 and R.S. 2339 rights-of-way and documented linear rights-of-way that are not located in a Congressionally designated wilderness area.

Consequently, in the final rule, § 251.50(e)(3) reads as follows: ''The proposed use is not situated in a Congressionally designated wilderness area, and is a routine operation or maintenance activity within the scope of a statutory right-of-way for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976) or for a ditch or canal pursuant to R.S. 2339 (43 U.S.C. 661, as amended), or the proposed use is a routine operation or maintenance activity within the express scope of a documented linear right-of-way.''

The Department disagrees that a special use authorization should be required for routine operation or maintenance activities within the scope of these rights-of-way. Paragraph (e)(3) of the final rule identifies uses for which the special use authorization requirement may be waived. Under paragraph (e)(3) of the final rule, routine operation or maintenance activities that are not in a Congressionally designated wilderness area and that are within the scope of an R.S. 2477 or R.S. 2339 right-of-way or within the express scope of a documented linear right-of-way will not be subject to the requirement for a special use authorization. The Department has determined that

waiving the authorization requirement in this context not only will improve management efficiency, but also will demonstrate recognition of those rights and privileges that have been granted by statute under R.S. 2477 or R.S. 2339 or that are exercised under easements, deeds, or reservations for linear rights-of-way.

The Department does not believe that the activities covered by paragraph (e)(3) should be subject to public notice and comment in connection with NEPA compliance. These types of activities are typically categorically excluded from documentation in an environmental assessment or environmental impact statement under FSH 1909.15, chapter 30.

The Department agrees that under paragraph (e)(3) of the proposed rule there was some ambiguity as to whether right-of-way holders are required to propose for the authorized officer's review activities that are considered to be routine operation or maintenance within the scope of a right-of-way, or just those that are considered to be other than routine operation or maintenance or outside the scope of a right-of-way. Both sets of activities must be proposed for the authorized officer's review. The Forest Service, not the right-of-way holder or applicant, has the authority to determine whether a special use authorization is required. To underscore this point, the Department is adding ''based upon a review of a proposal'' to the introductory text of § 251.50(e), so that it reads as follows: ''For proposed uses other than a noncommercial group use, a special use authorization is not required if, based upon a review of a proposal, the authorized officer determines that the proposed use has one or more of the following characteristics'' (the subsequent paragraphs (e)(1) through (e)(3) set out the characteristics). This revision makes it explicit that authority to determine whether a special use authorization is necessary continues to rest with the Forest Service. In addition, the revision ensures that the authorized officer is provided sufficient information about the proposed activity to determine whether a special use authorization is required.

The Department agrees that clarification of ''routine operation or maintenance'' is needed, but disagrees that this clarification needs to be in the final rule. Therefore, the agency is adding to FSM 2719, paragraph 10, examples of what constitutes routine operation or maintenance within the scope of an R.S. 2477 or R.S. 2339 right-of-way or within the express scope of a documented linear right-of-way. Paragraph 10 of FSM 2719 has been renumbered to fit the sequence of previously referenced revisions to this section of the FSM made necessary by this rulemaking and has been revised to read as follows:

''10. *Routine Operation and Maintenance Activities Within the Scope of a Statutory Right-of-Way or Documented Linear Right-of-Way.* Routine operation and maintenance activities within the scope of a statutory right-of-way for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976) or for a ditch or canal pursuant to R.S. 2339 (43 U.S.C. 661, as amended), or routine operation or maintenance activities within the express scope of a documented linear right-of-way, when these uses do not occur within a Congressionally designated wilderness area. A formal grant or document is not required under these authorities. Observe the boundaries that existed at the time the grant was accepted, unless State law existing at the time of acceptance provides for a different width.

''a. *Routine Operation or Maintenance Activities Within the Scope of R.S. 2477 Right-of-Way.* Routine operation or maintenance activities within the scope of a statutory right-of-way for a highway pursuant to R.S. 2477 include a variety of activities to preserve the integrity and safe use of the road, such as surface rock replacement; grading; snow removal; seal coats and asphalt overlays; culvert and bridge replacements; removal of rock and landslides from the road prism; repair of washouts and other damage from erosion; and the installation and maintenance of signs and other devices for traffic control, information, and safety.

''b. *Routine Operation or Maintenance Activities Within the Scope of R.S. 2339 Right-of-Way.* Routine operation or maintenance activities within the scope of a statutory right for a ditch or canal pursuant to R.S. 2339 include such activities as recurrent removal and deposition of silt and sediment from fish screens, diversion structures, canals, weirs, and ditches; armoring of dams, ditches, or canals with rocks or other protective materials to prevent or remedy damage from erosion, avalanches, or landslides; lining of ditches to prevent or repair leaks and seepage; minor cutting or pruning of vegetation within or immediately adjacent to a water development facility that might be impeding or precluding the storage, diversion, or free-flowing transmission of water; and recurrent adjustment, opening, and closing of diversions, headgates, valves, and other devices necessary to control the timing and volume of water flows consistent with the use of the water being stored, diverted, and transmitted within the right-of-way.

''c. *Activities That Require a Special Use Authorization.* A special use authorization is required for any activities other than routine operation or maintenance, such as construction or reconstruction, that are within the scope of an R.S. 2477 or R.S. 2339 right-of-way or within the express scope of a documented linear right-of-way. A special use authorization is also required for any activities (including operation, maintenance, construction, or reconstruction) that are outside the scope of an R.S. 2477 or R.S. 2339 right-of-way or outside the express scope of a documented linear right-of-way.''

Section 251.51 Definitions. This section of the rule defines technical terms contained in the rule.

Commercial filming. No comments were received on the definition of commercial filming.

Forest road or trail. No comments were received on this definition in part 251. However, extensive comments were received on this definition in part 261. The response to these comments appears in the following discussion of comments under part 261—Prohibitions at § 261.2. This definition has not been changed in the final rule.

Guiding. Comment. One respondent stated that the definition of guiding is too broad. Another stated that an exemption should be made for guiding by noncommercial, nonprofit organizations. Another commented that guiding should not include direction, instruction, or interpretation by nonprofit organizations in exchange for a donation to that organization.

Response. The Department disagrees that the definition of guiding in this rule is too broad. The definition of guiding in this rule is the same as the definition of guiding in FSH 2709.11, section 43.53c, which was published in the **Federal Register** for public notice and comment (55 FR 14445, April 18, 1990; 60 FR 30830, June 12, 1995).

The Department also disagrees that an exemption to the definition for guiding should be made for nonprofit entities. Nonprofit entities engaging in outfitting and guiding activities as defined by the final rule and agency policy are considered to be outfitters and guides. The policy governing administration of outfitting and guiding permits specifically refers to institutional and semi-public outfitting and guiding (FSH 2709.11, sec. 41.53l). The land use fee policy for outfitters and guides specifically refers to fees for nonprofit organizations and educational

institutions (FSH 2709.11, sec. 37.21j and 37.21k). Both of these policies were published in the **Federal Register** for public notice and comment (55 FR 14445, April 18, 1990; 60 FR 30830, June 12, 1995).

The Department also disagrees that an exemption to the definition for guiding should be made for noncommercial group activities. Noncommercial group activities with fewer than 75 people do not require a special use authorization. Noncommercial group activities involving 75 or more people require a noncommercial group use permit.

National Forest System road. Comment. One respondent stated that the terms ''National Forest System road'' and ''National Forest System trail'' are not defined in 36 CFR part 212. Another stated that definitions for these terms must be deduced from § 212.20.

Response. The Department concurs that ''National Forest System road'' and ''National Forest System trail'' are not defined in 36 CFR part 212. They are currently defined in § 261.2. The final rule modifies the definitions for National Forest System road and National Forest System trail in § 261.2 to make them consistent with 23 U.S.C. 101. National Forest System road is also defined in FSM 7705.

Noncommercial Use or Activity and Group Use. Comment. Several respondents stated that the Forest Service should clearly define noncommercial group use. Another stated that the two separate definitions for noncommercial use or activity and group use should be combined. One respondent commented that 50 to 100 riders should not trigger the permit requirement. Another stated that noncommercial group use should be defined as ''an organized and publicized activity expected to attract 100 or more persons and the use of National Forest System lands, resources, or facilities, except where only National Forest System roads and/or trails will be used, with no minor and incidental use of National Forest System lands, resources, and/or facilities.'' One respondent stated that the definition for group use should be removed from the current regulation, and that group use should be revised to clarify that it means 75 or more people at one time. Another stated that noncommercial group use is targeted. One respondent recommended changing the definition for commercial use or activity to ''any use or activity on National Forest System lands (a) where an entry or participation fee is charged, except where such entry or participation fee is less than $5.00 per user, or (b) where the primary purpose is the sale of a good or service, and in either case, regardless of whether the use or activity is intended to produce a profit.''

Response. The definitions for commercial use or activity, group use, and noncommercial use or activity were not proposed for change in this rulemaking and are therefore beyond its scope. The definition for group use has been included in the regulation at § 251.51 since 1995 and has been very successfully applied in the context of the special uses program. This definition is a key component of the special use authorization requirement for noncommercial group uses. The Department disagrees that noncommercial group use should be defined in such a way as to exclude activities that occur on National Forest System roads or trails. For the reasons previously identified for revising § 251.50(d), the Department believes that regulating special uses occurring on National Forest System roads and trails, including noncommercial group uses, is appropriate. Noncommercial group use is not targeted in any way in the final rule. To the contrary, for purposes of the special use authorization requirement in the final rule, noncommercial group use is treated equally with outfitting and guiding, commercial filming, still photography, and recreation event special uses that are conducted on National Forest System roads or trails. The definition for commercial use or activity is beyond the scope of this rulemaking and does not warrant any revision.

Outfitting. No comments were received on the definition of outfitting.

Recreation event. Comment. One respondent stated that the definition for recreation event should be revised to exclude events when entry fees only recover costs. One respondent stated that donations should not be considered an entry fee. Another stated that recreation events should not require a permit. Another commented that a permit should not be required for non-speed competitive events, but that a permit should be required for speed competitive events, unless only one person is participating. This respondent also stated that marking a course should require a permit.

Response. The Department disagrees that the definition for recreation event should exempt events that limit entry fees to amounts that only recover event costs. The Department also disagrees that donations should not be considered an entry fee. The definition for recreation event tracks the definition for commercial use or activity in the current regulations and is based on current agency policy and practice. The definition in the current regulations does not exempt certain types of events or provide that donations should not be considered entry fees. In addition, exempting events when entry fees only recover event costs or when a donation, rather than an entry fee, is collected would require the Forest Service to engage in an intensive, fact-specific inquiry to determine whether a recreation event requires a special use authorization.

Comment. One respondent believed that under the proposed rule, any recreational activity for which an entry or participation fee is charged would be treated as commercial and would require a permit. Another stated that unorganized groups are not commercial and should not be treated as commercial. Another stated that the definition for commercial use should be revised to exclude events conducted by nonprofits. Several respondents stated that permits and fees should not apply to certain nonprofit and noncommercial organizations. A respondent commented that volunteer work should be excluded from a permit requirement. Another stated that event preparation often provides the Forest Service with valuable volunteer work such as trail maintenance. Another noted that organized clubs pick up trash, clear trails, and exhibit care for the land and resources because they are gratified to have the opportunity to use National Forest System lands. One respondent stated that a fee should not be charged for an organizational ride. Another respondent asserted that special use permits and fees should not be required for recreation events when there is no fee-based requirement for attendance. One respondent commented that if a group with 75 or more bikes wants to ride when no fee is to be charged and no money is to be raised, then no permit should be required. One respondent stated that permits and permit fees will create a hardship for nonprofit recreation groups. Another respondent commented that there should be an exemption for minimal-impact users such as recreational outfitters, clubs, and groups like the girl scouts, the YWCA, and seniors.

Response. A recreation event requires a special use authorization. In the final rule, a recreation event is any recreation activity conducted on National Forest System lands for which an entry or participation fee is charged, such as animal, vehicle, or boat races; dog trials; fishing contests; rodeos; adventure games; and fairs. Under this definition, the fee is being charged by a person or entity other than the Forest Service for participation in an organized event. An entry or participation fee for an

organized event should be distinguished from a fee charged to the public by the Forest Service for admission to or use of National Forest System lands for recreational purposes.

The Department disagrees that activities conducted by unorganized or nonprofit groups can never be commercial. Under the current regulations at § 251.51, commercial use or activity is defined as ''any use or activity on National Forest System lands (a) where an entry or participation fee is charged, or (b) where the primary purpose is the sale of a good or service, and in either case, regardless of whether the use or activity is intended to produce a profit.'' Thus, under the final rule, any recreation activity conducted on National Forest System lands for which an entry or participation fee is charged is commercial and requires a special use authorization, regardless of whether the activity is conducted by an organized or unorganized group or by a for-profit or nonprofit entity.

Whether land use fees should be charged for particular special use authorizations is beyond the scope of this rulemaking and is already addressed in § 251.57 and agency policy. Section 251.57(b)(2) authorizes waiver, subject to certain conditions, of all or part of the land use fee for a special use authorization for nonprofit entities engaged in a public or semi-public activity to further public health, safety, or welfare. This provision recognizes and encourages the contributions these entities make to National Forest management.

Volunteers working under the supervision of the Forest Service do not require a special use authorization. Groups of fewer than 75 volunteers organized by an individual or entity other than the Forest Service to perform environmental stewardship on National Forest System lands do not require a special use authorization. If such a group has 75 or more volunteers, it would require a noncommercial group use permit. However, fees are not charged for noncommercial group use permits. If an event is organized involving 75 or more people and there is no entry or participation fee and the primary purpose is not the sale of a good or service, the event would be noncommercial, but would still require a permit as a noncommercial group use.

The Department disagrees that special use authorizations and special use authorization fees will create a hardship for nonprofit recreation groups, many of whom already hold a special use authorization. The Department does not want to create an exemption from the special use authorization requirement for minimal-impact users. Applying such an exemption would require the Forest Service to engage in a subjective, fact-intensive inquiry as to what constitutes minimal impact. In addition, the special use authorization requirement serves other purposes besides addressing resource impacts.

Comment. One respondent stated that there should be two categories of permits: a one-time event permit and a yearly tour operator permit.

Response. The definitions in the final rule and current agency policy distinguish between one-time, short-term recreation events and noncommercial group uses versus ongoing, long-term outfitting and guiding activities. The Forest Service has the authority to issue special use authorizations for either a one-time event or for yearlong or ongoing uses and occupancies. That authority is outside the scope of this rulemaking and is not affected by this final rule.

Still photography. Comment. Respondents observed that still photography should not require a permit, that the proposed rule appears to extend the permit requirement to noncommercial photography, and that the rule does not differentiate ''models or props'' from picnic tables, volleyball nets, teepees, and campsite decorations that might show up in a photograph. They suggested that there is no apparent Governmental interest in regulating commercial filming and still photography other than for large-scale commercial filming and still photography productions.

Response. The Department disagrees that the definition for still photography should be modified. The Act of May 26, 2000 (16 U.S.C. 460*l*–6d) specifies the types of still photography that require a special use authorization on National Forest System lands. The agency's definition of still photography in the final rule is consistent with the provisions of the act and agency policy. Pursuant to 16 U.S.C. 460*l*–6d and FSM Interim Directive 2720–2003–1, National Forest visitors and recreational, professional, and amateur photographers do not need a special use authorization for still photography unless the activity (1) uses models, sets, or props that are not part of the site's natural or cultural resources or administrative facilities; (2) takes place where members of the public generally are not allowed; or (3) takes place at a location where additional administrative costs are likely. Definitions of models and props also are included in FSM Interim Directive 2720–2003–1.

The determination of when a special use authorization is required under 16 U.S.C. 460*l*–6d and the definition for still photography in the final rule do not depend on whether still photography is commercial or noncommercial. Thus, a noncommercial activity that meets the criteria for still photography in 16 U.S.C. 460*l*–6d and § 251.51 requires a special use authorization. This requirement, however, conflicts with the exemption from the special use authorization requirement for noncommercial recreation activities in § 251.50(c). To make § 251.50(c) consistent with 16 U.S.C. 460*l*–6d and the definition for still photography in § 251.51, the Department is adding a new paragraph (2) to § 251.50(c) to read as follows: ''(2) The proposed use is still photography as defined in § 251.51 of this subpart.''

Part 261—Prohibitions

Section 261.2. This section of the rule defines technical terms contained in the rule.

Forest road or trail. Comment. One respondent stated that the definition of ''forest road or trail'' should be revised to read, ''a road or trail wholly or partly within or adjacent to and serving the National Forest System, and which is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources, except those roads or trails in which another entity holds a superior right-of-way, to which roads or trails the Forest Service makes no claim of title or jurisdiction.''

Response. The Department disagrees with changing the definition for forest road or trail in the final rule because that definition is taken verbatim from 23 U.S.C. 101.

National Forest System road. Comment. One respondent suggested that the definition of National Forest System road should be revised to read, ''a road under the jurisdiction of the Forest Service that is listed in the appropriate forest transportation atlas.''

Response. The Department disagrees that this change should be made. The Department has modified the definition for National Forest System road in § 261.2 to make it consistent with the definition for forest development road in 23 U.S.C. 101. The final rule does not remove the requirement that a National Forest System road or trail be listed in the appropriate forest transportation atlas. This requirement is set out in § 212.2.

Comment. One respondent stated that the new definitions for National Forest System road and National Forest System trail blur the distinction among an area,

a National Forest System road, and a National Forest System trail that is critical for law enforcement purposes. Another respondent stated that it is not clear how a road will be deemed ''necessary.''

Response. The Department disagrees that the definitions for National Forest System road and National Forest System trail blur the distinction among an area, a National Forest System road, and a National Forest System trail. The definitions of a National Forest System road and a National Forest System trail in the final rule will simplify the determination of what constitutes a National Forest System road or trail. To qualify as a National Forest System road or trail, a forest road or trail only needs to fall under the jurisdiction of the Forest Service. No determination of the necessity of the road or trail or its inclusion in a forest transportation atlas is required.

National Forest System trail.

Comment. One respondent objected to replacing ''forest development trail'' in § 261.55 with ''National Forest System trail.'' This respondent stated that the term ''National Forest System trail'' is neither used nor defined in 23 U.S.C. 101 and, therefore, replacing ''forest development trail'' with ''National Forest System trail'' does not bring about conformance with 23 U.S.C. 101.

Response. ''National Forest System trail'' is currently defined in § 261.2. The term ''National Forest System trail'' in the final rule is intended to be synonymous with the term ''forest development trail'' in 23 U.S.C. 101. Therefore, the Department has modified the definition for National Forest System trail in the final rule to make it consistent with the definition for forest development trail in 23 U.S.C. 101. The Department concurs that this change in terminology is not reflected in Forest Service policy. FSM 2350 is currently being revised, and during the course of those revisions, ''forest development trail'' will be changed to ''National Forest System trail.''

Comment. One respondent stated that the definition of National Forest System trail should be revised to read, ''a trail under the jurisdiction of the Forest Service that is listed in the appropriate forest transportation atlas,'' and observed that the revised definition removes the requirement that a National Forest System trail be listed in the appropriate forest transportation atlas.

Response. The Department disagrees that this change should be made. The Department has modified the definition for National Forest System trail in § 261.2 to make it consistent with the definition for forest development trail in 23 U.S.C. 101. The final rule does not remove the requirement that a National Forest System trail be listed in the appropriate forest transportation atlas. This requirement is set out in § 212.2.

Comment. One respondent observed that when read in conjunction with the definition of forest road or trail, the proposed definition of National Forest System trail would define a National Forest System trail as a trail under the jurisdiction of the Forest Service wholly or partly within or adjacent to and serving the National Forest System, and which is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources. This respondent objected to the proposed definition of National Forest System trail because this respondent believed that it could significantly reduce the number of forest trails that would be subject to special use regulation. This respondent noted that pioneered trails and other trails not considered ''necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources'' would not be included in the new definition and that therefore special uses on pioneered trails would not be subject to the special use authorization requirement under the proposed regulation.

Response. The terms ''forest development trail'' and ''National Forest System trail'' are synonymous. The final rule defines ''National Forest System trail'' as a forest trail under the jurisdiction of the Forest Service.

The Department disagrees that the definition for National Forest System trail in the final rule creates an exemption from the permit requirement for special uses on pioneered and other trails that are not National Forest System trails. The final rule will remove National Forest System trails from the exemption from the special use authorization requirement in § 251.50(d). Special uses on National Forest System lands, including special uses conducted on National Forest System and non-National Forest System trails, will require a special use authorization under the final rule. Therefore, it is immaterial whether pioneered trails are National Forest System trails for purposes of applicability of the permit requirement in the final rule. A special use occurring on a pioneered trail will require a special use permit.

Section 261.55. This section of the rule changes ''forest development trail'' to ''National Forest System trail'' in the heading and introductory text.

No comments were received on this section.

Part 295—Use of Motor Vehicles Off National Forest System Roads

No comments were received on this part.

Regulatory Certifications in the Proposed Rule

Environmental Impact

Comment. Two respondents asserted that the agency did not follow applicable environmental policy and procedures for this rulemaking and that scoping for this rulemaking was inadequate. One respondent stated that there is no categorical exclusion that applies to this rulemaking and that extraordinary circumstances are implicated by this rulemaking.

Response. The Department has determined that this final rule falls within the category of actions excluded from documentation in an environmental assessment or environmental impact statement (FSH 1909.15, section 31.1b). This provision excludes from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. No extraordinary circumstances enumerated in the Forest Service NEPA procedures exist in conjunction with this rulemaking that would preclude reliance on this categorical exclusion. Issuance of a special use authorization for a specific use as provided in this rule, however, may trigger the need for documentation of environmental analysis on a case-by-case basis under NEPA.

Regulatory Impact

Comment. Several respondents asserted that the proposed rule would have significant economic impacts on a substantial number of small businesses and that its economic effects would exceed the $100 million threshold for determining that effects are insignificant under the Regulatory Flexibility Act.

Response. Section 251.50(d) of the final rule requires a special use authorization and land use fee for special uses conducted on National Forest System roads and trails. The net regulatory effect of this section of the final rule is the difference between the current special uses program and the special uses program under the final rule. The following is a breakdown of the revenue generated nationally by the special uses affected by § 251.50(d) of the final rule:

Commercial Filming and Still Photography—$ .2 million
Noncommercial Group Use—No fee
Outfitting and Guiding—$4.5 million
Recreation Events—$ .4 million

The Forest Service estimates that there will be a 2 percent increase in the number of special use authorizations for outfitting and guiding and a 4 percent increase in the number of authorizations for recreation events issued as a result of the final rule. It is not likely that there will be much of an increase in the number of commercial filming, still photography, or noncommercial group use special use authorizations. There may be an increase in special use authorizations for noncommercial group use if organizers of recreation events, to avoid having to pay a land use fee and the cost of insurance, redesign their activities so that they are not charging entry or participation fees, thus making their activities qualify as noncommercial group uses. No land use fee is charged for noncommercial group use. The estimated increase in the number of authorizations and their associated land use fees (which includes authorizations issued to and fees paid by all individuals and entities, not just small businesses) would not have significant economic impacts on a substantial number of small businesses, nor does the increase in authorizations and fees rise to the $100 million threshold for determining whether a regulation is significant.

Moreover, the comment fails to address benefits associated with this rulemaking. The final rule levels the playing field for special uses by closing the regulatory gap for uses conducted entirely on National Forest System roads and trails. In addition, there will be a decrease in impacts on small businesses under the final rule. Section 251.50(e) of the final rule provides the authorized officer with the discretion, under specific circumstances, to waive the requirement for a special use authorization, thereby decreasing the economic impact on small businesses to the extent that they otherwise would have had to obtain an authorization and pay a land use fee for certain types of special uses.

The Department has prepared an analysis of the economic effects of this rulemaking, which is included in the rulemaking record.

No Takings Implications

Comment. One respondent stated that the proposed rule effects a taking of small business.

Response. There is no taking, either express or implied, of any property rights or any other constitutional violation from implementation of this rule. The final rule merely requires a special use authorization for special uses wherever they occur on National Forest System lands, including on National Forest System roads and trails (but not on roads under the jurisdiction of a State, County, or local public road authority).

Civil Justice Reform

Comment. One respondent stated that it is not clear what is meant by the determination that this rule will not have any retroactive effect for purposes of Executive Order 12988 on civil justice reform.

Response. The determination that the final rule will not have any retroactive effect for purposes of Executive Order 12988 means that the final rule will not be applied retroactively, that is, it will not be applied before its effective date.

Federalism and Consultation and Coordination With Indian Tribal Governments

Comment. One respondent asserted that the proposed rule has tribal implications and may pose a taking of Indian Tribal rights with respect to economic development.

Response. The proposed rule does not have Tribal implications pursuant to Executive Order 13175.

Energy Effects

No comments were received on this section.

Unfunded Mandates

No comments were received on this section.

Controlling Paperwork Burdens on the Public

Comment. One respondent observed that there is no paperwork reduction associated with the proposed rule.

Response. This rulemaking fully complies with the Paperwork Reduction Act and its implementing regulations. The forms for special use applications and authorizations have been approved for use by the Office of Management and Budget (OMB) and assigned OMB control number 0596–0082. Therefore, this final rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use.

Comments Beyond the Scope of This Rulemaking

Comment. Some respondents stated that roads and trails on National Forest System lands should be kept open for motorized recreationists.

Response. The final rule merely requires a special use authorization for special uses occurring on National Forest System roads and trails. The final rule does not effectuate decisions as to which roads or trails should be kept open for motor vehicle use. Such decisions are made through the forest planning process and through project-specific environmental analysis, typically by Forest Supervisors at the National Forest level. Decisions involving management, operation, and maintenance of National Forest System roads are made pursuant to a roads analysis conducted in accordance with FSM 7712.1.

Comment. One respondent observed that general public use, not commercial use, should be regulated.

Response. The rule at 36 CFR part 251, subpart B, regulates special uses, not general public use. With limited exceptions, the rule exempts general public use from the special use authorization requirement (§ 251.50(c)). The final rule clarifies which activities require a special use authorization. In situations where resource management concerns arise as a result of heavy public use, management alternatives would be evaluated at the local level in accordance with procedures in FSH 1909.15.

Comment. Several respondents requested designation of land for off-highway vehicle use. They noted that wilderness for them is a drive-through experience. They are concerned that available land for off-highway vehicle use is diminishing and that the proposed rule would take away land for off-highway vehicle use.

Response. The final rule does not address allocation of National Forest System lands for off-highway vehicle use. The final rule does not impose any additional restrictions on off-highway vehicle use or any other use of a road or trail, unless it constitutes one of the six special uses identified in the final rule, that is, noncommercial group use (which involves 75 or more people), outfitting and guiding, a recreation event, commercial filming, still photography, or a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use. Designation of lands for off-highway vehicle use is conducted at the local level, through each Forest's land management planning process and environmental analysis.

Comment. Several respondents observed that use restrictions may be

necessary, and that it is not clear how the agency will allocate use. Other respondents observed that it is not in the interest of the public to grant all permits to one company. These respondents were concerned that some companies do not utilize all of their allocation, that some companies have too much use, and that there needs to be a redistribution of existing use. Some respondents observed that there is a need to strike a fair balance between commercial and noncommercial programs in the allocation of use and that only commercial providers receive permits. Others observed that there is too much bias against commercial operations.

Response. This final rule does not affect allocation of use on National Forest System lands. Allocation of use is established through forest planning and site-specific environmental analysis. For outfitting and guiding, allocation is addressed in FSH 2709.11, sections 41.53(f) (Applications and Issuance of Permits), 41.53(g) (Assignment and Management of Temporary Use), 41.53(h) (Assignment and Management of Priority Use), and 41.53(i) (Reduction of Use in Service Days). These procedures for outfitting and guiding were implemented after publication for public notice and comment (55 FR 14445, April 18, 1990; 60 FR 30830, June 12, 1995).

Comment. One respondent stated that nonprofit institutional groups should be able to provide visitor services and that the Forest Service should not award all use to commercial outfitters.

Response. The final rule specifies which uses require special use authorizations; it does not affect allocation of use at the local level. Nonprofit groups, as well as for-profit entities, are valued providers of recreation experiences to the public on the National Forests. Nonprofit entities are not precluded from obtaining a special use authorization. To the contrary, Forest Service outfitting and guiding policy specifically refers to institutional and semi-public outfitting and guiding and land use fees for nonprofit organizations and educational institutions (FSH 2709.11, sec. 37.21j, 37.21k, and 41.53l).

Comment. Several respondents stated that permit fees for recreation events should not be based on costs incurred in organizing an event.

Response. The regulations governing land use fees are found at § 251.57 and are beyond the scope of this rulemaking. Revenue exclusions for recreation events are addressed in FSM 2721.49 and include the cost of prizes awarded.

Comment. Several respondents observed that because there are so many fees, it seems that one pays twice for the same thing. Another respondent stated that charging a fee for a special use authorization is unfair when the public is already paying taxes and, in some cases, other use fees, or when a member of the public has limited income. Respondents objected to the proposed rule on the grounds that they already pay an annual all-terrain vehicle fee or that parks have already been paid for by tax dollars. One respondent opposed any regulation that would result in fees of any kind. One respondent suggested that only organized events should pay fees. Another respondent stated that individual participants should be required to have Adventure Passes. Another commented that it is not clear how special use fees relate to individual use fees.

Response. Fees charged by the Forest Service are beyond the scope of this rulemaking.

The Department disagrees that charging a public admission or use fee and charging a land use fee for a special use authorization are equivalent or duplicative. The Forest Service has the authority under the Land and Water Conservation Fund Act and the Recreational Fee Demonstration Program to charge fees to the public for admission to or use of recreation sites, facilities, and services. The authority to charge public admission and use fees is set out in 16 U.S.C. 460l-6a and section 315 of Public Law 104–134. (The Adventure Pass is required under the Recreational Fee Demonstration Program for recreational use and is assessed for vehicular access on the four Southern California National Forests.) These public admission and use fees are different from land use fees charged for commercial special use authorizations under 36 CFR 251.57. The regulations at § 251.57(b) and Forest Service policy in Forest Service Handbook (FSH) 2709.11, chapter 30, provide that land use fees for special use authorizations may be waived in a number of circumstances when equitable and in the public interest.

Comment. One respondent suggested that the agency should charge a fee for an annual license for travel on forest trails, rather than requiring a special use permit.

Response. For the reasons identified above, the Forest Service is regulating special uses that are conducted on National Forest System trails, not travel on National Forest System trails. Charging a fee for an annual license for travel on National Forest System trails is therefore beyond the scope of this rulemaking.

Comment. One respondent asserted that club dues and other membership charges should not be subject to a permit fee and that there should not be invasive inquiries for membership names, telephone numbers, income, and dues.

Response. Land use fees charged for special use authorizations issued to clubs, and the administration of such authorizations, are addressed in existing regulations at § 251.57 and agency policy in Forest Service Manual (FSM) 2340 and Forest Service Handbook (FSH) 2709.11, and are beyond the scope of this rulemaking.

Comment. The Forest Service does not have authority to charge fees for use of R.S. 2477 rights-of-way.

Response. This final rule does not establish a requirement to assess land use fees or in any way address fees for use of R.S. 2477 rights-of-way. Rather, this rule exempts certain activities that are conducted within the scope of R.S. 2477 rights-of-way from the requirement to obtain a special use authorization. Therefore, the concern expressed in this comment is beyond the scope of this rulemaking.

Comment. One respondent stated that the criteria for issuing permits and the number of permits to be issued should be disclosed.

Response. This comment is beyond the scope of this rulemaking. Procedures for issuing new special use authorizations are found at § 251.54. Procedures for issuing new outfitting and guiding permits are set out in FSH 2709.11, section 41.53f, paragraph 2. The Forest Service prospectus process, which is used when competitive interest exists, is set out at FSM 2712.1. The competitive selection process requires that the prospectus specify the criteria to be used for issuing special use authorizations. Further direction on allocation of authorized outfitting and guiding use is found at FSH 2709.11, sections 41.53(f) through 41.53(i). The number of special use authorizations to be issued is a local decision subject to the forest planning process and environmental analysis as provided in FSH 1909.15.

Comment. Several respondents are concerned that the regulations do not provide enough detail on requiring that applicants for special use permits obtain consistent treatment from different Forests in the application process.

Response. The existing regulation at § 251.54 provides guidance for screening proposals and evaluating applications. This portion of the

existing regulation is beyond the scope of this rulemaking.

Comment. Several respondents stated that District Rangers have too much power to regulate outfitting and guiding.

Response. District Rangers have delegated authority to issue and administer special use authorizations as set out in FSM 2703.34. Delegations of authority are not the subject of this rulemaking.

Comment. One respondent commented that it was burdensome to have to get permits from three different agencies.

Response. The Federal land management agencies operate under different laws, regulations, and policies, which often dictate the need for each agency to issue an authorization for activities that are limited to the Federal lands and resources administered by that agency. The necessity for separate Federal permitting procedures is beyond the scope of this rulemaking.

Comment. The public needs freedom to change activities without government oversight.

Response. The final rule does not affect the public's ability to change activities without government oversight. Rather, the final rule merely specifies the activities for which special use authorizations are required.

Comment. One respondent asked numerous specific questions that do not relate directly to this rulemaking and that involve issues that are the subject of pending litigation.

Response. The Department believes that it is inappropriate to respond to these questions because they are beyond the scope of this rulemaking and because they involve issues that are the subject of pending litigation.

Comment. One respondent observed that there should be more outfitter and guide involvement in visitor education and management.

Response. The final rule does not address outfitter and guide involvement in visitor education and management. Outfitters and guides are encouraged to work with their local District Ranger to identify such opportunities.

Comment. One respondent suggested that trails should have a separate set of guidelines or regulations.

Response. Policy pertaining to trail management can be found in FSM 2353 and FSH 2309.18 (Trails Management Handbook). Regulations relating to trail management can be found at 36 CFR parts 212, 261, and 295. The only aspect of trail management related to this rulemaking is the requirement for a special use authorization for special uses conducted on National Forest System trails.

Comment. One respondent stated that the rule would reverse the burden of proof in the exercise of regulatory power.

Response. The concept of burden of proof does not apply in this context. The final rule identifies the Forest Service's authorities for requiring a special use authorization for special uses occurring on National Forest System roads and trails. All of these special uses are already regulated elsewhere in the National Forest System.

Comment. One respondent objected to any special use authorization that would include a fee for noncommercial group use, outfitting and guiding, and recreation events.

Response. The regulations that address land use fees are found at § 251.57 and are beyond the scope of this rulemaking.

Comment. One respondent suggested that by foreclosing any permit exemption for noncommercial group uses, the proposed rule would subject them to the National Environmental Policy Act (NEPA), which would render the proposed rule constitutionally invalid.

Response. The Department disagrees with this assertion. Compliance with both NEPA and constitutional requirements was fully addressed in promulgating the final noncommercial group use rule (60 FR 45258) and is embodied at § 251.54(g)(3)(ii)(C). Numerous Federal district courts and courts of appeals have upheld the constitutionality of the noncommercial group use regulation.

Comment. Two respondents were concerned that costs for environmental assessments are high. One respondent believed that these costs should be borne by permit applicants.

Response. The Department recognizes that conducting environmental assessments is costly. Recovery of these costs is the subject of a separate rulemaking, which was published for public notice and comment November 24, 1999 (64 FR 66343).

Comment. Several respondents stated that permit fees should be spent on upkeep of trails and alleviating environmental impacts, but that permit fees instead have been spent on forest fires.

Response. The Forest Service's authority to retain and spend land use fees collected for special use authorizations is beyond the scope of this rulemaking.

Comment. One respondent suggested that the Forest Service include language in the FSM requiring that roads and trails be listed in the appropriate forest transportation atlas and require each National Forest to maintain a list of National Forest System roads and trails.

Response. The requirement for inclusion of forest roads and trails in a forest transportation atlas is contained in § 212.2 and is not the subject of this rulemaking.

3. Regulatory Certifications

Environmental Impact

The changes in the final rule at § 251.50 and § 251.51 provide more consistent procedures for processing special use proposals and applications and administering special use authorizations for use and occupancy of National Forest System lands. The final rule also makes terminology consistent in parts 251, 261, and 295. The changes are intended to improve administrative efficiencies and have no environmental effects. Section 31.1b of FSH 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. The Department's conclusion is that this final rule falls within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant rule. This final rule does not have an annual effect of $100 million or more on the economy, nor does it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This final rule does not interfere with an action taken or planned by another agency, nor does it raise new legal or policy issues. Finally, this final rule does not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this final rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Regulatory Flexibility Act

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). Based on a threshold Regulatory Flexibility Act analysis prepared by the Forest Service for this

final rule, it has been determined that this final rule does not have a significant economic impact on a substantial number of small entities as defined by the act because the final rule does not impose record-keeping requirements on them; it does not affect their competitive position in relation to large entities; and it does not affect their cash flow, liquidity, or ability to remain in the market.

This final rule does not impact a substantial number of small entities because the Forest Service estimates that fewer than 40 recreation event authorizations, 50 outfitting and guiding authorizations, 3 still photography authorizations, 4 commercial filming authorizations, and 64 noncommercial group use permits will be issued as a result of this rule. The efficiencies to be achieved by this rule should benefit small businesses that seek to use and occupy National Forest System lands by ensuring consistency in procedures across National Forests and regions and by eliminating costly, time-consuming, and unnecessary processing of certain special use applications and administration of certain special use authorizations. The benefits, most of which cannot be quantified, are not likely to alter costs substantially to small businesses.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the final rule does not pose the risk of a taking of private property.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this final rule under the requirements of Executive Order 13132 on federalism, and has determined that the final rule conforms with the federalism principles set out in this Executive Order; does not impose any compliance costs on the States; and does not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Moreover, this final rule does not have Tribal implications as defined by Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the Executive Order.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

The forms for special use applications and authorizations have been approved for use by OMB and assigned OMB control number 0596–0082. Therefore, this final rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Moreover, the final rule should reduce the number of applicants for special use authorizations by clarifying those circumstances when special use authorizations are not required. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and its implementing regulations at 5 CFR part 1320 do not apply.

4. Text of the Final Rule

List of Subjects

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands rights-of-way, Reporting and record-keeping requirements, Water resources.

36 CFR Part 261

Law enforcement, National forests.

36 CFR Part 295

National forests, Traffic regulations.

■ For the reasons set out in the preamble, amend subparts B and D of part 251, subpart A of part 261, and part 295 of Title 36 of the Code of Federal Regulations to read as follows:

PART 251—LAND USES

Subpart B—Special Uses

■ 1. Revise the authority citation for subpart B to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 460*l*–6a(c), 460*l*–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

■ 2. Revise § 251.50 to read as follows:

§ 251.50 Scope.

(a) All uses of National Forest System lands, improvements, and resources, except those authorized by the regulations governing sharing use of roads (§ 212.9); grazing and livestock use (part 222); the sale and disposal of timber and special forest products, such as greens, mushrooms, and medicinal plants (part 223); and minerals (part 228) are designated ''special uses.'' Before conducting a special use, individuals or entities must submit a proposal to the authorized officer and must obtain a special use authorization from the authorized officer, unless that requirement is waived by paragraphs (c) through (e)(3) of this section.

(b) Nothing in this section prohibits the temporary occupancy of National Forest System lands without a special use authorization when necessary for the protection of life and property in emergencies, if a special use authorization is applied for and obtained at the earliest opportunity, unless waived pursuant to paragraphs (c) through (e)(3) of this section. The authorized officer may, pursuant to § 251.56 of this subpart, impose in that authorization such terms and conditions as are deemed necessary or appropriate and may require changes to the temporary occupancy to conform to those terms and conditions. Those temporarily occupying National Forest System lands without a special use authorization assume liability, and must indemnify the United States, for all injury, loss, or damage arising in connection with the temporary occupancy.

(c) A special use authorization is not required for noncommercial recreational activities, such as camping, picnicking, hiking, fishing, boating, hunting, and horseback riding, or for noncommercial activities involving the expression of views, such as assemblies, meetings, demonstrations, and parades, unless:

(1) The proposed use is a noncommercial group use as defined in § 251.51 of this subpart;

(2) The proposed use is still photography as defined in § 251.51 of this subpart; or

(3) Authorization of that use is required by an order issued under § 261.50 or by a regulation issued under § 261.70 of this chapter.

(d) Travel on any National Forest System road shall comply with all Federal and State laws governing the road to be used and does not require a special use authorization, unless:

(1) The travel is for the purpose of engaging in a noncommercial group use, outfitting or guiding, a recreation event, commercial filming, or still photography, as defined in § 251.51 of this subpart, or for a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use under § 251.110(d) of this part; or

(2) Authorization of that use is required by an order issued under § 261.50 or by a regulation issued under § 261.70 of this chapter.

(e) For proposed uses other than a noncommercial group use, a special use authorization is not required if, based upon review of a proposal, the authorized officer determines that the proposed use has one or more of the following characteristics:

(1) The proposed use will have such nominal effects on National Forest System lands, resources, or programs that it is not necessary to establish terms and conditions in a special use authorization to protect National Forest System lands and resources or to avoid conflict with National Forest System programs or operations;

(2) The proposed use is regulated by a State agency or another Federal agency in a manner that is adequate to protect National Forest System lands and resources and to avoid conflict with National Forest System programs or operations; or

(3) The proposed use is not situated in a congressionally designated wilderness area, and is a routine operation or maintenance activity within the scope of a statutory right-of-way for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976) or for a ditch or canal pursuant to R.S. 2339 (43 U.S.C. 661, as amended), or the proposed use is a routine operation or maintenance activity within the express scope of a documented linear right-of-way.

■ 3. Add the following definitions in alphabetical order to § 251.51:

§ 251.51 Definitions.

* * * * *

Commercial filming—use of motion picture, videotaping, sound recording, or any other moving image or audio recording equipment on National Forest System lands that involves the advertisement of a product or service, the creation of a product for sale, or the use of models, actors, sets, or props, but not including activities associated with broadcasting breaking news, as defined in FSH 2709.11, chapter 40.

* * * * *

Forest road or trail—a road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources, and that is included in a forest transportation atlas.

* * * * *

Guiding—providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, transporting people, or interpretation) for pecuniary remuneration or other gain to individuals or groups on National Forest System lands.

* * * * *

Linear right-of-way—a right-of-way for a linear facility, such as a road, trail, pipeline, electronic transmission line, fence, water transmission facility, or fiber optic cable.

* * * * *

National Forest System road—a forest road under the jurisdiction of the Forest Service.

* * * * *

Outfitting—renting on or delivering to National Forest System lands for pecuniary remuneration or other gain any saddle or pack animal, vehicle, boat, camping gear, or similar supplies or equipment.

* * * * *

Recreation event—a recreational activity conducted on National Forest System lands for which an entry or participation fee is charged, such as animal, vehicle, or boat races; dog trials; fishing contests; rodeos; adventure games; and fairs.

* * * * *

Still photography—use of still photographic equipment on National Forest System lands that takes place at a location where members of the public generally are not allowed or where additional administrative costs are likely, or uses models, sets, or props that are not a part of the site's natural or cultural resources or administrative facilities.

* * * * *

PART 261—PROHIBITIONS

Subpart A—General Prohibitions

■ 4. Revise the authority citation for part 261 to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551, 620(f), 1133(c), (d)(1), 1246(i).

■ 5. Amend § 261.2 to add a definition for ''Forest road or trail'' in alphabetical order and to revise the definitions for ''National Forest System road'' and ''National Forest System trail'' to read as follows:

§ 261.2 Definitions.

* * * * *

Forest road or trail—a road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources, and that is included in a forest transportation atlas.

* * * * *

National Forest System road—a forest road under the jurisdiction of the Forest Service.

National Forest System trail—a forest trail under the jurisdiction of the Forest Service.

* * * * *

■ 6. Revise §261.10(a) to read as follows:

§ 261.10 Occupancy and use.

* * * * *

(a) Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communications equipment, or other improvement on National Forest System lands or facilities without a special use authorization, contract, or approved operating plan, unless such authorization, contract, or operating plan is waived pursuant to § 251.50(e) of this chapter.

■ 7. Revise the heading and introductory text of § 261.55 to read as follows:

§ 261.55 National Forest System trails.

When pursuant to an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a National Forest System trail: * * *

* * * * *

PART 295—USE OF MOTOR VEHICLES OFF NATIONAL FOREST SYSTEM ROADS

■ 8. Revise the authority citation for part 295 to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 551; E.O. 11644, 11989 (42 FR 26959).

■ 9. Revise the heading for part 295 to read as set forth above.

Dated: July 4, 2004.

Mark Rey,

Under Secretary, Natural Resources and Environment.

Note: The following material will not appear in the Code of Federal Regulations.

5. Summary of Provisions in the Final Rules at 36 CFR Parts 251, 261, and 295

TABLE I.—SECTION-BY-SECTION COMPARISON FOR THE PREVIOUS, PROPOSED, AND FINAL RULES

Previous rule	Proposed rule	Final rule
§ 251.50(a)—Specified that all uses of National Forest System lands are special uses, except for disposal of timber and minerals and grazing of livestock. Also specified actions required prior to conducting a special use.	§ 251.50(a)—Added disposal of forest products, such as greens, mushrooms, and medicinal plants (part 223) to the list of uses that are not considered special uses.	§ 251.50(a)—In numerical order, adds sharing use of roads (part 212) and disposal of forest products, such as greens, mushrooms, and medicinal plants (part 223), to the list of uses that are not considered special uses.
§ 251.50(b)—Allowed temporary occupancy without a special use authorization for emergencies, if a special use authorization was obtained at the earliest opportunity.	§ 251.50(b)—Provided that the requirement to obtain a special use authorization at the earliest opportunity is subject to the waiver provisions in paragraphs (c) through (e). Clarified that the temporary occupant has liability similar to that imposed on a permit holder under § 251.56(d)(1).	§ 251.50(b)—Retains the changes in the proposed rule and adds the phrases ''when necessary'' and ''is applied for and'' to qualify temporary occupancy. Also clarifies that when an authorization is issued, it may be conditioned pursuant to § 251.56 and that changes may be required to bring the occupancy into compliance.
§ 251.50(c)—Identified noncommercial recreational activities for which no special use authorization was required.	§ 251.50(c)—Changed the sequence of activities listed but not the activities themselves. Substituted the word ''unless'' for ''except for''.	§ 251.50(c)—Makes changes similar to the proposed rule, but also excludes still photography from the exemption from the special use authorization requirement for noncommercial recreational activities.
§ 251.50(d)—Specified that use of forest roads and trails did not require a special use authorization unless required by order.	§ 251.50(d)—Specified that travel on National Forest System roads does not require a special use authorization, unless required by order or regulation issued under part 261, or the travel is for the purpose of engaging in a noncommercial group use, outfitting or guiding, a recreation event, commercial filming, or still photography as defined in § 251.51. Removed trails from the exemption from a special use authorization.	§ 251.50(d)(1)—Makes technical change to confirm preexisting authority to issue special use authorizations under 16 U.S.C. 3210(a) and 36 CFR 251.110(d), by adding to the list of special uses occurring on National Forest System roads that require a special use authorization a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use.
§ 251.50(e)—These provisions are new and did not exist in the previous regulations.	§ 251.50(e)—Provided for the authorized officer to waive the requirement for a special use authorization if the proposed use had certain characteristics.	§ 251.50(e)—Retains the language of the proposed rule and adds the requirement that a waiver decision be based upon review of a proposal.
	§ 251.50(e)(1)—Provided for waiver of the special use authorization requirement for uses with nominal effects.	§ 251.50(e)(1)—Makes no change from the proposed rule.
	§ 251.50(e)(2)—Provided for waiver of the special use authorization requirement for uses that were adequately regulated by a State agency or other Federal agency..	§ 251.50(e)(2)—Makes no change from the proposed rule.
	§ 251.50(e)(3)—Provided for waiver of the special use authorization requirement for activities within the scope of a valid reserved right or outstanding property right, or for routine operation and maintenance activity within the scope of an outstanding statutory right.	§ 251.50(e)(3)—Clarifies that a right in the context of R.S. 2477 and R.S. 2339 means a right-of-way. Narrows the scope of the waiver so that it applies only to routine operation or maintenance activities within the scope of an R.S. 2477 or R.S. 2339 right-of-way or within the express scope of a documented linear right-of-way that are not located in a Congressionally designated wilderness area.
§ 251.51—Defined terminology used in the rule	§ 251.51—Added definitions for commercial filming, Forest road or trail, guiding, National Forest System road, outfitting, recreation event, and still photography.	§ 251.51—Makes no changes from the proposed rule.
§ 261.2—Used a definition for National Forest System road and National Forest System trail different from that in the proposed and final rules.	§ 261.2—Added a definition for forest road or trail and revised definitions for National Forest System road and National Forest System trail.	§ 261.2—Makes no changes from the proposed rule.

TABLE I.—SECTION-BY-SECTION COMPARISON FOR THE PREVIOUS, PROPOSED, AND FINAL RULES—Continued

Previous rule	Proposed rule	Final rule
§ 261.10(a)—Prohibited improvements on National Forest System land or facilities without a special use authorization, contract, or approved operating plan.	§ 261.10(a)—Not addressed by the proposed rule.	§ 261.10(a)—Provides that this prohibition is subject to the waiver provisions in § 251.50(c) through (e).
§ 261.55—Specified prohibitions on trails	§ 261.55—Changed "forest development trail" to "National Forest System trail" in the heading and introductory text.	§ 261.55—Makes no change from the proposed rule.
Part 295—Pertained to the administration of motor vehicle use off National Forest System roads.	Part 295—Changed "Forest Service roads" to "National Forest System roads".	Part 295—Makes no change from the proposed rule.

[FR Doc. 04–15728 Filed 7–12–04; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–2004–18575 (HM–189X)]

RIN 2137–AE03

Hazardous Materials Regulations: Minor Editorial Corrections

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; editorial corrections.

SUMMARY: This final rule corrects errors in the 49 CFR 172.101 Hazardous Materials Table (HMT) made during the recent publication of 49 CFR Parts 100 to 185. In the most recent publication of 49 CFR Parts 100–185, a number of entries in the HMT were inadvertently removed.

DATES: The effective date of the amendments adopted herein is October 1, 2004. Immediate compliance is authorized.

FOR FURTHER INFORMATION CONTACT: T. Glenn Foster, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule corrects the inadvertent deletion of certain entries in the § 172.101 Hazardous Materials Table (HMT) primarily made during the recent publication of 49 CFR Parts 100 to 185. These errors were the result of a misunderstanding concerning the amendatory language in final rules that affected the HMT, in particular, Docket HM–215E (July 31, 2003; 68 FR 44992).

The amendments contained in this rule are minor changes and do not impose new requirements. Because these amendments do not impose new requirements, notice and public procedure are unnecessary. The following is a summary of the amendments made under this final rule.

We are amending the HMT to correct certain entries as follows:

1. The following entries, that were inadvertently removed, are being reinserted:

—"Adhesives, *containing a flammable liquid,* UN1133," Packing Groups I and III;
—"Coating Solution *(includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining)* , UN1139," Packing Groups I and III;
—"Extracts, aromatic, liquid, UN1169," Packing Group III;
—"Flammable liquids, n.o.s., UN1993," Packing Groups II and III;
—"Hydrobromic acid, *with not more than 49 percent hydrobromic acid*, UN1788," Packing Group II;
—"Hydrocarbons, liquid, n.o.s., UN3295," Packing Groups II and III;
—"Organochlorine pesticides, liquid, toxic, flammable, *flash point not less than 23 degrees C,* UN2995," Packing Group I;
—"Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base,* UN1263," Packing Groups I and III;
—"Paint related material *including paint thinning, drying, removing, or reducing compound,* UN1263," Packing Groups I and III;
—"Pentanes, UN1265," Packing Groups I;
—"Perfumery products *with flammable solvents,* UN1266," Packing Group III;
—"Printing ink, *flammable* or Printing ink related material *(including printing ink thinning or reducing compound), flammable,* UN1210," Packing Groups I and III;
—"Resin solution, *flammable,* UN1866," Packing Groups I and III;
—"Rubber solution, UN1287," Packing Group III;
—Tars, liquid, *including road asphalt and oils, bitumen and cut backs,* UN1999," Packing Group III; and
—"Wood preservatives, liquid, UN1306," Packing Group III.

2. The first occurrence of the entry "Organochlorine pesticides, liquid, toxic, flammable, *flash point not less than 23 degrees C,* UN2995," Packing Group III, is removed.

3. The entry "[PG II].," immediately preceding the entry "Pentanes, UN1265," is removed.

4. The entry "Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol,* NA1203," Packing Group I, is replaced with "Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol,* NA1203," Packing Group II.

II. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. This final rule is not a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. Because there is no impact of this rule, preparation of a regulatory impact analysis is not warranted.

B. Executive Order 13132

RSPA is not aware of any State, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment

C. Executive Order 13175

This final rule was analyzed in accordance with the principles and

criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

E. Paperwork Reduction Act

This final rule does not impose new information collection requirements.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

■ 2. In § 172.101, the Hazardous Materials Table is amended as follows:

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE:]												
	*		*		*	*	*		*	*			
	Adhesives, *containing a flammable liquid.*	3	UN1133	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
	Coating solution (*includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining*).	3	UN1139	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
				II	3	IB2, T4, TP1, TP8	150	202	242	5 L	60 L	B.	
				III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Extracts, aromatic, liquid.	3	UN1169	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
G	Flammable liquids, n.o.s.	3	UN1993	I	3	T11, TP1, TP27	150	201	243	1 L	30 L	E.	
	*		*		*	*	*		*	*			
D	Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol.*	3	NA1203	I	3	144.	150	202	242	5 L	60 L	E.	
	*		*		*	*	*		*	*			
	Hydrobromic acid, *with more than 4 percent hydrobromic acid 9.*	8	UN1788										
	*		*		*	*	*		*	*			
	Hydrobromic acid, *with not more than 49 percent hydrobromic acid.*	8	UN1788	III	8	IB3, T4, TP1	154	203	241	5 L	60 L	C	8
	*		*		*	*	*		*	*			
	Hydrocarbons, liquid, n.o.s.	3	UN3295	I	3	T11, TP1, TP8, TP28	150	201	243	1 L	30 L	E.	
	*		*		*	*	*		*	*			
	Organochlorine pesticides, liquid, toxic, flammable, *flash point not less than 23 degrees C.*	6.1	UN2995	III	6.1, 3	B1, IB3, T7, TP2, TP28.	153	203	242	60 L	220 L	A	40

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
			UN2995	II	6.1, 3	IB2, T11, TP2, TP13, TP27.	None	202	243	5 L	60 L	B	40
			UN2995	III	6.1, 3	B1, IB3, T7, TP2, TP28.	153	203	242	60 L	220 L	A	40
	*		*		*	*	*		*	*			
	Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base.*	3	UN1263	II	3	I49, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
	Paint related material *including paint thinning, drying, removing, or reducing compound.*	3	UN1263	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
	[PG II only]. Pentanes	3	UN1265	II	3	IB2, T4, TP1	150	202	243	5 L	60 L	E.	
	*		*		*	*	*		*	*			
	Perfumery products *with flammable solvents.*	3	UN1266	II	3	149, IB2, T4, TP1, TP8.	150	202	242	15 L	60 L	B.	
	*		*		*	*	*		*	*			
	Printing ink, *flammable or* Printing ink related material *(including printing ink thinning or reducing compound), flammable.*	3	UN1210	II	3	149, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
	Resin solution, *flammable.*	3	UN1866	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
	Rubber solution	3	UN1287	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
	Tars, liquid *including road asphalt and oils, bitumen and cut backs.*	3	UN1999	II	3	149, B13, IB2, T3, TP3, TP29.	150	202	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
	Wood preservatives	3	UN1306	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	

[ADD:]

	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
	Adhesives, *containing a flammable liquid.*	3	UN1133	I	3	B42, T11, TP1, TP8, TP27.	150	201	243	1 L	30 L	B.			
				II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.			
				III	3	B1, B52, IB3, T2, TP1	150	173	242	60 L	220 L	A.			
	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
	Coating solution *(includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining).*	3	UN1139	I	3	T11, TP1, TP8, TP27	150	201	243	1 L	30 L	E.			
	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
				II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.			
				III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A.			
	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
	Extracts, aromatic, liquid.	3	UN1169	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.			
				III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A.			
	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
G	Flammable liquids, n.o.s.	3	UN1993	I	3	T11, TP1, TP27	150	201	243	1 L	30 L	E.			
				II	3	IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B.			
				III	3	B1, B52, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A.			
	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
D	Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol.*	3	NA1203	II	3	144.	150	202	242	5 L	60 L	E.			
	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
	Hydrobromic acid, *with not more than 49 percent hydrobromic acid.*	8	UN1788	II	8	A3, A6, B2, B15, IB2, N41, T7, TP2.	154	202	242	1 L	30 L	C.			
				III	8	IB3, T4, TP1	154	203	241	5 L	60 L	C	8		
	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
	Hydrocarbons, liquid, n.o.s.	3	UN3295	I	3	144, T11, TP1, TP8, TP28.	150	201	243	1 L	30 L	E			
				II	3	144, IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B.			
				III	3	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A.			

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Organochlorine pesticides, liquid, toxic, flammable, *flash point not less than 23 degrees C.*	6.1	UN2995	I	6.1, 3	T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B	40
				II	6.1, 3	IB2, T11, TP2, TP13, TP27.	None	202	243	5 L	60 L	B	40
				III	6.1, 3	B1, IB3, T7, TP2, TP28.	153	203	242	60 L	220 L	A	40
	*		*		*	*	*		*	*			
	Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base.*	3	UN1263	I	3	T11, TP1, TP8	150	201	243	1 L	30 L	E.	
				II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
				III	3	B1, B52, IB3, T2, TP1	150	173	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Paint related material *including paint thinning, drying, removing, or reducing compound.*	3	UN1263	I	3	T11, TP1, TP8	150	201	243	1 L	30 L	E.	
				II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
				III	3	B1, B52, IB3, T2, TP1	150	173	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Pentanes	3	UN1265	I	3	T11, TP2.	150	201	243	1 L	30 L	E.	
				II	3	IB2, T4, TP1	150	202	242	5 L	60 L	E.	
	*		*		*	*	*		*	*			
	Perfumery products *with flammable solvents.*	3	UN1266	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
				III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Printing ink, *flammable or* Printing ink related material (*including printing ink thinning or reducing compound, flammable*).	3	UN1210	I	3	T11, TP1, TP8	150	173	243	1 L	30 L	E.	
				II	3	149, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
				III	3	B1, IB3, T2, TP1	150	173	242	60 L	220 L	A.	

*		*		*	*	*	*	*						
Resin solution, *flammable.*	3	UN1866	I	3	B52, T11, TP1, TP8	150	201	243	1 L	30 L	E.			
			II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.			
			III	3	B1, B52, IB3, T2, TP1	150	173	242	60 L	220 L	A.			
*		*		*	*	*	*	*						
Rubber solution	3	UN1287	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.			
			III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A.			
*		*		*	*	*	*	*						
Tars, liquid *including road asphalt and oils, bitumen and cut backs.*	3	UN1999	II	3	149, B13, IB2, T3, TP3, TP29.	150	202	242	5 L	60 L	B.			
			III	3	B1, B13, IB3, T1, TP3	150	203	242	60 L	220 L	A.			
*		*		*	*	*	*	*						
Wood preservatives	3	UN1306	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.			
			III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A			40
*		*		*	*	*	*	*						

* * * * *

Issued in Washington, DC, on July 6, 2004, under authority delegated in 49 CFR Part 1.

Samuel G. Bonasso,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 04–15766 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA–2004–17217]

RIN 2127–AJ29

Insurer Reporting Requirements; List of Insurers Required To File Reports

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

ACTION: Final rule.

SUMMARY: This final rule updates Appendices A and C of 49 CFR Part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices must file three copies of its report for the 2001 calendar year before October 25, 2004.

DATES: This final rule becomes effective on July 13, 2004. Insurers listed in the appendices are required to submit reports before October 25, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR Part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and (3) rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term ''small insurer'' is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing each insurer subject to the reporting requirements in Appendix A. Because the number of insurers subject to the reporting requirements is smaller than the number of insurers that fall under the 1% exemption, the agency chooses to publish the shorter list of insurers subject to the reporting requirements of 49 U.S.C. 33112. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best,[1] which A.M. Best publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, *i.e.*, any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles (see 49 U.S.C. 33112(b)(1)). Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to Part 544. Following the same approach as in Appendix A, Appendix C contains only the self-insurers subject to reporting, instead of the self-insurers that are exempted. NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Business Travel News.[2]

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any

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[1] A.M. Best Company is a well recognized source of insurance company ratings and information. 49 U.S.C. 33112(i) authorizes NHTSA to consult with public and private organizations as necessary.

[2] Automotive Fleet Magazine and Business Travel News are publications that provide information on the size of fleets and market share of rental and leasing companies.

insurer listed in Appendices A, B or C must file a report by October 25, 2004 and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

On April 9, 2004, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (69 FR18861). Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on October 14, 2003 (68 FR 59132). Based on the 2001 calendar year data market shares from A.M. Best, we proposed to make no changes to Appendix A.

Each of the 19 insurers listed in Appendix A is required to file a report by October 25, 2004, setting forth the information required by Part 544, for each State in which it did business in the 2001 calendar year. As long as these 19 insurers remain listed, they are required to submit a report by each subsequent October 25, for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 2001, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 2001 calendar year data for market shares from A.M. Best, we proposed to make no changes to Appendix B.

The eight insurers listed in Appendix B are required to report on their calendar year 2001 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2004, and set forth the information required by Part 544. As long as these eight insurers remain listed; they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Business Travel News for 2000, NHTSA proposed to add ANC Rental Corporation and remove Associates Leasing Inc., and the Consolidated Service Corporation. Each of the 17 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 2001 no later than October 25, 2004, and set forth the information required by Part 544. As long as those 17 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Public Comments on Final Determination

Insurers of Passenger Motor Vehicles

In response to the NPRM, the agency received no comments. Accordingly, this final rule adopts the proposed changes to Appendices A, B, and C.

Submission of Theft Loss Report

Passenger motor vehicle insurers listed in the appendices can forward their theft loss reports to the agency in several ways:

a. *Mail:* Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, NVS–131, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: cballard@nhtsa.dot.gov*; or

c. *Fax:* (202) 493–2290.

Theft loss reports may also be submitted to the docket electronically by:

d. logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on ''ES Submit'' or ''Help'' to obtain instructions for filing the document electronically.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866, Regulatory Planning and Review. NHTSA has considered the impact of this proposed rule and has determined that the action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2003 (*see http://www.bls.gov/cpi*), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $92,000 for any insurer added to Appendix A, $36,800 for any insurer added to Appendix B, and $10,616.80 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency proposed no change, for Appendix B, the agency proposed no change; and for Appendix C, the agency added one company and removed two companies. The agency estimates that the net effect of this final rule would be a decrease of $10,616.80 to insurers as a group.

Interested persons may examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this final rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and approved for use through July 31, 2006, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C is construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self

insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self-insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 13132, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, and section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

7. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

8. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NVS–131, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: cballard@nhtsa.dot.gov*; or

c. *Fax:* (202) 493–2290.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

PART 544—[AMENDED]

■ 1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

■ 2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (*e.g.*, the report due before October 25, 2004 will contain the required information for the 2001 calendar year).

* * * * *

■ 3. Appendix A to Part 544 is revised to read as follows:

Appendix A to Part 544—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
California State Auto Association
CGU Group
CNA Insurance Companies
Erie Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Great American P & C Group
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group
Nationwide Group
Progressive Group
SAFECO Insurance Companies
State Farm Group
Travelers/Citigroup Company
USAA Group
Farmers Insurance Group

■ 4. Appendix C to Part 544 is revised to read as follows:

Appendix C to Part 544—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ANC Rental Corporation [1]
ARI (Automotive Resources International)
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of the Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
PHH Vehicle Management Services
Ryder TRS
Thrifty Rental Car System Inc.
U-Haul International, Inc. (Subsidiary of AMERCO)
Wheels Inc.

[1] Indicates a newly listed company, which must file a report beginning with the report due October 25, 2004.

Issued on: July 6, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–15765 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 021017237–4194–02; I.D. 090302F]

RIN 0648–AQ51

Access to Tissue Specimen Samples from the National Marine Mammal Tissue Bank

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

ACTION: Final rule.

SUMMARY: NMFS is issuing a final rule that provides the criteria and procedures necessary to access tissue samples archived in the National Marine Mammal Tissue Bank (NMMTB). These samples are available to the scientific community, contributors, and principal investigators for research that is consistent with the goals of the NMMTB and the Marine Mammal Health and Stranding Response Program (MMHSRP).

DATES: This final rule is effective August 12, 2004.

ADDRESSES: Copies of the MMHSRP and the NMMTB Specimen Access Protocol can be obtained by writing to Dr. Teri Rowles, Marine Mammal Health and Stranding Response Program, MMHSRP, 1315 East West Highway, Silver Spring, MD 20910 and can also be obtained from the MMHSRP Web site listed under the electronic Access portion of this document.

FOR FURTHER INFORMATION CONTACT: Dr. Teri Rowles, Marine Mammal Health and Stranding Response Program, 301–713–2322 ext 178.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the MMHSRP and the NMMTB Specimen Access Policy can be downloaded from the Health and Stranding Response Program web site at *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding/Response_Program/mmhsrp.html*

Background

On November 12, 2002, NMFS proposed a protocol for access to tissue specimen samples from the NMMTB (67 FR 68553). The proposed rule provided background information on the availability of tissue specimen samples from the NMMTB, which is summarized here. The NMMTB provides protocols, techniques, and physical facilities for the long-term storage of tissues from marine mammals. Scientists can request tissues from this repository for retrospective analyses to determine environmental trends of contaminants and other analytes of interest. The NMMTB is currently managed in collaboration with the National Institute of Standards and Technology (NIST) and is housed at the Hollings Marine Laboratory in Charleston, SC and the NIST campus in Gaithersburg, MD as part of the National Biomonitoring Specimen Bank. The NMMTB collects, processes, and stores tissues or blood from specific species; animals from mass strandings; animals that have been trapped, injured or killed incidental to commercial fisheries; animals taken for subsistence purposes; animals from which biopsies have been obtained; and animals from unusual mortality events.

Each tissue specimen consists of duplicate samples (denoted A and B) of approximately 150 g. each. When a portion of a tissue specimen is requested for analysis, the ''B'' sample of that specimen can be cryogenically homogenized and aliquoted into approximately 20 subsamples of 6 to 8 g. each. Fifty percent of each specimen is available for research and scientific evaluations consistent with the goals of the NMMTB and 50 percent is intended for long-term storage as a more permanent archive for decades.

Each ''B'' sample of a specimen is divided into three categories. Category 1, which is 10 percent of the homogenized material, is reserved for baseline analyses. Category 2 consists of 50 percent of the material and is reserved for use by specimen contributors. Category 3 constitutes 40 percent of the material and is available to the scientific community for research that is consistent with the goal of the NMMTB and the MMHSRP.

If an ''A'' sample is eventually homogenized, it is divided into the following four categories. Category 1 consists of 10 percent of the material for baseline analyses. Category 2 consists of 25 percent of the material reserved for use by the specimen contributors. Category 3 consists of 25 percent of the material available to the scientific community. Category 4 contains the remaining 40 percent, which is intended as a permanent archive. Category 4 will not be used unless a very high need can be identified by NOAA and the Department of the Interior. Combining the ''A'' and ''B'' samples, the specimen allocations for each use are as follows: Category 1 = 10 percent, Category 2 = 37.5 percent, Category 3 = 32.5 percent, and Category 4 = 20 percent.

Comments and Responses and Changes from the Proposed Rule

NMFS received comments from a variety of sources, including representatives of interest groups, state and Federal agencies, universities, and private citizens. Comments duplicated others; therefore, individual comments were combined and addressed together below. Report specific comments were considered and were incorporated, as appropriate. There was also a comment received via NMFS' E-comment website.

Comment 1: Four commenters requested that the contributors be included in the review process.

Response: The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date that the request was sent to the contributor(s).

Comment 2: All analysis should be reported and made available to the contributor(s).

Response: The research/findings based on use of the banked tissue will be reported to the NMMTB, MMHSRP Program Manager, and the contributor.

Comment 3: Credit and acknowledgment should include the original collector.

Response: Applications will be required to include agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service, U.S. Geologic Service, NMFS, National Institute of Standards and Technology, Minerals Management Service (MMS), the NMMTB, and the collector for use of banked tissue.

Comment 4: Credit and acknowledgment should include the Minerals Management Service.

Response: This was incorporated into the protocol (see response to comment #3).

Comment 5: Tissue specimen samples used for DNA sequencing should be required to archive sequences in the national Center for Biotechnology Information's GenBank. Sequence accessions in GenBank should document the source, citing a NIST catalog number that individually identifies the animal.

Response: This was incorporated into the protocol.

Comment 6: Tissue specimen samples should be destroyed after research so subsequent research that was not reviewed or approved can not be conducted.

Response: The applicant will dispose of the tissue specimen sample after the research is completed unless the requester puts in another request for research and receives approval. The timeline for this request is three months after the original project has been completed.

Comment 7: The second paragraph of the Background section was misleading when discussing sample ''A'' and ''B''.

Response: This paragraph was clarified so that it was not misleading.

Comment 8: MMS must be designated as having first priority and right of first refusal for access to Alaska Marine Mammal Tissue Archival Project (AMMTAP).

Response: MMS will not have first priority and right of first refusal to AMMTAP tissues. MMS will have the same access to tissue specimen samples as all other federal agencies that are major partners.

Comment 9: The second paragraph of the back ground section is misleading in that it implies that 50% of the sample ''B'' is available to the scientific community for research purposes and 50% of the specimen ''A'' is not available. Both ''A'' and ''B'' samples are actually divided into categories of various uses. These categories for ''B''

sample are: 10% for use by the NMMTB for baseline analysis as part of its quality assurance procedures, 60% for use by Federal and non-Federal Contributors of specimens to the NMMTB, and 40% for use by the scientific community (non-contributing). The ''A'' sample is divided into 10% for baseline analysis, 25% for Contributors, 25% for scientific community, and 40% for long-term archive.

Response: There is no change, the percentage will stay the same.

Comment 10: It must be clear in the description on ''How to Apply,'' that the procedures described are for the scientific community (non-contributors).

Response: A copy of the applicant's scientific research permit is requested in the ''How to Apply'' section. This will clarify that the tissue specimen sample will be used for scientific research.

Comment 11: More streamlined access procedures should be in place for contributors, otherwise many important partners may be lost to the NMMTB and to the MMHSRP.

Response: Contributors need to send a proposal for tissue samples to the review committee. This level of review is needed to ensure that the samples are being used properly.

Comment 12: The e-comment computer program used to send in comments was difficult, cumbersome and user-unfriendly.

Response: The proposed rule was one of the first rules being used for the e-comments program and these problems have been subsequently corrected.

Under 16 U.S.C. 1421f, section 407(d)(1) of the Marine Mammal Protection Act (MMPA), NMFS must establish criteria for access to marine mammal tissues in the NMMTB and make those criteria available for public review and comment, which NMFS made available in the proposed rule. In addition, pursuant to MMPA section 407(d) NMFS must establish criteria for access to tissue analyses conducted pursuant to MMPA section 407(b) and data in the central marine mammal data base maintained under MMPA section 407(c). NMFS will establish these additional criteria in subsequent rulemaking.

The criteria require that applicants for tissue specimen samples from the NMMTB demonstrate that their research will fulfill the goals of the NMMTB and MMHSRP and that comparable tissue samples to accomplish the goals of the proposed research could not be readily obtained from other sources. The goal of the National Marine Mammal Tissue Bank (NMMTB) is to maintain quality controlled marine mammal tissues and or blood that will permit retrospective analyses to determine such things as environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques. The goals of the MMHSRP are to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.

How To Apply

1. Applicants must submit a signed written request with attached study plan to the MMHSRP Program Manager, Office of Protected Resources, NMFS (see **ADDRESSES**).

2. The following specific information must be included in the request:

a. A clear and concise statement of the proposed use of the banked tissue specimen sample. The applicant must demonstrate that the proposed use of the banked tissue is consistent with the goals of the NMMTB and the MMHSRP (described above);

b. A copy of the applicant's scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit;

c. Name of principal investigator, official title, and affiliated research or academic organization;

d. Specific tissue sample and quantity desired;

e. Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance (AQA) program, which was designed to ensure the accuracy, precision, level of detection, and intercompatibility of data resulting from chemical analyses of marine mammal tissues. The AQA consists of annual interlaboratory comparisons and the development of control materials and standard reference materials for marine mammal tissues. Standard Reference Materials for use in the analysis of marine mammal tissues can be purchased from the NIST;

f. Verification that funding is available to conduct the research;

g. Estimated date for completion of research, and schedule/date of subsequent reports;

h. Agreement that all (1)research/findings based on use of the banked tissue will be reported to the NMMTB, MMHSRP Program Manager, and the contributor; and (2) the sequences of any tissue specimen samples that are used/released for genetic analyses (DNA sequencing) will be archived in the National Center for Biotechnology Information's GenBank. Sequence accessions in GenBank should document the source, citing a NIST field number that indentifies the animal; and

i. Agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service (USFWS), U.S. Geologic Service (USGS), NMFS, NIST, MMS, the NMMTB, and the collector for use of banked tissues. The applicant shall insert the following acknowledgment in all publications, abstracts or presentations based on research using the banked tissue:

The specimens used in this study were collected by [the contributor] and provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of USGS, USFWS, MMS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

3. Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

a. Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species, and

b. Representatives of the NMMTB Collaborating Agencies (NMFS, USFWS, USGS Biological Resources Division, and NIST).

If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which may be outside of NMFS or USFWS but within the Federal government.

4. The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date that the request was sent to the contributor(s).

5. The USFWS Representative of the NMMTB Collaborating Agencies will be chair of the review committees for requests involving species managed by the DOI. The MMHSRP Program Manager will be chair of all other review committees.

6. Each committee chair will provide recommendations on the request and an evaluation of the study plan will be provided by each committee chair to the Director, Office of Protected Resources, NMFS.

7. The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee, comments received from any contributor(s) of the sample within the time provided in paragraph 4, and determination that the proposed use of the banked tissue specimen sample is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

The average time for review of the request and the mailing of the written response to the requester will be 45 working days from receipt of the request by the committee chair. However, the Director, Office of Protected Resources, NMFS should respond in writing no later than 60 days following receipt of the letter of request.

8. Shipping and homogenization costs related to the use of any specimens from the NMMTB will be borne by the applicant.

9. The applicant will dispose of the tissue specimen sample after the research is completed unless the requester submits another request(within 3 months after the project is complete) and receives approval in accordance with the procedures listed above.

Classification

This final rule contains collection-of-information requirements and, therefore, is subject to the provisions of the Paperwork Reduction Act (PRA). Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Applicants will be submitting a written request with attached study plan to the MMHSRP to apply for a tissue specimen sample from the NMMTB. Applicants will also report all research/findings based on use of the banked tissue to the NMMTB, MMHSRP Program Manager, and the contributor.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. The OMB approval number for this PRA package is OMB 0648 0468.

This action will not have an adverse effect on marine mammals under the Marine Mammal Protection Act.

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

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action, would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding the economic impact of this rule. A final regulatory flexibility analysis is not required, and none was prepared.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Confidential business information, Fisheries and Marine mammals, Reporting and record keeping requirements.

Dated: July 7, 2004.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Section 216.47 is added to read as follows:

§ 216.47 Access to marine mammal tissue, analyses, and data.

(a) *Applications for the National Marine Mammal Tissue Bank samples (NMMTB).* (1) A principal investigator, contributor or holder of a scientific research permit issued in accordance with the provisions of this subpart may apply for access to a tissue specimen sample in the NMMTB. Applicants for tissue specimen samples from the NMMTB must submit a signed written request with attached study plan to the Marine Mammal Health and Stranding Response Program (MMHSRP) Program Manager, Office of Protected Resources, NMFS. The written request must include:

(i) A clear and concise statement of the proposed use of the banked tissue specimen. The applicant must demonstrate that the proposed use of the banked tissue is consistent with the goals of the NMMTB and the MMHSRP.

(A) The goals of the MMHSRP are to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.

(B) The goal of the NMMTB is to maintain quality controlled marine mammal tissues that will permit retrospective analyses to determine environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques.

(ii) A copy of the applicant's scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit;

(iii) Name of principal investigator, official title, and affiliated research or academic organization;

(iv) Specific tissue sample and quantity desired;

(v) Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance (AQA) program, which was designed to ensure the accuracy, precision, level of detection, and intercompatibility of data resulting from chemical analyses of marine mammal tissues. The AQA consists of annual interlaboratory comparisons and the development of control materials and standard reference materials for marine mammal tissues;

(vi) Verification that funding is available to conduct the research;

(vii) Estimated date for completion of research, and schedule/date of subsequent reports;

(viii) Agreement that all research findings based on use of the banked tissue will be reported to the NMMTB, MMHSRP Program Manager and the contributor; and the sequences of tissue specimen samples that are used/released for genetic analyses (DNA

sequencing) will be archived in the National Center for biotechnology Information's GenBank. Sequence accessions in GenBank should document the source, citing a NIST field number that indentifies the animal; and

(ix) Agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service (USFWS), US Geologic Service (USGS), National Institute of Standards and Technology (NIST), the Minerals Management Service (MMS), NMFS, the NMMTB, and the collector for use of banked tissues.

(2) The applicant shall insert the following acknowledgment in all publications, abstracts, or presentations based on research using the banked tissue:

The specimens used in this study were collected by [the contributor] and provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of MMS, USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

(3) Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

(i) Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species; and

(ii) Representatives of the NMMTB Collaborating Agencies (NMFS, USFS, USGS Biological Resources Division, and NIST) If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which may be outside of NMFS or USFWS but within the Federal Government.

(4) The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date that the request was sent to the contributor(s).

(5) The USFWS Representative of the NMMTB Collaborating Agencies will be chair of review committees for requests involving species managed by the DOI. The MMHSRP Program Manager will be chair of all other review committees.

(6) Each committee chair will provide recommendations on the request and an evaluation of the study plan to the Director, Office of Protected Resources, NMFS.

(7) The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee, comments received from any contributor(s) of the sample within the time provided in paragraph (a)(4) of this section, and determination that the proposed use of the banked tissue specimen is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

(8) The applicant will bear all shipping and homogenization costs related to use of any specimens from the NMMTB.

(9) The applicant will dispose of the tissue specimen sample consistent with the provisions of the applicant's scientific research permit after the research is completed, unless the requester submits another request and receives approval pursuant to this section. The request must be submitted within three months after the original project has been completed.

(b) [Reserved]

[FR Doc. 04–15825 Filed 7–12–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.040326103–4198–02; I.D. 031504A]

RIN 0648–AQ82

Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2004

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement recreational measures for the 2004 summer flounder, scup, and black sea bass fisheries. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Effective July 13, 2004.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Final Regulatory Flexibility Analysis (FRFA) are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.noaa.gov/ro/doc/com.htm*.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational measures. The recreational harvest limits for summer flounder, scup, and black sea bass fisheries were published as part of the 2004 specifications on January 14, 2004 (69 FR 2074). The 2004 coastwide recreational harvest limits are 11.21 million lb (5,085 mt) for summer flounder, 3.99 million lb (1,810 mt) for scup, and 4.01 million lb (1,819 mt) for black sea bass. The 2004 quota specifications, inclusive of the recreational harvest limits, were determined to be consistent with the 2004 target fishing mortality rate (F) for summer flounder and the target exploitation rates for scup and black sea bass.

The proposed rule to implement annual Federal recreational measures for the 2004 summer flounder, scup, and black sea bass fisheries was published on April 14, 2004 (69 FR 19805), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. A complete discussion of the development of the recreational measures appeared in the preamble of the proposed rule and is not repeated here.

Table 1 contains the coastwide Federal measures for scup and black sea bass that are being implemented. As described below, NMFS has added one day (September 7) to the open season for

scup as a result of updated landings information for 2003. The recreational measures for black sea bass contained in this final rule are unchanged from those published in the proposed rule. For summer flounder, this final rule implements conservation equivalency, as the process was described in the proposed rule. The management measures will vary according to the state of landing (see Table 2). All minimum fish sizes discussed below are total length (TL) measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side.

TABLE 1—2004 RECREATIONAL MEASURES

Species	Minimum Size (total length)	Possession Limit	Open Season
Summer Flounder	Varies according to state of landing		
Scup	10 inches (25.4 cm)	50 fish	January 1 through last day of February,and September 7 through November 30.
Black Sea Bass	12 inches (30.5 cm)	25 fish	January 1 through September 7, and September 22 through November 30.

TABLE 2—2004 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum Size (inches)	Minimum Size (cm)	Possession Limit (number of fish)	Open Season
MA	16.5	41.9	7	Year-Round.
RI	17.5	44.5	7	April 1 through December 31.
CT	17	43.2	6	Year-Round.
NY*	18	45.7	1	Year-Round.
NJ	16.5	41.9	8	May 8 through October 11.
DE	17.5	44.5	4	Year-Round.
MD	16	40.6	3	Year-Round.
VA	17	43.2	6	March 29 through December 31.
NC	14	35.6	8	Year-Round.

*Under the provisions of Framework Adjustment 2 to the FMP, because NY's conservation equivalency proposal was disapproved by the Atlantic States Marine Fisheries Commission (Commission), NY is required to implement the precautionary default measures.

Changes from the Proposed Rule

In the proposed rule published on April 14, 2004 (69 FR 19805), NMFS indicated that a 58–percent reduction in scup landings would be necessary to achieve the target, and proposed scup open seasons of January 1 through February 29, and September 8 through November 30. Since publication of the proposed rule, and based on updated landings information for 2003 (9.3 million lb (4,233 mt) rather than 9.6 million lb (4,354 mt)), NMFS has determined that the required reduction in landings is 57 percent. The revised information allows for the extension of the open season by one day in September. Therefore, the second open season would begin September 7 rather than September 8. Section 648.122(g) is amended accordingly.

At the time the proposed rule was published, it was not known which states would have their conservation equivalency proposals approved by the Commission. The Commission approved the proposals of MA, RI, CT, NJ, DE, MD, VA, and NC. Based on the recommendation of the Commission, the Regional Administrator finds that the recreational fishing measures proposed to be implemented by these states for 2004 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. According to the regulation at § 648.107(a)(1), vessels subject to the recreational fishing measures of this part landing summer flounder in one of these states with an approved conservation equivalency program shall not be subject to the more restrictive Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) is amended accordingly.

Based on the recommendation of the Commission, the Regional Administrator finds that the recreational fishing measures proposed to be implemented by NY for 2004 are not the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. Therefore, according to § 648.107(b), federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures in this part, that land in NY are subject to the following precautionary default measures: An open season January 1 through December 31; a minimum size of 18 inches (45.7 cm) total length; and a possession limit of one fish.

Comments and Responses

Six comment letters were received, via e-mail, regarding the proposed recreational management measures.

Comment 1: Three of the comment letters indicated opposition to any change to the regulations that would result in more restrictive measures for the subject fisheries, especially summer flounder.

Response: Through this final rule, NMFS approves conservation equivalency for the recreational summer flounder. The Commission's conservation equivalency guidelines require each state, using state-specific equivalency tables, to determine and implement an appropriate possession limit, minimum fish size, and closed

season to achieve the landings reduction necessary for each state. The intention of conservation equivalency is for the combined effect of all of the states' management measures to achieve the same level of conservation as would Federal coastwide measures developed to achieve the recreational harvest limit, if implemented by all of the states. The state-specific tables are adjusted to account for the past effectiveness of the regulations in each state. Landings information for 2003 indicates that NY and NJ must reduce recreational summer flounder landings in 2004. Therefore, it is necessary for these states to implement more restrictive measures than implemented for 2003 in order to effect the required reductions.

Comment 2: One of the comment letters expressed support for maintaining the black sea bass regulations rather than relaxing them, given that there may a shift of effort from summer flounder to black sea bass. This letter also indicated concern about the Marine Recreational Fisheries Statistics Survey (MRFSS) data on which the recommended summer flounder reduction for NY is based, and about implementation of different summer flounder regulations in neighboring states.

Response: NMFS agrees that the black sea bass management measures implemented for 2003 should be maintained (as adjusted for the 2004 calendar), both to provide regulatory consistency and predictability to the party/charter and recreational fishing sectors and because of the possibility that relaxation of the management measures may result in the 2004 landings target being exceeded, resulting in the need for stricter measures in 2005.

To respond to concerns regarding the MRFSS landings estimated for 2003, the NMFS Recreational Fishery Statistics Team re-examined the 2003 summer flounder and scup harvest estimates relative to those produced for the previous 5 years, and found no errors in the data or estimates for either NY or NJ. Its review indicates that both the number of successful trips and the average number of fish increased significantly in both the party/charter and private/rental boat modes in those states, and these increases account for the increase in the landings estimates. The Monitoring Committees, the Mid-Atlantic Fishery Management Council (Council), and NMFS base their recommendations and decisions regarding recreational measures for the summer flounder, scup, and black sea bass fisheries on the MRFSS landings because they are considered the best information available.

As indicated in the response to Comment 1, under conservation equivalency, each state uses state-specific tables to determine and implement an appropriate possession limit, minimum fish size, and closed season to achieve the landings reduction necessary for each state. Because last year's landings in each state vary as a percentage of the state's target, the measures that a state must implement to hold this year's landings to within the target will also vary. Thus, there may be differing management measures implemented in neighboring states under the conservation equivalency process.

Comment 3: One commenter submitted two comment letters that indicate support for marine protected areas, reduction of fishing quotas in general, and fisheries enforcement; and opposition of quota allocation to commercial entities, any increase to the research set-aside quota for scup, and fishing opportunities in states that exceed their summer flounder recreational harvest limit.

Response: This rule implements management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. While NMFS acknowledges that consideration of marine protected areas, sector allocation shares, and fisheries enforcement may be important, this rule is not the proper mechanism to address these general issues. The FMP does not allow for closure of the summer flounder recreational fishery, or a reduction of a state's summer flounder quota, as a consequence of overharvest of a state's recreational harvest limit.

Classification

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

The Assistant Administrator for Fisheries, NOAA, finds, for certain measures contained in this rule, good cause pursuant to 5 U.S.C 553(d)(3) to make this rule effective immediately, thereby waiving the 30–day delayed effectiveness date required by 5 U.S.C. 553. Additionally, pursuant to 5 U.S.C 553(d)(1), certain measures in this rule relieve a restriction and are therefore not subject to a delay in effective date. The linchpin of NMFS's decision whether to proceed with the coastwide measures or to give effect to the conservation equivalent measures adopted by the individual states is advice from the Commission as to the results of its review of the plans of the individual states. The measures implemented by NY on May 1, 2004, differed from the proposals approved by the Commission's Technical Committee for that state in March 2004, and were determined by the Technical Committee to be inconsistent with the annual specifications set by the Commission's Summer Flounder Management Board (Board). The Commission gave NY until June 15, 2004, to implement a management program that would achieve the required 48.5–percent reduction in landings. On June 17, 2004, the Commission informed NMFS that NY has been found out of compliance and that the management programs implemented by the other states were approved by the Board.

During the pendency of the Commission's process and subsequent preparation of this rule by NMFS, the recreational fisheries for these three species have commenced. The party and charter boats from the various states are by far the largest component of the recreational fishery that fish in the Federal exclusive economic zone. The Federal coastwide regulatory measures for the three species that were codified last year remain in effect. The Federal coastwide measures for the summer flounder fishery are more restrictive than the measures adopted by the states, approved by the Commission as conservation equivalents, and implemented by NMFS in this rule. Further, the fishing seasons for the black sea bass fishery that this rule implements is less restrictive than the season in the Federal coastwide measures currently in effect. Federally permitted recreational vessels subject to these more restrictive measures are currently operating at a disadvantage since non-Federally permitted recreational vessels can fish in state waters under more liberal measures. With respect to the scup fishery, the fishing season must be shortened by over a month to achieve the required reduction in recreational fishing effort. The Federal coastwide measures currently in effect allow the recreational fishing season for scup to reopen on July 1 instead of the September 7 reopening date in this rule. Failure to have this rule effective immediately will allow recreational overages this year, leading to increased restrictions on the recreational scup fishery next year.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts summarized in the IRFA for the proposed rule (69 FR 19805), the comments on, and responses to, the proposed rule, and the analyses

completed in support of this action. A copy of the FRFA is available from the Council (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Six comments were received on the measures contained in the proposed rule. No comments were received on the IRFA or the economic impact of the rule. No changes to the proposed rule were required to be made as a result of public comments. For a summary of the comments received, refer to the section above titled ''Comments and Responses.''

Description and Estimate of Number of Small Entities to which Rule Will Apply

The Council estimated that the proposed action could affect any of the 775 vessels possessing a Federal party/charter permit for summer flounder, scup, and/or black sea bass in 2002, the most recent year for which complete permit data are available. Only 327 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2002.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Under the conservation equivalency approach, each state may implement unique management measures appropriate to that state to achieve state-specific harvest limits, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the annual recreational harvest limit. The conservation equivalency approach allows states flexibility in the specification of management measures, unlike the application of one set of coastwide measures. It is not possible to further mitigate economic impacts on small entities because the specification of the recreational management measures (possession limits, minimum fish size, and fishing seasons) contained in this final rule is constrained by the conservation objectives of the FMP, and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The economic analysis assessed the impacts of the various management alternatives. In the EA, the no action alternative for each species is defined as the continuation of the management measures as codified for the 2003 fishing season. In consideration of the Council-recommended recreational harvest limits established for the 2004 fishing year, implementation of the same recreational measures established for the 2003 fishing year would be inconsistent with the goals and objectives of the FMP and its implementing regulations, and, because it could result in overfishing of the scup fishery, would be inconsistent with National Standard 1 of the Magnuson-Stevens Act. Therefore, the status quo alternative was not considered to be a reasonable alternative to the preferred action and its collective impacts were not analyzed in the EA/RIR/IRFA. The no action measures, with open seasons modified slightly for the 2004 calendar, were analyzed in Alternative 2.

At this time, it is not possible to determine the economic impact of summer flounder conservation equivalency on each state. However, it is likely to be proportional to the level of landings reductions required. If the conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Because states have a choice as to the specific measures to apply to landings in each state, it is more rational for the states to adopt conservation equivalent measures that result in fewer adverse economic impacts than to adopt the more restrictive measures contained in the precautionary default alternative (i.e., only one fish measuring at least 18 inches (45.7 cm)).

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal party/charter permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.nero.noaa.gov*.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 7, 2004.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.107, paragraph (a) introductory text is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, Virginia, and North Carolina for 2004 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

■ 3. In § 648.122, paragraph (g) is revised to read as follows:

§ 648.122 Time and area restrictions.

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through the last day of February, and from September 7 through November 30. This time period may be adjusted pursuant to the procedures in § 648.120.

■ 4. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit, may not possess black sea bass, except from January 1 through September 7, and September 22 through November 30. This time period may be adjusted pursuant to the procedures in § 648.140.

[FR Doc. 04–15824 Filed 7–12–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 070804A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 8, 2004, through 2400 hrs, A.l.t., December 31, 2004.

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

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

The 2004 TAC specified for Pacific ocean perch in the Eastern Aleutian District of the BSAI is 2,829 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC for Pacific ocean perch in the Eastern Aleutian District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,729 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the directed fishery for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

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

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

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

Dated: July 8, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–15822 Filed 7–8–04; 2:21 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 133
Tuesday, July 13, 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. 2000–NM–32–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that would have required resistance tests of the brake coils of the auto throttle servo (ATS) and of the elevator load feel (ELF)/flap limiter (FL) duplex actuator for low electrical resistance; and corrective actions, if necessary. This new action revises the proposed rule by removing the resistance tests, adding certain airplanes to the applicability, and adding an inspection of the ATS assembly and corrective actions if necessary. The actions specified by this new proposed AD are necessary to prevent electrical shorting of the brake coils of the ATS, which could result in smoke in the cockpit and/or passenger cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 9, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–32–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. 2000–NM–32–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 for Windows 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 2000–NM–32–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. 2000–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, was published as notice of proposed rulemaking (NPRM) in the **Federal Register** on July 27, 2000 (65 FR 46210) (hereafter referred to as the ''original NPRM''). The original NPRM would have required resistance tests of the brake coils of the auto throttle servo (ATS) and of the elevator load feel (ELF)/flap limiter (FL) duplex actuator for low electrical resistance; and corrective actions, if necessary. The original NPRM was prompted by an incident in which the ATS shorted electrically and caused smoke in the cockpit. Electrical shorting of the brake coils of the ATS or ELF/FL duplex actuator, if not corrected, could result in smoke in the cockpit and/or passenger cabin.

Actions Since the Issuance of Original NPRM

Since the issuance of the original NPRM, we have reviewed and approved Boeing Service Bulletin MD11–22–026, dated December 19, 2003. The service bulletin supersedes and cancels the

recommendations of Boeing Service Bulletins MD11–22–024 and MD11–22–025 (original and Revision 01). The service bulletin describes procedures for performing an inspection to determine the P/N of the ATS assembly of the servo assembly of the TCM, and corrective action(s) if necessary. The corrective actions include reidentifying the TCM assembly; and replacing the existing ATS assembly of the TCM assembly with a new ATS assembly or returning the TCM assembly in the center of the pedestal in the flight compartment to Boeing for modification and reidentification. Accomplishment of the actions specified in the Boeing Service Bulletin MD11–22–026 is intended to adequately address the identified unsafe condition. Therefore, we have revised the supplemental NPRM to reference Boeing Service Bulletin MD11–22–026 as the appropriate source of service information.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Request To Change Dash Number of Affected Spare Parts

Two commenters request that the FAA require Boeing and Honeywell to change the dash numbers on all parts affected by the original NPRM. To do this, one commenter suggests that the manufacturers' revise the following service information:

1. Boeing Service Bulletin MD11–22–024, dated March 29, 2000 (which is referenced in the original NPRM as the appropriate source of service information for accomplishing the proposed actions);
2. Honeywell Service Bulletins 4059004–22–0003 and 4059005–27–0004 (Boeing Service Bulletin MD11–22–024 references these Honeywell service bulletins as an additional source of service information for accomplishing the proposed resistance tests);
3. Boeing Component Maintenance Manuals (CMM) 76–10–05; and
4. Honeywell CMMs 22–31–60 and 27–32–07.

Several commenters note that paragraph (b) of the original NPRM states, ''As of the effective date of this AD, no person shall install the following parts on any airplane: (1) Thrust control module assembly having part number ABH7760–1, ABH7760–501, or ABH7760–503; (2) Flap limiter duplex actuator having part number 4059004–901; or (3) Elevator load feel duplex actuator having part number 4059005–901.'' Two of the commenters state that none of the service information listed above recommend re-identification of thrust control module (TCM) assembly having part number ABH7760–1, ABH7760–501, or ABH7760–503, but do recommend re-identification with a modication letter ''K'' after the resistance tests of ATSs having part number (P/N) 4059004–901—a subassembly of the TCM, and ELF/FL duplex actuators having P/N 4059005–901. Another commenter made a similar statement. One of the commenters specifically points out that P/N 4059004–901 in paragraph (b)(2) of the original NPRM actually belongs to the ATS, which is the subassembly of the TCM, and that P/N 4059005–901 in paragraph (b)(3) of the original NPRM applies to both the ELF and FL installations.

One of the commenters notes that re-identification per a modification letter does not constitute a part number change, and that parts are not purchased, stocked, tracked, or identified in an airplane illustrated parts catalog using modification letters. Therefore, the commenter concludes that a modification letter change will do very little to help prevent pre-modification parts from being installed on an airplane.

In addition, one commenter requests that provisions be added to Boeing Service Bulletin MD11–22–024 to allow operators to perform the resistance check on all affected spares without special routings to shop for complete disassembly and date code checks. The commenter states that spares should be reidentified with the new dash number and returned to stock provided they pass all resistance checks.

The FAA does not agree with the commenters' request to require Boeing and Honeywell to update the respective CMMs. Because CMMs are not FAA-approved and the procedures specified in CMMs vary from operator to operator, there are no assurances that each operator's CMM contains the identical actions proposed by this supplemental NPRM. These changes should be negotiated between the affected operators and Boeing.

However, we agree with the commenter's statement that the Boeing and Honeywell service bulletins listed above need to be revised, but for different reasons. Since the issuance of the original NPRM, we have determined that the ELF/FL duplex actuators are not subject to the identified unsafe condition of this AD. These actuators are installed outside of the cockpit and passenger cabin such that the possibility of smoke in the cockpit or cabin is minimized. Also, we have determined that all ATSs that have not been upgraded to P/N 4059005–903 are subject to electrical shorting, and that the proposed resistance tests in the original NPRM are not adequate to detect all defective ATSs. Therefore, all ATSs must be inspected to determine if they have been upgraded to P/N 4059005–903 per Boeing Service Bulletin MD11–22–026 (described previously).

Explanation of Change to Applicability

We have determined that some confusion may arise from the applicability of the original NPRM, because McDonnell Douglas Model MD–11F series airplanes were not specifically identified. However, those airplanes were identified by manufacturer's fuselage numbers in Boeing Service Bulletin MD11–22–024, dated March 29, 2000 (which was referenced in the applicability statement of the original NPRM for determining the specific affected airplanes). Therefore, we have revised the applicability of the supplemental NPRM to include Model MD–11F airplanes, in addition to Model MD–11 series airplanes, and to reference Boeing Service Bulletin MD11–22–026 as the appropriate source of service information for determining the specific affected airplanes.

Conclusion

Since these changes expand the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). These changes are reflected in this supplemental NPRM.

Changes to Labor Rate

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 195 McDonnell Douglas Model MD–11 and ''11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 62 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 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 inspection proposed by this AD on U.S. operators is estimated to be $4,030, 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:

McDonnell Douglas: Docket 2000–NM–32–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Service Bulletin MD11–22–026, dated December 19, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical shorting of the brake coils of the auto throttle servo (ATS), which could result in smoke in the cockpit and/or passenger cabin, accomplish the following:

Inspect ATS

(a) Within 36 months after the effective date of this AD, do an inspection to determine the part number (P/N) of the ATS assembly of the servo assembly of the TCM, per the Accomplishment Instructions of Boeing Service Bulletin MD11–22–026, dated December 19, 2003.

Corrective Actions

(b) Before further flight after doing the inspection required by paragraph (a) of this AD, do the applicable corrective action(s) specified in ''Table-Corrective Actions,'' per Boeing Service Bulletin MD11–22–026, dated December 19, 2003.

If—	Then—
(1) P/N 4059004–903 is installed	Reidentify the TCM assembly.
(2) P/N 4059004–903 is not installed	Replace the existing ATS assembly of the TCM assembly with a new ATS assembly, and reidentify the TCM assembly; or return TCM assembly to Boeing for modification and reidentification.

Parts Installation

(c) As of the effective date of this AD, no person shall install a thrust control module assembly having part number ABH7760–1, ABH7760–501, ABH7760–503, SR11761001–3, SR11761001–5, SR11761001–7, SR11270022–3, SR11761001–9, SR11270022–5, or SR11761001–11, on any airplane.

Alternative Methods of Compliance

(d) 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 June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15760 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–54–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, that would have required an inspection of the connector cables for signs of arcing and/or signs of moisture penetration into the overhead decoder units (ODU), and replacement of the affected ODU(s) with a new ODU, if necessary. The proposed AD also would have required modification and reidentification of the cable assemblies and the connect cable assemblies at shipside power to the ODU, ODU to ODU, and adjacent bag racks. This new action revises the proposed rule by adding and removing airplanes in the applicability of the proposed rule and replacing certain connectors of the ODU and shipside power cable assemblies. The actions specified by this new proposed AD are intended to prevent moisture from entering through the rear of the connector of the ODUs located in the

overhead baggage stowage racks, which could result in a short, damage to the connector pins, and consequent smoke and/or fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 9, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–54–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–54–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 2001–NM–54–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–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 5, 2001 (66 FR 50901) (hereafter referred to as the ''original NPRM''). The original NPRM would have required an inspection of the connector cables for signs of arcing and/or signs of moisture penetration into the overhead decoder units (ODU), and replacement of the affected ODU(s) with a new ODU, if necessary. The original NPRM also would have required modification and reidentification of the cable assemblies and the connect cable assemblies at shipside power to the ODU, ODU to ODU, and adjacent bag racks. The original NPRM was prompted by several incidents of smoke in the cabin. Moisture entering through the rear of the connector of the ODUs located in the overhead baggage stowage racks, if not corrected, could result in a short, damage to the connector pins, and consequent smoke and/or fire in the cabin.

Comment Received: Request To Revise Cost Impact Section

Due consideration has been given to the comment received in response to the original NPRM:

One commenter requests that we revise the Cost Impact section of the original NPRM. The commenter notes that the original NPRM states, ''The manufacturer has committed previously to its customers that it will bear the cost of replacement parts.'' The commenter states that Boeing warranty remedies are available for Model MD–11 and –11F airplanes under warranty as of October 1, 1999, and that the kits for airplanes in warranty as of that date will be supplied at no charge.

The FAA concurs. We have revised the cost impact by including the cost of the replaced parts and adding the following statement: ''The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. As a result, the costs attributable to the proposed AD may be less than stated above.''

Actions Since Issuance of the Original NPRM

Since the issuance of the original NPRM, Boeing issued Revision 01 of Boeing Alert Service Bulletin MD11–33A065, dated December 21, 2001 (the original issue was referenced in the original NPRM as the appropriate source of service information for the proposed actions). Revision 01 corrected several part numbers and revised the effectivity listing by removing certain fuselage numbers and Group 34 airplanes and adding six convertible freighters.

Explanation of Relevant Service Information

Since the issuance of Revision 01 of the service bulletin, we have reviewed and approved Revision 02 of Boeing Alert Service Bulletin MD11–33A065, dated April 1, 2003. For all airplanes, Revision 02 continues to describes procedures for a general visual inspection of the cable connectors for signs of arcing or signs of moisture penetration into the ODUs, and replacement of the affected ODU with a new ODU, if necessary.

For certain airplanes, Revision 02 describes new procedures for:

• A general visual inspection of the P1 connector end of all AWP9604 cable assemblies of the ODUs to determine if SK2464–15 connectors are present; and replacement of SK2464–15 connectors with new connectors;

• Replacement of the connector ends on the applicable cable assemblies of the ODUs with new connector ends;

• A general visual inspection of the P1 connector end of the jumper cables of the centerline AWP9606 shipside cable assemblies to determine if SK2464–9 connectors are present; and replacement of SK2464–9 connectors with new connectors;

• Replacement of the P1 connector ends on the applicable shipside cable assemblies with new connector ends; and

• Replacement of the connectors of the applicable shipside cable assemblies with new connectors.

For certain other airplanes, Revision 02 describes new procedures for replacement of the connectors of the applicable cable assemblies of the ODUs with new connectors. In addition, Revision 02 removes 19 passenger airplanes that have been converted to freighter configuration.

Changes to Proposed Requirements

Accomplishment of the actions described above in Revision 02 of the service bulletin is intended to adequately address the identified unsafe condition. Therefore, we have revised this supplemental NPRM to reference Revision 02 as the appropriate source of service information, except as discussed below.

Although the service bulletin describes procedure for a general visual inspection of the connector cables of the shipside cable assemblies for signs of arcing or signs of moisture penetration for certain airplanes, this proposed AD does not require that inspection. We have consulted with the airplane manufacturer and have determined that this inspection is unnecessary because this proposed AD would require replacement of the connectors and connector ends of the applicable shipside cable assemblies with new parts.

In addition, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this proposed AD would not require those actions. We do not need this information from operators.

Conclusion

Since these changes expand the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). These changes are reflected in this supplemental NPRM.

Changes to Labor Rate

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 114 airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 295 and 2,056 work hours per airplane (*i.e.,* 2 work hours per ODU and shipside connector; the number of ODUs and shipside connectors per airplane will vary between 59 and 1,028 depending on the airplane's configuration) to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately between $2,264 and $130,864 per airplane (depending on the airplane configuration). Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $21,439 and $264,504 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 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. 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:

McDonnell Douglas: Docket 2001–NM–54–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service

Bulletin MD11–33A065, Revision 02, dated April 1, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent moisture from entering through the rear of the connector of the overhead decoder units (ODU) located in the overhead baggage stowage racks, which could result in a short, damage to the connector pins, and consequent smoke and/or fire in the cabin, accomplish the following:

Service Bulletin References

(a) The term ''the service bulletin,'' as used in this AD, means Boeing Alert Service Bulletin MD11–33A065, Revision 02, dated April 1, 2003.

Part 1: Cable Assemblies of the ODU

(b) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) through (b)(4) of Table 1 of this AD, as applicable, and any applicable corrective actions by doing all actions in Part 1 of the Work Instructions of the service bulletin. Do the actions per the service bulletin. Do any applicable corrective actions before further flight.

TABLE 1.—CABLE ASSEMBLIES OF THE ODUS

For airplanes identified in the service bulletin as—	Actions—
(1) For Groups 1 through 69	Do a general visual inspection of the P1 connector end of all AWP9604 cable assemblies of the ODUs to determine if SK2464–15 connectors are present.
(2) For Groups 1 through 69	Replace the connector ends on the applicable cable assemblies of the ODUs with new connector ends.
(3) Groups 1 through 72	Do general visual inspection of the cable connectors for signs of arcing or signs of moisture penetration into the ODUs.
(4) Groups 70 through 72	Replace the connectors of the applicable cable assemblies of the ODUs with new connectors.

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.''

Part 2: Shipside Cable Assemblies

(c) For Groups 1 through 69 identified in the service bulletin: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (c)(1) through (c)(3) of this AD, and any applicable corrective action by doing all actions in paragraphs 1., and 3. through 10., as applicable, of Part 2 of the Work Instructions of the service bulletin. Do the actions per the service bulletin. Do any applicable corrective actions before further flight.

(1) Do a general visual inspection of the P1 connector end of the jumper cables of the centerline AWP9606 shipside cable assemblies to determine if SK2464–9 connectors are present.

(2) Replace the P1 connector ends on the applicable shipside cable assemblies with new connector ends.

(3) Replace the connectors of the applicable shipside cable assemblies with new connectors.

Differences Between AD and Referenced Service Bulletin

(d) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(e) Although the service bulletin describes procedure for a general visual inspection of the connector cables of the shipside cable assemblies for signs of arcing or signs of moisture penetration for certain airplanes, this AD does not require that inspection.

Note 2: Where there are differences between the AD and the service bulletin, the AD prevails.

Parts Installation

(f) As of the effective date of this AD, no person shall install a cable assembly having a part number in the ''Existing Part Number'' column of the applicable table specified in paragraph 2.C.3, ''Parts Necessary for Each Airplanes'' of the service bulletin, on any airplane.

Alternative Methods of Compliance

(g) 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 June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15761 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18573; Directorate Identifier 2003–NM–71–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–11 airplanes. This proposed AD would require revising the cable connection stackups for mid-cabin terminal strips, replacing the terminal strips, and removing a nameplate, as applicable. This proposed AD also would require an inspection for arcing damage in the mid-cabin area, and corrective actions if necessary. This proposed AD is prompted by an incident in which arcing occurred between the power feeder cables and support bracket of the terminal strips. We are proposing this AD to prevent arcing damage to the terminal strips and damage to the adjacent structure, which could result in smoke and/or fire in the mid-cabin compartment.

DATES: We must receive comments on this proposed AD by August 27, 2004.

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

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

Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

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

FOR FURTHER INFORMATION CONTACT:

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:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18573; Directorate Identifier 2003–NM–71–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

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

Discussion

As part of our practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, we have become aware of an incident in which arcing occurred between the power feeder cables and support bracket of the terminal strips on a McDonnell Douglas Model MD–11 airplane. Investigation revealed that inadequate clearance exists between the terminal strips and associated support brackets in the center and aft cargo compartments. This condition, if not corrected, could result in arcing damage to the terminal strips and damage to the adjacent structure, which could result in smoke and/or fire in the mid-cabin compartment.

Other Related Rulemaking

In conjunction with Boeing and operators of Model MD–11 airplanes, we have 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.

Relevant Service Information

We have reviewed McDonnell Douglas Alert Service Bulletin MD11–24A176, dated May 27, 2003. The service bulletin describes procedures for revising the cable connection stackups for mid-cabin terminal strips, replacing the terminal strips, and removing a nameplate, as applicable. The service bulletin also describes procedures for inspecting for arcing damage in the mid-cabin area, and corrective actions if damage is found. Corrective actions include repair of the damaged part or replacement with a new part. We have determined that accomplishment of the actions specified in the service bulletin will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishment of the actions specified in the service bulletin described previously, except as discussed under ''Differences Between the Proposed AD and Service Bulletin.''

Differences Between the Proposed AD and Service Bulletin

Operators should note that the service bulletin specifies to repair damaged structure in accordance with the Structural Repair Manual (SRM). However, the SRM does not provide procedures for repair of certain structural material. Therefore, this proposed AD would require the repair of damaged structure that is not covered in the SRM to be done in accordance with a method approved by the FAA.

Although McDonnell Douglas Alert Service Bulletin MD11–24A176, dated May 27, 2003, including paragraph 4, ''Appendix,'' and Evaluation Form, specifies to submit information to the manufacturer, this proposed AD does not include that requirement.

Costs of Compliance

This proposed AD would affect about 23 airplanes of U.S. registry and 90 airplanes worldwide. The proposed actions would take between 5 and 6 work hours per airplane, depending on the airplane configuration, at an average labor rate of $65 per work hour. Required parts would cost between $673 and $975 depending on the airplane configuration. The airplane

configuration group requiring the fewest number of work hours requires parts that cost approximately $710. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $1,035 and $1,365 per airplane depending on the airplane configuration.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2004–18573; Directorate Identifier 2003–NM–71–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by August 27, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–11 series airplanes, as listed in paragraph 1.A.1. of McDonnell Douglas Alert Service Bulletin MD11–24A176, dated May 27, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by an incident in which arcing occurred between the power feeder cables and support bracket of the terminal strips. We are issuing this AD to prevent arcing damage to the terminal strips and damage to the adjacent structure, which could result in smoke and/or fire in the mid-cabin compartment.

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.

Revise Wire Connection Stackups; Remove Nameplate, as Applicable; and Inspect for Damage

(f) Within 18 months after the effective date of this AD, do the actions specified in (f)(1) and (f)(2) of this AD in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–24A176, dated May 27, 2003. Although the service bulletin specifies to submit information to the manufacturer in paragraph 4, ''Appendix,'' this AD does not include that requirement.

(1) Revise the wire connection stackups, replace the terminal strips for the power feeder cables, and remove nameplates, as applicable, at the affected mid-cabin locations.

(2) Do a general visual inspection to detect arcing damage of the surrounding structure, adjacent system component, and electrical cables in the mid-cabin area.

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.''

Corrective Action If Necessary

(g) If any damage is detected during the inspection required by paragraph (f) of this AD, before further flight, repair damage or replace the damaged part with a new part, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–24A176, dated May 27, 2003. If the type of structural material that has been damaged is not covered in the Structural Repair Manual, before further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15762 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18572; Directorate Identifier 2003–NM–72–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–11 and MD–11F airplanes. This proposed AD would require replacement of low base terminal boards, related investigative action, and corrective actions if necessary. This proposed AD is prompted by arcing between a power feeder cable and terminal board support bracket. We are proposing this AD to prevent arcing damage to the power feeder cables, terminal boards, and adjacent structure, which could result in smoke and/or fire in the cabin.

DATES: We must receive comments on this proposed AD by August 27, 2004.

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

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

Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024)

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

FOR FURTHER INFORMATION CONTACT: 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:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18572; Directorate Identifier 2003–NM–72–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

You may examine the AD docket in person at the Docket Management Facility office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

As part of our practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, we have become aware of arcing between a power feeder cable and terminal board support bracket on a McDonnell Douglas Model MD–11 airplane. The cause is power feeder cables stacked improperly during manufacture in conjunction with low base terminal boards. Power feeder cables that are stacked improperly reduce the distance between the cables and mounting structure. This condition, if not corrected, could result in arcing damage to the power feeder cables, terminal boards, and adjacent structure, which could result in smoke and/or fire in the cabin.

Similar Airplanes

The subject area on certain McDonnell Douglas Model MD–11F airplanes are identical to those on the affected McDonnell Douglas Model MD–11 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Other Related Rulemaking

In conjunction with Boeing and operators of Model MD–11 and MD–11F airplanes, we have 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.

Relevant Service Information

We have reviewed McDonnell Douglas Alert Service Bulletin MD11–24A175, Revision 01, dated April 25, 2003, including Boeing Information Notices MD11–24A175 IN 01, dated November 6, 2003, and MD11–24A175 IN 02, dated December 17, 2003. The service bulletin describes procedures for replacing low base terminal boards with higher base terminal boards, performing a related investigative action (a general visual inspection of the cables, surrounding structure, and other systems components for arcing damage), and performing corrective actions if necessary. The corrective actions include repairing cable assemblies, replacing cable assemblies with new or serviceable cable assemblies, and repairing structural damage. We have determined that accomplishment of the actions specified in the service bulletin will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishment of the actions specified in the service bulletin described previously, except as discussed under ''Differences Between the Proposed AD and Referenced Service Bulletin.''

Differences Between Proposed Rule and Referenced Service Bulletin

Although the service bulletin referenced in the proposed AD specifies to submit certain information to the manufacturer, the proposed AD does not include that requirement. We do not need this information from operators.

Operators should also note that the service bulletin specifies to repair damaged structure in accordance with the structural repair manual (SRM). However, the SRM does not provide procedures for repair of certain

structural material. Therefore, this proposed AD would require the repair of damaged structure that is not covered in the SRM to be done in accordance with a method approved by the FAA.

Costs of Compliance

This proposed AD would affect about 52 airplanes of U.S. registry and 152 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Airplanes identified in the service bulletin as—	Work hours	Average labor rate per hour	Parts cost	Cost per airplane (depending on the airplane configuration)
Group 1	3	$65	$45–$384	$240–$579
Groups 2 and 5	1	$65	$45–$384	$110–$449
Groups 3, 4, and 6	2	$65	$45–$384	$175–$514

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2004–18572; Directorate Identifier 2003–NM–72–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by August 27, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–11 and MD–11F airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A175, Revision 01, dated April 25, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by arcing between a power feeder cable and terminal board support bracket. We are issuing this AD to prevent arcing damage to the power feeder cables, terminal boards, and adjacent structure, which could result in smoke and/or fire in the cabin.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–24A175, Revision 01, dated April 25, 2003, including Boeing Information Notices MD11–24A175 IN 01, dated November 6, 2003, and MD11–24A175 IN 02, dated December 17, 2003.

Replacement, Related Investigative Action, and Corrective Actions

(g) Within 18 months after the effective date of this AD, replace low base terminal boards with higher base terminal boards in accordance with the applicable figure in the service bulletin, and do all related investigative action/applicable corrective actions by accomplishing all the actions in the service bulletin, except as provided by paragraph (h) of this AD. Any related investigative action/applicable corrective actions must be done before further flight.

(h) If, during the corrective actions required by paragraph (g) of this AD, the type of structural material that has been damaged is not covered in the structural repair manual, before further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Parts Installation

(i) As of the effective date of this AD, no person may install a terminal board, as listed in section 1.A.2. ''Spares Affected'' of the Planning Information of the service bulletin, on any airplane.

No Reporting

(j) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15763 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18582; Directorate Identifier 2003–NM–35–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model EMB–135 and –145 series airplanes. This proposed AD would require measuring the fillet radius dimension of the trunnion fitting webs of the wings; and reworking the fillet radius of the trunnion fitting web in order to increase the radius, doing related investigative actions, and doing applicable corrective action, if necessary. This proposed AD is prompted by a report indicating that trunnion fittings of the wings have been manufactured with a web fillet radius smaller than the minimum required by the design data, which may induce the occurrence of fatigue cracks at the root of the trunnion fillet radius and adjacent structures (*e.g.*, spar and ribs). We are proposing this AD to detect and correct fatigue cracking of the wing trunnion fittings or adjacent structure, which could result in failure of the main landing gear, consequent damage to surrounding structure, and possible loss of control of the airplane during landing.

DATES: We must receive comments on this proposed AD by August 12, 2004.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- *Hand Delivery:* room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: 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:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–18582; Directorate Identifier 2003–NM–35–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

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

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that the trunnion fittings of the wings have been manufactured with a Web fillet radius smaller than the minimum required by the design data. This may induce fatigue cracks at the root of the trunnion fillet radius and adjacent structures (*e.g.*, spar and ribs). Such fatigue cracks, if not detected and corrected, could result in failure of the main landing gears (MLG), consequent damage to surrounding structure, and possible loss of control of the airplane during landing.

Relevant Service Information

EMBRAER has issued Service Bulletin 145–57–0034, Change 01, dated January 9, 2002. The service bulletin describes procedures for measuring the fillet radius dimension of the trunnion fitting webs of the wings; and reworking the fillet radius of the trunnion fitting web in order to increase the radius, doing related investigative actions, and doing applicable corrective actions, if necessary. The related investigative action involves performing a dye-penetrant inspection on the reworked area for cracks. The applicable corrective actions involve contacting EMBRAER for technical disposition. We have determined that accomplishment of the actions specified in the service information will adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2001–12–03R1, effective February 4, 2002, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil 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 DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require measuring the fillet radius dimension of the trunnion fitting webs of the wings; and reworking the fillet radius of the trunnion fitting web in order to increase the radius, doing related investigative actions, and doing applicable corrective actions, if necessary. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and the Service Bulletin.''

Differences Between Proposed AD and Service Bulletin

Operators should note that, 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 in accordance with a method approved by either the FAA or the DAC (or its delegated agent). In light of the type of repair 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 approved by either the FAA or the DAC would be acceptable for compliance with this proposed AD.

In addition, unlike the procedures described in the service bulletin, this proposed AD would not permit further flight if cracks are detected in the trunnion fitting of the main landing gear. We have determined that, because of the safety implications and consequences associated with such cracking, any cracked trunnion fitting must be repaired before further flight.

Costs of Compliance

This proposed AD would affect about 60 airplanes of U.S. registry. The proposed measurement would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $7,800, or $130 per airplane.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeonautica S.A. (EMBRAER): Docket No. FAA–2004–18582; Directorate Identifier 2003–NM–35–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 12, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145–57–0034, Change 01, dated January 9, 2002; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report indicating that trunnion fittings of the wings have been manufactured with a web fillet radius smaller than the minimum required by the design data, which may induce the occurrence of fatigue cracks at the root of the trunnion fillet radius and adjacent structures (*e.g.*, spar and ribs). We are issuing this AD to detect and correct fatigue cracking of the wing trunnion fittings or adjacent structure, which could result in failure of the main landing gear, consequent damage to surrounding structure, and possible loss of control of the airplane during landing.

Compliance

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

Service Bulletin

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of EMBRAER Service Bulletin 145–57–0034, Change 01, dated January 9, 2002.

Measurement

(g) Before the accumulation of 2,000 total flight cycles, or within 500 flight hours after the effective date of this AD, whichever occurs later, measure the fillet radius dimension of the trunnion fitting webs of the wings in accordance with paragraph 3.(C), ''Part I,'' of the service bulletin.

(1) If the fillet radius value is equal to or greater than 0.1969 inches (5 mm), no further action is required by this AD.

(2) If a fillet radius value is less than 0.0394 inches (1 mm), before further flight, do the actions specified in paragraph (h) of this AD.

(3) If the fillet radius value is equal to or greater than 0.0394 inch (1 mm), but less than 0.1969 inch (5 mm), before the accumulation of 4,000 total flight cycles, or within 500 flight hours after the effective date of this AD, whichever occurs later, do the actions specified in paragraph (h) of this AD.

Rework and Further Corrective Actions, if Necessary

(h) Rework the fillet radius of the trunnion fitting web to increase the radius, do related investigative actions, and do applicable corrective actions by accomplishing all the actions specified in paragraph 3.(D), ''Part II,'' of the service bulletin. Do the actions in accordance with the service bulletin, except as provided by paragraph (i) of this AD. Any applicable corrective actions must be done before further flight.

(1) If the final fillet radius is less than 0.1969 inch (5 mm) and the radius limit contour is reached, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Departmento de Aviacao Civil (DAC) (or its delegated agent).

(2) If the final fillet radius is equal to or greater than 0.1969 inches (5 mm), before further flight, shot-peen the reworked area in

accordance with paragraph 3.(E), ''Part III,'' of the service bulletin.

(i) If any crack is found in the structure during the related investigative action required by paragraph (h) of this AD, before further flight, repair in accordance with either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the DAC (or its delegated agent).

Credit for Previous Revisions of Service Bulletin

(j) Except as provided by paragraphs (h)(1) and (i) of this AD, measurements and rework of the fillet radius done before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–57–0034, dated October 11, 2001, are acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance (AMOC)

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

Related Information

(l) Brazilian airworthiness directive 2001–12–03R1, effective February 4, 2002, also addresses the subject of this AD.

Issued in Renton, Washington, on July 6, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15790 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18583; Directorate Identifier 2002–NM–285–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –300, –400, and –400D Series Airplanes; and Model 747SR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –300, –400, and –400D series airplanes; and Model 747SR series airplanes. This proposed AD would require repetitive inspections of the forward corner reveals for the main entry door (MED) 3 for cracking, and corrective actions if necessary. This proposed AD is prompted by reports of cracking in the forward corner reveals for the MED 3. We are proposing this AD to detect and correct misalignment of the girt bar fitting due to fatigue failure of the forward corner reveals for MED 3, which could lead to the door escape slide departing from the airplane if the door is opened when the slide is deployed, and consequent injuries to passengers and crew using the door escape slide during an emergency evacuation.

DATES: We must receive comments on this proposed AD by August 27, 2004.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- *Hand Delivery:* room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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

FOR FURTHER INFORMATION CONTACT: Nick Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18583; Directorate Identifier 2002–NM–285–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

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

Discussion

We have received reports from eight operators indicating that cracking of the

lower forward corner reveals for main entry door (MED) 3 was found on Model 747 series airplanes. Of the twelve forward corner reveals that were cracked, eleven were made of cast 356 aluminum and one was made of 6061 aluminum. The cause of the cracking of the forward corner reveals made of cast 356 aluminum is deflection of the airplane structure at the MED 3 frame. The cause of the cracking of the forward corner reveal made of 6061 aluminum was a manufacturing error during the manufacturing process. This condition, if not detected and corrected, could result in misalignment of the girt bar fitting due to fatigue failure of the forward corner reveals for MED 3, which could lead to the door escape slide departing from the airplane if the door is opened when the slide is deployed, and consequent injuries to passengers and crew using the door escape slide during an emergency evacuation.

Explanation of Related AD

We have previously issued AD 96–23–05, amendment 39–9810 (61 FR 58318, November 14, 1996), which applies to certain Boeing Model 747 series airplanes. That AD requires repetitive inspections to detect cracks and/or corrosion of the girt bar support fitting at certain main entry doors, and repair or replacement of the support fitting. That AD also provides for various terminating actions for the repetitive inspections. Inspections, repair, and replacement required by that AD are done in accordance with Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994. Accomplishment of the applicable repair in this proposed AD would constitute compliance with the requirements of paragraph (k)(2)(ii) of AD 96–23–05 for the repair of the corner casting (reveal) only.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 747–53–2460, dated June 27, 2002, which describes procedures for performing repetitive detailed inspections of the forward corner reveals for MED 3 for cracking, and follow-on and corrective actions, if necessary. Those actions include the following:

- Performing a material type inspection of the forward corner reveal to determine if it is made of cast 356 aluminum or 6061 aluminum;
- Replacing forward corner reveals with forward corner reveals made of 6061 aluminum;
- Repairing the forward corner reveals (including inspecting for material type and inspecting for cracks); and
- Contacting the manufacturer for repair of forward corner reveals made of 6061 aluminum.

We have determined that accomplishment of the actions specified in the service bulletin will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require repetitive inspections of the forward corner reveals for the MED 3 for cracking, and corrective actions if necessary. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and the Service Bulletin.''

Differences Between the Proposed AD and the Service Bulletin

Operators should note that, although the service bulletin specifies that, if the forward corner reveal is found to be made from 6061 aluminum or if a new 6061 aluminum corner reveal is installed, no further action is necessary, this proposed AD would require repetitive inspections if the forward corner reveal is made of 6061 aluminum. The cracking that was found in a forward corner reveal made of 6061 aluminum, as discussed previously, was detected after the service bulletin was issued. Therefore, we determined that all forward corner reveals need to be repetitively inspected to adequately ensure continued operational safety.

In addition, operators should note that, although the service bulletin does not specify coordinating with the manufacturer if the repair of a forward corner reveal consists of installing a new forward corner reveal made of 6061 aluminum, operators must coordinate with the manufacturer to ensure that the new forward corner reveal is free from manufacturing defects before obtaining FAA approval for the repair.

Although Figure 1 of the service bulletin says to ''repeat inspections every 3,000 flight-cycles'' and to ''perform the next inspection prior to 3,000 flight-cycles,'' this proposed AD requires repetitive inspections at intervals not to exceed 3,000 flight cycles for forward corner reveals made of cast 356 aluminum and repetitive inspections at intervals not to exceed 1,500 flight cycles for forward corner reveals made of 6061 aluminum.

Operators should also note that, while Boeing Special Attention Service Bulletin 747–53–2460, dated June 27, 2002, specifies the effectivity to be ''all 747 airplanes line numbers 1 through 1037 except for 747–SP's, Freighters and airplanes converted to Special Freighters,'' this proposed AD has an applicability of ''Model 747–100, –100B, –100B SUD, –200B, –200C, –300, –400, and –400D series airplanes; and Model 747SR series airplanes, line numbers 1 through 1,342 inclusive, except freighters and airplanes converted to Boeing special freighters.'' The line numbers were changed to include airplanes with forward corner reveals made of 6061 aluminum that may have a manufacturing defect. It has been verified that airplanes with line number 1343 and up have forward corner reveals installed that are made from 6061 aluminum and do not have the manufacturing defect.

Also operators should note that Figure 1 of the service bulletin specifies the initial inspection threshold to be ''At or prior to 7,000 flight-cycles, or within 2,000 flight-cycles of the issue date of this service bulletin, or within 3,000 flight-cycles of the last inspection of the door 3 corner reveal as given in Boeing Service Bulletin 747–53A2378, whichever is later.'' However, this proposed AD would require the initial inspection within 1,500 flight cycles after the effective date of the AD. We have determined that the threshold listed in Figure 1 of the service bulletin would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, we considered new reports since the service bulletin was issued, the manufacturer's recommendation and the degree of urgency associated with the subject unsafe condition. In light of all of these factors, we find that requiring the initial inspection within 1,500 flight cycles represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

In addition, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished 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 those findings.

Furthermore, although step 5 of Figure 8 of the service bulletin specifies that operators may accomplish the actions on forward corner reveals made of cast 356 aluminum in accordance with ''an operator's equivalent procedure,'' this proposed AD would require operators to accomplish step 5 of Figure 8 only in accordance with the procedures specified in Standard Overhaul Practices Manual (SOPM) 20–20–02. An ''operator's equivalent procedure'' may be used only if approved as an alternative method of compliance in accordance with paragraph (m) of this AD.

The differences described above have been coordinated with the manufacturer.

Costs of Compliance

This proposed AD would affect about 146 airplanes of U.S. registry and 926 airplanes worldwide. The proposed detailed inspection for cracking would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $9,490, or $65 per airplane, per inspection cycle.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2004–18583; Directorate Identifier 2002-NM–285-AD. Comments Due Date.

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by August 27, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –300, –400, and –400D series airplanes; and Model 747SR series airplanes, line numbers 1 through 1,342 inclusive, except freighters and airplanes converted to Boeing special freighters; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of cracking in the forward corner reveals for the main entry door (MED) 3. We are issuing this AD to detect and correct misalignment of the girt bar fitting due to fatigue failure of the forward corner reveals for MED 3, which could lead to the door escape slide departing from the airplane if the door is opened when the slide is deployed, and consequent injuries to passengers and crew using the door escape slide during an emergency evacuation.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, dated June 27, 2002.

Initial Inspections

(g) Within 1,500 flight cycles after the effective date of this AD, perform a detailed inspection of the forward corner reveals for MED 3 for cracking, in accordance with the service bulletin.

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.''

No Cracking Found—Repetitive Inspections

(h) If no crack is found during the detailed inspection required by paragraph (g) of this AD, before further flight, perform the material type inspection of the forward corner reveal to determine if it is made of cast 356 aluminum or 6061 aluminum, in accordance with the service bulletin.

(1) If the forward corner reveal is made of cast 356 aluminum, repeat the detailed inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 3,000 flight cycles.

(2) If the forward corner reveal is made of 6061 aluminum, repeat the detailed inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 1,500 flight cycles.

Cracking Found—Repair/Contact the FAA

(i) If any crack is found during the detailed inspection required by paragraph (g) of this AD, before further flight, perform the material type inspection of the forward corner reveal to determine if it is made of cast 356 aluminum or 6061 aluminum, in accordance with the service bulletin.

(1) If the forward corner reveal is made of cast 356 aluminum, before further flight, repair the forward corner reveal in accordance with the service bulletin or 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 those findings. For a repair method to be approved, the approval must specifically refer to this AD. Repeat the detailed inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 3,000 flight cycles.

(2) If the forward corner reveal is made of 6061 aluminum, 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 those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Operator's Equivalent Procedure

(j) Although step 5 of Figure 8 of the service bulletin specifies that operators may accomplish the actions in accordance with ''an operator's equivalent procedure,'' this AD requires operators to accomplish step 5 of Figure 8 in accordance with only the procedures specified in Standard Overhaul Practices Manual (SOPM) 20–20–02. An ''operator's equivalent procedure'' may be used only if approved as an alternative method of compliance in accordance with paragraph (m) of this AD.

Parts Installation

(k) As of the effective date of this AD, no person may install a door corner reveal made of cast 356 aluminum on any airplane in the location specified by this AD, except as provided by paragraph (i)(1) of this AD.

Compliance With AD 96–23–05 for MED 3 Only

(l) Accomplishment of the applicable repair required by this AD constitutes compliance with the repair of the MED 3, lower forward corner casting (reveal) only, as required by paragraph (k)(2)(ii) of AD 96–23–05, amendment 39–9810 (which specifies the actions be done in accordance with Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994). Accomplishment of the actions of this AD does not terminate the remaining requirements of AD 96–23–05.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15791 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26

[REG–153841–02]

RIN 1545–BB54

Election Out of GST Deemed Allocations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations provide guidance for making the election under section 2632(c)(5)(A)(i) of the Internal Revenue Code to not have the deemed allocation of unused generation-skipping transfer (GST) tax exemption under section 2632(c)(1) apply with regard to certain transfers to a GST trust, as defined in section 2632(c)(3)(B). The proposed regulations also provide guidance for making the election under section 2632(c)(5)(A)(ii) to treat a trust as a GST trust. The regulations primarily affect individuals.

DATES: Written and electronic comments and requests for a public hearing must be received by October 12, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–153841–02), room 5203, Internal Revenue Service, PO Box 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–153841–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS—REG–153841–02).

FOR FURTHER INFORMATION CONTACT: Mayer R. Samuels, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by September 13, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 26.2632–1(b)(2)(ii), (b)(2)(iii), and (b)(3). This information is required by the IRS for taxpayers who elect to have the automatic allocation rules not apply to the current transfer and/or to future transfers to the trust or to terminate such election. This information is also required by the IRS for taxpayers who elect to treat trusts described in section 2632(c)(3)(B)(i) through (vi) as GST trusts or to terminate such election. This information will be used to identify the trusts to which the election or termination of election will apply. The collection of information is required in order to have a valid election or termination of election. The likely respondents are individuals contributing to trusts that have skip persons as beneficiaries.

Estimated total annual reporting burden: 12,500 hours.

Estimated average annual burden hours per respondent: 30 minutes.

Estimated number of respondents: 25,000.

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

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

Background

Section 2601 imposes a tax on every generation-skipping transfer (GST). Under section 2631(a), for purposes of determining the amount of GST tax imposed on a transfer, every individual is allowed a GST exemption ($1,500,000 in 2004) that may be allocated by the individual (or his or her executor) to any property with regard to which the individual is the transferor. Generally, under section 2632(a), an allocation of an individual's GST exemption may be made at any time on or before the date prescribed for filing the estate tax return for the individual's estate (determined with regard to extensions).

Section 2632 also provides deemed allocation rules pursuant to which an individual's available GST exemption is automatically allocated to certain kinds of transfers, without any action on the part of the transferor. Under section 2632(b), an individual's unused GST exemption is automatically allocated to transfers made during that individual's lifetime that are direct skips as defined in section 2612(c), to the extent necessary to make the inclusion ratio zero for the property transferred. Under section 2632(c), in the case of a lifetime transfer made after December 31, 2000

that is an indirect skip, the transferor's available GST exemption is automatically allocated to the transfer to the extent necessary to make the inclusion ratio zero for the property transferred. Section 2632(c)(3)(A) defines an indirect skip as a transfer of property (other than a direct skip) subject to gift tax that is made to a GST trust. A GST trust is defined in section 2632(c)(3)(B), in general, as any trust that could have a generation-skipping transfer. However, no trust described in section 2632(c)(3)(B)(i) through (vi) is treated as a GST trust, because a sufficient possibility exists (based on the statutory criteria) that the trust corpus will not be distributed to lower generations. A transfer to any trust described in section 2632(c)(3)(B)(i) through (vi) will not be subject to the automatic allocation of the GST exemption. The automatic allocation under section 2632(c) also applies to an indirect skip occurring upon the post-2000 termination of an estate tax inclusion period.

Under section 2632(c)(5)(A)(i)(I), an individual may elect out of the deemed allocation rules so that GST exemption will not be allocated automatically to a particular transfer that is an indirect skip. Under section 2632(c)(5)(B)(i), this election out with regard to a particular indirect skip shall be deemed timely if made on a timely filed gift tax return for the calendar year in which the transfer was made, or deemed to have been made under section 2632(c)(4) with regard to trusts subject to an estate tax inclusion period, or on such later dates as may be prescribed in regulations.

Under section 2632(c)(5)(A)(i)(II), an individual may elect out of the deemed allocation rules for indirect skips so that GST exemption will not be allocated automatically to any or all transfers made to the trust by that individual, regardless of when a transfer is, or may in the future be, made. Under section 2632(c)(5)(B)(ii), this election out with regard to any or all transfers to the trust by that individual may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Alternatively, under section 2632(c)(5)(A)(ii), an individual may elect to treat any trust as a GST trust with regard to any or all transfers made by that individual to the trust. If this election is made, the rules for the automatic allocation of the GST exemption will apply with regard to that individual's transfers to the trust, notwithstanding that the trust is described in section 2632(c)(3)(B)(i) through (vi). Under section 2632(c)(5)(B)(ii), the election to treat a trust as a GST trust may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Notice 2001–50 (2001–2 C.B. 189), states that the Treasury Department and the IRS will issue regulations providing that the election out of the automatic allocation for indirect skips and the election to treat any trust as a GST trust must be made on a timely filed federal gift tax return (which is the same rule that applies for the election out of the automatic allocation for direct skips contained in section 2632(b)(3) and § 26.2632–1(b)(1)(i)).

Explanation of Provisions

Under the proposed regulations, the election out of the automatic allocation rules for indirect skips and the election to treat any trust as a GST trust are to be made on a timely filed federal gift tax return.

Under the proposed regulations, a transferor who wants to elect out of the automatic allocation rules for indirect skips has the option of electing out for the specific transfer to the GST trust, or making a single election with regard to the trust that applies to the current transfer and all subsequent transfers made by that transferor to the trust. Under the second option, once the election is made with regard to a trust, the election remains effective for all subsequent transfers to that trust by the electing transferor, until that transferor's election is terminated. Practitioners have commented that in many cases, particularly situations in which trust corpus consists of primarily insurance contracts, the transferor may not be required to file a Federal gift tax return reporting annual transfers to a GST trust because the transfers qualify for the gift tax annual exclusion under section 2503(b). If under the terms of the trust instrument distributions to skip persons are unlikely, the transferor may choose not to allocate GST exemption to the trust. The rule in the proposed regulation is intended to alleviate the need to repeatedly file a gift tax return to elect out of the automatic allocation rules for transfers that would not otherwise require a Federal gift tax return to be filed. Thus, once the transferor ''elects out'' of the automatic allocation rule for indirect skips with regard to any or all transfers made by that transferor to the trust, the election out, until terminated, remains effective for all subsequent transfers made by that transferor to the trust, without any further reporting requirement on the part of the transferor. A similar rule applies with regard to the election to treat a trust as a GST trust.

Finally, the proposed regulations revise the examples illustrating the rules for allocation of GST exemption to reflect the recent statutory changes.

Proposed Effective Date

The regulations are proposed to be applicable for elections made on or after the date that the proposed regulations are published in the **Federal Register**. However, any election under section 2632(c)(5)(A) made before that date will be recognized if the election was made on a timely filed gift tax return in a manner that provided adequate notice to the Commissioner that the transferor made the election.

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 proposed regulations, and because these proposed 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 Internal Revenue Code, the proposed regulations will be submitted to the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (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 will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Mayer R. Samuels, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. If you have any questions concerning these proposed

regulations, please contact Mayer R. Samuels at (202) 622–3090. Other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 26 is proposed to be amended as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Paragraph 1. The authority citation for part 26 continues to read, in part, as follows:

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

Par. 2. In § 26.2600–1, the table is amended under the entries for § 26.2632–1 by revising the entry for paragraph (b)(2) and adding entries for paragraphs (b)(3), (b)(4) and (e) to read as follows:

§ 26.2600–1 Table of contents.

* * * * *

§ 26.2632–1 Allocation of GST exemption.

* * * * *

(b) * * *

(2) Automatic allocation to indirect skips made after December 31, 2000.

(3) Election to treat trust as GST trust.

(4) Allocation to other transfers.

* * * * *

(e) Effective date

* * * * *

Par. 3. Section 26.2632–1 is amended as follows:

1. Paragraph (b)(2) is redesignated as paragraph (b)(4).

2. Paragraphs (b)(2) and (b)(3) are added.

3. In newly designated paragraph (b)(4)(i), the third sentence is revised.

4. In newly designated paragraph (b)(4)(ii)(A)(*1*), the fourth sentence is revised.

5. In newly designated paragraph (b)(4)(ii)(B):

a. All references to paragraph ''(b)(2)(ii)(A) (*1*)(i)'' are removed and ''(b)(4)(ii)(A)(1)(i)'' is added in its place.

b. All references to paragraph ''(b)(2)(ii)(A)(*1*)(ii)'' are removed and ''(b)(4)(ii)(A)(1)(ii)'' is added in its place.

c. All references to paragraph ''(b)(2)(ii)(A)(*1*)(iii)'' are removed and ''(b)(4)(ii)(A)(1)(iii)'' is added in its place.

6. *Examples 1* through *5* in newly designated paragraph (b)(4)(iii) are revised.

7. In paragraph (c)(1), the first sentence is removed and two sentences are added in its place.

8. In paragraph (d)(1), the fourth sentence is revised.

9. Paragraph (e) is added.

The additions and revisions read as follows:

§ 26.2632–1 Allocation of GST exemption.

* * * * *

(b) * * *

(2) *Automatic allocation to indirect skips made after December 31, 2000*—(i) *In general.* An indirect skip is a transfer of property to a GST trust as defined in section 2632(c)(3)(B) provided that the transfer is subject to gift tax and does not qualify as a direct skip. In the case of an indirect skip made after December 31, 2000, to which section 2642(f) (relating to transfers subject to an estate tax inclusion period) does not apply, the transferor's unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). In the case of an indirect skip to which section 2642(f) does apply, the indirect skip is deemed to be made at the close of the estate tax inclusion period and the GST exemption is deemed to be allocated at that time. The transferor may prevent the automatic allocation of GST exemption with regard to an indirect skip, as provided in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) *Election to have automatic allocation rules not apply to the current transfer.* The transferor may prevent the automatic allocation of GST exemption with regard to the current indirect skip (and not to any other transfer) to a trust, or to one or more separate shares that are treated as separate trusts under § 26.2654–1(a)(1), by attaching a statement to a timely filed Form 709 (as defined in paragraph (b)(1)(ii) of this section) for the calendar year in which the transfer was made (whether or not a Form 709 would otherwise be required for that year). The statement must identify the trust (or separate share), describe the transfer, and specifically provide that the transferor is electing, pursuant to section 2632(c)(5)(A), to have the automatic allocation rules contained in section 2632(c)(1) not apply to the described transfer to the trust (or separate share). In the case of a transfer treated as made one-half by the transferor and one-half by the transferor's spouse under section 2513, a statement must be attached to the return filed by each transferor seeking to prevent the automatic allocation. The election will apply only with regard to the described transfer, and all subsequent transfers to the trust (or separate share) will be subject to the automatic allocation rules, unless the transferor subsequently files an election described in paragraph (b)(2)(iii) of this section, or files an election under this paragraph with regard to each transfer as additional transfers are made.

(iii) *Election to have automatic allocation rules not apply to both the current transfer and any or all future transfers to the trust*—(A) *In general.* The transferor may prevent the automatic allocation of GST exemption to both the current transfer and any or all subsequent transfers made by the transferor to the trust or to one or more separate shares that are treated as separate trusts under § 26.2654–1(a)(1). The transferor must attach a statement to a timely filed Form 709 (as defined paragraph (b)(1)(ii) of this section) for the calendar year in which the current transfer was made (whether or not a Form 709 would otherwise be required for that year). The statement must identify the trust (or separate share), describe the current transfer, and specifically provide that pursuant to section 2632(c)(5)(A) the transferor is electing to have the automatic allocation rules contained in section 2632(c)(1) not apply to the described current transfer as well as all future transfers made by the transferor to the trust (or separate share). The election, unless and until terminated, will remain in effect for all future transfers made by the transferor to the trust (or separate share). No future gift tax return will have to be filed by the transferor in order to prevent the automatic allocation of the GST exemption to such future transfers.

(B) *Termination of election.* The election described in paragraph (b)(2)(iii)(A) of this section may be terminated by the transferor for transfers to the trust (or separate share) in a subsequent year by attaching a statement to a timely filed Form 709 (as defined in paragraph (b)(1)(ii) of this section) for the calendar year in which the first transfer to which the election is not to apply was made (whether or not a Form 709 would otherwise be required for that year). The statement must identify the trust (or separate share), describe the transfer, and provide that the prior election out of the GST automatic allocation rule described in § 26.2632–1(b)(2)(iii)(A) is terminated. Accordingly, the automatic allocation rules contained in section 2632(c)(1) are to apply to the described current transfer as well as to all future transfers made by the transferor to the trust (or separate share) unless and to the extent that another election under section 2632(c)(5)(A) is made in the future.

(iv) *Subsequent allocations.* Making an election under paragraph (b)(2)(ii) or (iii) of this section does not prevent the transferor from allocating the transferor's available GST exemption to a current transfer (or, in the case of an election made under paragraph (b)(2)(iii) of this section, to any future transfer) to a trust (or separate share) either on a timely filed Form 709 (as defined in paragraph (b)(1)(ii) of this section) reporting the transfer, or at a later date in accordance with the provisions of paragraph (b)(4) of this section.

(3) *Election to treat trust as GST trust*—(i) *In general.* A transferor may elect to treat any trust as a GST trust, in which case the automatic allocation rules will apply to current and future transfers made by the electing transferor to the trust. The transferor must attach a statement to a timely filed Form 709 (as defined in paragraph (b)(1)(ii) of this section) for the calendar year in which a transfer was made by the transferor (whether or not a Form 709 would otherwise be required for that year). The statement must identify the trust, describe the current transfer, and specifically provide that, pursuant to section 2632(c)(5)(A)(ii), the transferor is electing to have the trust treated as a GST trust as defined in section 2632(c)(3)(B). As a result of this election, the current transfer and all future transfers made by the transferor to the trust will be indirect skips as defined in paragraph (b)(2)(i) of this section to which the transferor's unused GST exemption will be automatically allocated in accordance with paragraph (b)(2) of this section. The election will remain in effect for all future transfers made by the transferor to the trust unless and until terminated (as described below).

(ii) *Termination of election.* The election may be terminated by the transferor in a subsequent year by attaching to a timely filed Form 709 (as defined in paragraph (b)(1)(ii) of this section) for the calendar year in which the first transfer to which the election is not to apply was made (whether or not a Form 709 would otherwise be required for the year), a statement identifying the trust, describing the current transfer, and providing that the prior election to treat the trust as a GST trust as provided under § 26.2632–1(b)(3)(i) is terminated. Accordingly, if the trust does not satisfy the definition of a GST trust, the automatic allocation rules contained in section 2632(c)(1) will not apply to the described current transfer or to any future transfers made by the transferor to the trust, unless and until another election under section 2632(c)(5)(A) is made in the future.

(4) *Allocation to other transfers*—(i) *In general.* * * * See paragraph (b)(4)(ii) of this section. * * *

(ii) *Effective date of allocation*—(A) *In general.* (*1*) * * * For purposes of this paragraph (b)(4)(ii), the Form 709 is deemed filed on the date it is postmarked to the Internal Revenue Service address as directed in forms or other guidance published by the Service. * * *

* * * * *

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (b):

Example 1. Modification of allocation of GST exemption. On December 1, 2003, T transfers $100,000 to an irrevocable GST trust described in section 2632(c)(3)(B). The transfer to the trust is not a direct skip. The date prescribed for filing the gift tax return reporting the taxable gift is April 15, 2004. On February 10, 2004, T files a Form 709 on which T properly elects out of the automatic allocation rules contained in section 2632(c)(1) with respect to the transfer in accordance with paragraph (b)(2)(ii) of this section, and allocates $50,000 of GST exemption to the trust. On April 13th of the same year, T files an additional Form 709 on which T confirms the election out of the automatic allocation rules contained in section 2632(c)(1) and allocates $100,000 of GST exemption to the trust in a manner that clearly indicates the intention to modify and supersede the prior allocation with respect to the 2003 transfer. The allocation made on the April 13 return supersedes the prior allocation because it is made on a timely-filed Form 709 that clearly identifies the trust and the nature and extent of the modification of GST exemption allocation. The allocation of $100,000 of GST exemption to the trust is effective as of December 1, 2003. The result would be the same if the amended Form 709 decreased the amount of the GST exemption allocated to the trust.

Example 2. Modification of allocation of GST exemption. The facts are the same as in *Example 1*, except on July 8, 2004, T files a Form 709 attempting to reduce the earlier allocation. The return is not a timely filed return. The $100,000 GST exemption allocated to the trust, as amended on April 13, 2004, remains in effect because an allocation, once made, is irrevocable and may not be modified after the last date on which a timely filed Form 709 can be filed.

Example 3. Effective date of late allocation of GST exemption. On December 1, 2003, T transfers $100,000 to an irrevocable GST trust described in section 2632(c)(3)(B). The transfer to the trust is not a direct skip. The date prescribed for filing the gift tax return reporting the taxable gift is April 15, 2004. On February 10, 2004, T files a Form 709 on which T properly elects out of the automatic allocation rules contained in section 2632(c)(1) in accordance with paragraph (b)(2)(ii) of this section with respect to that transfer. On December 1, 2004, T files a Form 709 and allocates $50,000 to the trust. The allocation is effective as of December 1, 2004.

Example 4. Effective date of late allocation of GST exemption. T transfers $100,000 to a GST trust on December 1, 2003, in a transfer that is not a direct skip. On April 15, 2004, T files a Form 709 on which T properly elects out of the automatic allocation rules contained in section 2632(c)(1) with respect to the entire transfer in accordance with paragraph (b)(2)(ii) of this section and T does not make an allocation of any GST exemption on the Form 709. On September 1, 2004, the trustee makes a taxable distribution from the trust to T's grandchild in the amount of $30,000. Immediately prior to the distribution, the value of the trust assets was $150,000. On the same date, T allocates GST exemption to the trust in the amount of $50,000. The allocation of GST exemption on the date of the transfer is treated as preceding in point of time the taxable distribution. At the time of the GST, the trust has an inclusion ratio of .6667 (1–(50,000/150,000)).

Example 5. Automatic allocation to split-gift. On December 1, 2003, T transfers $50,000 to an irrevocable GST Trust described in section 2632(c)(3)(B). The transfer to the trust is not a direct skip. On April 30, 2004, T and T's spouse, S, each files an initial gift tax return for 2003, on which they consent, pursuant to section 2513, to have the gift treated as if one-half had been made by each. Previously, neither T nor S filed a timely gift tax return electing out of the automatic allocation rules contained in section 2632(c)(1). As a result of the election under section 2513, which is retroactive to the date of T's transfer, T and S are each treated as the transferor of one-half of the property transferred in the indirect skip. Thus, $25,000 of T's unused GST exemption and $25,000 of S's unused GST exemption is automatically allocated to the trust. Both allocations are effective on and after the date that T made the transfer. The result would be the same if T's transfer constituted a direct skip subject to the automatic allocation rules contained in section 2632(b).

(c) *Special rules during an estate tax inclusion period*—(1) *In general.* An allocation of GST exemption (including an automatic allocation to a direct skip, but not an indirect skip) to property subject to an estate tax inclusion period (ETIP) cannot be revoked, but becomes effective no earlier than the date of any termination of the ETIP with respect to the trust. See paragraph (b)(2)(i) of this section regarding the automatic allocation of GST exemption to an indirect skip subject to an ETIP. * * *

* * * * *

(d) *Allocations after the transferor's death*—(1) * * * A late allocation of GST exemption by an executor, other than an allocation that is deemed to be made under section 2632(b)(1) or (c)(1), with respect to a lifetime transfer of property is made on Form 706, Form 706NA, or Form 709 (filed on or before the due date of the transferor's estate tax

return) and is effective as of the date the allocation is filed. * * *

* * * * *

(e) *Effective Date*. Paragraphs (b)(2) and (b)(3), the third sentence of paragraph (b)(4)(i), the fourth sentence of paragraph (b)(4)(ii)(A), paragraph (b)(4)(iii), the first two sentences of paragraph (c)(1), and the fourth sentence of paragraph (d)(1) of this section, when published as final regulations, will apply as of July 13, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–15752 Filed 7–12–04; 8:45 am]

BILLING CODE 4830–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 202, 211 and 212

[Docket No. RM 2004–5]

Reconsideration Procedure

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: With a few modifications, this notice of proposed rulemaking continues procedures adopted by the U.S. Copyright Office in 1995 that permit copyright applicants to request reconsideration of its decisions to refuse registration. The purpose of this notice of proposed rulemaking is to amend those procedures and incorporate them into Copyright Office regulations. This proposal continues to give copyright applicants two opportunities to seek reconsideration of a Copyright Office decision to refuse registration. A significant modification is that the procedures are also made applicable to the Office's refusals to register mask works and vessel hull designs.

DATES: Comments are due by September 13, 2004. Reply comments are due by October 26, 2004.

ADDRESSES: If hand delivered by a private party, an original and five copies of any comment should be brought to: Room LM–401 of the James Madison Memorial Building and addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000. If delivered by a commercial, non-government courier or messenger, an original and five copies of any comment must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, N.E. between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. If sent by mail, an original and five copies of any comment should be addressed to: GC/I&R, P.O. Box 70400, Southwest Station, Washington D.C. 20024–0400. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Associate General Counsel, or Renee Coe, Senior Attorney. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

The Copyright Office is responsible for registering copyright claims submitted by authors or other copyright claimants. 17 U.S.C. 410(a). In fiscal year 2003, the Copyright Office issued 534,122 copyright registrations, many of which covered multiple works.

Although copyright protection is automatic, copyright law provides important benefits for enforcing rights that are only available to owners who register their claims. In fact, a suit for copyright infringement of a United States work cannot be instituted unless a copyright claimant has submitted an application to register the work with the Copyright Office. 17 U.S.C. 411(a). Even if the Copyright Office ultimately refuses to register the work, a copyright owner is entitled to institute an infringement action.

There are other benefits, too. When a certificate of registration contains an effective date that is either before publication or within five years after publication, a court is required to treat it as prima facie evidence of the validity of the copyright and the facts stated in the certificate. 17 U.S.C. 410(c). In an infringement suit, attorney's fees or statutory damages may not be awarded for an unpublished work if its effective registration date is after the commencement of the infringement, or for a published work if its effective registration date is after commencement of the infringement and more than three months after first publication of the work. 17 U.S.C. 412.

Subsections 410(a) and (b) of title 17 of the United States Code set forth the Copyright Office's role in examining and registering copyright claims, including the authority to refuse registration:

(a) When, after examination, the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. The certificate shall contain the information given in the application, together with the number and effective date of the registration.

(b) In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal.

In fiscal year 2003, the Copyright Office refused to register 7,241 copyright claims, less than two percent of the number of registrations issued.

In 1995, the Copyright Office established interim procedures for reconsidering its refusals to register copyright claims. 60 FR 21983 (May 4, 1995). The interim procedures amended section 606.04 of the practices found in Compendium of Copyright Office Practices II (1984). Prior to 1995, an applicant had two opportunities to request that the Office reconsider its refusal to register a claim, but both requests were reviewed in the Examining Division. The 1995 interim procedures established a Board of Appeals to review second requests for reconsideration. The purpose of this notice is to amend the 1995 procedures and to incorporate them into title 37 of the U.S. Code of Federal Regulations.

II. Changes Proposed by the Notice of Proposed Rulemaking

This proposed rulemaking includes changing the name of the Copyright Office ''Board of Appeals'' to the ''Review Board.'' The Office is proposing this name change to communicate more accurately the nature of the proceedings involved at the second level of reconsideration. This notice also provides that a decision by the Review Board constitutes final agency action.

Another significant change is to clarify that reconsideration proceedings are also available for requests to reconsider Copyright Office refusals to register claims in mask works and vessel hull designs each which have a unique

form of protection that is separate from copyright protection. The Copyright Office registers claims in mask works under chapter 9 of title 17 of the United States Code. Pub. L. No. 98–620, 98 Stat. 3335, 3347. It registers claims in vessel hull designs under chapter 13 of title 17 of the United States Code. Pub. L. No. 105–304, 112 Stat. 2860, 2905. As with copyright claims, the Copyright Office examines submissions to register mask works, 13 CFR part 211, and vessel hull designs, 13 CFR part 212, to determine whether they satisfy legal requirements for registration. If they do not, the Office may refuse registration.

In fiscal year 2003, the Copyright Office registered 397 mask works and 45 vessel hull designs; it refused to register seven claims in mask works and one claim in a vessel hull design.[1]

III. Summary of Procedures

This notice of proposed rulemaking establishes procedures for applicants to request that the Copyright Office reconsider refusals to register copyright claims and claims in mask works or vessel hull designs. There are two opportunities for reconsideration of a refusal to register. At the first level of reconsideration, the Examining Division of the Copyright Office reviews its initial decision to refuse registration. At the second level, the Review Board will conduct the review of a refusal to register. The Review Board is composed of the Register of Copyrights, the General Counsel, and the Chief of the Examining Division, or their respective designees.

An applicant may make a first request for reconsideration after he or she receives a written notice from the Examining Division explaining why the Division initially refused to register the applicant's claim. The request must be in writing and set forth the reasons for the applicant's objections, including any legal considerations.

The applicable fee for a first request for reconsideration, as set forth in 37 CFR 201.3(d)(4), must accompany the written request for reconsideration. The written request must be received by the Copyright Office no later than three months from the date that appears in the written notice of its initial decision to refuse registration. The Examining Division bases its decision on all of an applicant's written submissions. It does not hear oral argument in support of the request for reconsideration.

If the Examining Division decides a work is entitled to be registered, it notifies the applicant in writing of that decision and the work is registered. However, if the Examining Division upholds its initial refusal to register, it sends the applicant a written notification stating the reasons for refusal within four months from the date the Division receives the first request for reconsideration. Failure by the Examining Division to issue a written notification within four months does not result in registration of the applicant's work.

Upon receiving written notice that the Examining Division has again refused registration, an applicant may seek a second reconsideration by submitting a written request to the Review Board. With minor differences, the procedures for the second reconsideration by the Board are similar to the procedures for the first.

The second request for reconsideration must also be in writing and set forth the reasons for the applicant's objections, including any legal considerations. The applicable fee for a second request, as set forth in § 201.3(d)(4), must accompany the written request for reconsideration. This request must be received by the Copyright Office no later than three months from the date that appears in the written notice of the Examining Division's decision to refuse registration in response to the first request for reconsideration. The Board will base its decision on an applicant's written submissions and will not hear oral argument in support of the second request for reconsideration.

If the Review Board decides a work is entitled to be registered, it will notify the applicant of that decision and the work will be registered. However, if the Board upholds the Examining Division's refusal to register, it will send the applicant a written notification stating the reasons for refusal. A decision by the Review Board constitutes final agency action.

This notice of proposed rulemaking provides addresses for hand delivery and mailing correspondence for both the first and second requests for reconsideration. The Copyright Office continues to experience delays in the delivery of mail whether sent through the U.S. Postal Service or a private carrier, such as Federal Express, due to procedures designed to mitigate security risks.

If a request for a reconsideration sent timely arrives after the proposed deadline, the Office will apply the regulation on postal disruptions, 37 CFR 201.8, to determine the timeliness of the filing. However, claimants who wish to obtain prompt reconsideration of refusals to register would be well-advised to consider delivery by hand to the appropriate address given in this Notice.

To ensure delivery for any correspondence relating to both first and second requests for reconsideration, the address on the outside envelope should be the one provided in the proposed regulation for the Copyright R&P Division Office. That address should be used no matter how the correspondence is delivered, whether sent through the U.S. Postal Service, through another mail carrier or by hand delivery. To ensure correct routing and handling of correspondence within the Copyright Office, the regulation also requires that the word ''RECONSIDERATION'' must be clearly indicated on the first line of the address appearing on the envelope. For the cover letter accompanying a request for reconsideration, the subject line should indicate the Copyright Office control number assigned to applications and either ''FIRST RECONSIDERATION'' or ''SECOND RECONSIDERATION,'' as appropriate.

Regulatory Flexibility Act Statement

Although the Copyright Office, as a department of the Library of Congress and part of the Legislative Branch, is not an ''agency'' subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of the proposed amendment on small businesses. The Register has determined that the amendments would not have a significant economic impact on a substantial number of small business entities that would require a provision of special relief for them. The proposed amendments are designed to minimize any significant economic impact on small business entities.

List of Subjects in 37 CFR Part 202

Copyright, Mask works, Reconsideration of refusal to register claims, Vessel Hulls.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend parts 202, 211 and 212 of 37 CFR, chapter II in the manner set forth below:

PART 202–REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 would continue to read as follows:

Authority: 17 U.S.C. 702.

2. Add § 202.5 to read as follows:

[1] Five mask works were rejected because they were not eligible under the statute, and two were rejected because the two-year filing dead line was missed. The vessel hull design was rejected for failure to meet the filing deadline.

§ 202.5 Reconsideration Procedure for Refusals to Register.

(a) General. This section prescribes rules pertaining to procedures for administrative review of the Copyright Office's refusal to register a claim to copyright, a mask work, or a vessel hull design upon a finding by the Office that the application for registration does not satisfy the legal requirements of title 17 of the United States Code. If an applicant's initial claim is refused, the applicant is entitled to request that the initial refusal to register be reconsidered.

(b) First reconsideration. Upon receiving a written notification from the Examining Division explaining the reasons for a refusal to register, an applicant may request that the Examining Division reconsider its initial decision to refuse registration, subject to the following requirements:

(1) An applicant must request in writing that the Examining Division reconsider its decision. A request for reconsideration must include the reasons the applicant believes registration was improperly refused, including any legal arguments in support of those reasons and any supplementary information. The Examining Division will base its decision on the applicant's written submissions.

(2) The fee set forth in § 201.3(d)(4) of this chapter must accompany the first request for reconsideration.

(3) The first request for reconsideration and the applicable fee must be received by the Copyright Office no later than three months from the date that appears in the Examining Division's written notice of its initial decision to refuse registration. When the ending date for the three-month time period falls on a weekend or a federal holiday, the ending day of the three-month period shall be extended to the next federal work day.

(4) If the Examining Division decides to register an applicant's work in response to the first request for reconsideration, it will notify the applicant in writing of the decision and the work will be registered. However, if the Examining Division again refuses to register the work, it will send the applicant a written notification stating the reasons for refusal within four months of the date on which the first request for reconsideration is received by the Examining Division. When the ending date for the four-month time period falls on a weekend or a federal holiday, the ending day of the four-month period shall be extended to the next federal work day. Failure by the Examining Division to send the written notification within the four-month period shall not result in registration of the applicant's work.

(c) Second reconsideration. Upon receiving written notification of the Examining Division's decision to refuse registration in response to the first request for reconsideration, an applicant may request that the Review Board reconsider the Examining Division's refusal to register, subject to the following requirements:

(1) An applicant must request in writing that the Review Board reconsider the Examining Division's decision to refuse registration. The second request for reconsideration must include the reasons the applicant believes registration was improperly refused, including any legal arguments in support of those reasons and any supplementary information, and must address the reasons stated by the Examining Division for refusing registration upon first reconsideration. The Board will base its decision on the applicant's written submissions.

(2) The fee set forth in § 201.3(d)(4) of this chapter must accompany the second request for reconsideration.

(3) The second request for reconsideration and the applicable fee must be received in the Copyright Office no later than three months from the date that appears in the Examining Division's written notice of its decision to refuse registration after the first request for reconsideration. When the ending date for the three-month time period falls on a weekend or a federal holiday, the ending day of the three-month period shall be extended to the next federal work day.

(4) If the Review Board decides to register an applicant's work in response to a second request for reconsideration, it will notify the applicant in writing of the decision and the work will be registered. If the Review Board upholds the refusal to register the work, it will send the applicant a written notification stating the reasons for refusal.

(d) (1) All mail, including any that is hand delivered, should be addressed as follows: RECONSIDERATION, Copyright R&P Division, P.O. Box 71380, Washington, DC 20024–1380. If hand delivered by a commercial, non-government courier or messenger, a request for reconsideration must be delivered between 8:30 a.m. and 4 p.m. to: Congressional Courier Acceptance Site, located at Second and D Streets, NE, Washington, DC. If hand delivered by a private party, a request for reconsideration must be delivered between 8:30 a.m. and 5 p.m. to: Room 401 of the James Madison Memorial Building, located at 101 Independence Avenue, SE, Washington, DC.

(2) The first page of the written request must contain the Copyright Office control number and clearly indicate either ''FIRST RECONSIDERATION'' or ''SECOND RECONSIDERATION,'' as appropriate, on the subject line.

(e) For any particular request for reconsideration, the provisions relating to the time requirements for submitting a request under this § 202.5 may be suspended or waived, in whole or in part, by the Register of Copyrights upon a showing of good cause. Such suspension or waiver shall apply only to the request at issue and shall not be relevant with respect to any other request for reconsideration from that applicant or any other applicant.

(f) Composition of the Review Board. The Review Board shall consist of the Register of Copyrights, the General Counsel, and the Chief of the Examining Division, or their respective designees.

(g) Final Agency Action. A decision by the Review Board in response to a second request for reconsideration constitutes final agency action.

PART 211—MASK WORK PROTECTION

3. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702 and 908.

4. Add § 211.7 to read as follows:

§ 211.7 Reconsideration procedure for refusals to register.

The requirements prescribed in § 202.5 of this chapter for reconsideration of refusals to register copyright claims are applicable to requests to reconsider refusals to register mask works under 17 U.S.C. chapter 9, unless otherwise required by this part.

PART 212—PROTECTION OF VESSEL HULL DESIGNS

5. The authority citation for part 212 continues to read as follows:

Authority: 17 U.S.C. chapter 13.

6. Add § 212.7 to read as follows:

§ 212.7 Reconsideration procedure for refusals to register.

The requirements prescribed in § 202.5 of this chapter for reconsideration of refusals to register copyright claims are applicable to requests to reconsider refusals to register vessel hull designs under 17 U.S.C. chapter 13, unless otherwise required by this part.

Dated: July 8, 2004.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 04–15853 Filed 7–12–04; 8:45 am]

BILLING CODE 1410–33–S

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 270

[Docket No. RM 2002–1F]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing to amend its regulations to provide for the reporting of uses of sound recordings performed by means of digital audio transmissions pursuant to statutory license for the period October 28, 1998, through March 31, 2004.

DATES: Comments are due no later than August 12, 2004.

ADDRESSES: If hand delivered by a private party, an original and five copies of any comment should be brought to: Room LM–401 of the James Madison Memorial Building and addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000. If delivered by a commercial, non-government courier or messenger, an original and five copies of any comment must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, N.E. between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. If sent by mail, an original and five copies of any comment should be addressed to: GC/I&R, P.O. Box 70400, Southwest Station, Washington D.C. 20024–0400. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

The Copyright Act grants copyright owners of sound recordings the exclusive right to perform their works publicly by means of digital audio transmissions subject to certain limitations and exceptions. Among the limitations placed on the performance right for sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio radio, and business establishment services to perform those sound recordings publicly by means of digital audio transmissions. 17 U.S.C. 114.

Similarly, copyright owners of sound recordings are granted the exclusive right to make copies of their works subject to certain limitations and exceptions. Among the limitations placed on the reproduction right for sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio, and business establishment services to make ephemeral copies of those sound recordings to facilitate their digital transmission. 17 U.S.C. 112(e).

Both the section 114 and 112 licenses require services to, among other things, report to copyright owners of sound recordings on the use of their works. Both licenses direct the Librarian of Congress to establish regulations to give copyright owners reasonable notice of the use of their works and create and maintain records of use for delivery to copyright owners. 17 U.S.C. 114(f)(4)(A) and 17 U.S.C. 112(e)(4). The purpose of this notice and recordkeeping requirement is to ensure that the royalties collected under the statutory licenses are distributed to the correct recipients.

On March 11, 2004, the Copyright Office published interim regulations specifying notice and recordkeeping requirements for use of sound recordings under the section 112 and 114 licenses. *See* 69 FR 11515 (March 11, 2004).[1] Those interim regulations, however, apply only prospectively to the use of sound recordings commencing during the second calendar quarter of 2004, leaving the question of what records of use must be prescribed for uses of sound recordings from October 28, 1998 (the date the statutory licenses first became available for services other than preexisting subscription services), to March 31, 2004 (the ''historic period'').[2]

The task of crafting regulations to govern records of prior use is complicated by the fact that many services have maintained few or, in many instances, no records of such use. As a result, the Office published a notice of inquiry seeking public comment on the form and content that such regulations should take. 68 FR 58054 (October 8, 2003). Specifically, the Office sought comment on the following: how it should deal with the problem of incomplete or absent records for prior uses; whether licensees should be required to report actual performance data for the historical period, if available, so that copyright owners and performers whose works were performed could be identified; and whether any proxies could be used in lieu of incomplete or missing prior records, taking into account the attendant costs and who should bear such costs. *Id.*

Before discussing the comments filed in response to the notice of inquiry, the Office notes that as a threshold matter, the National Association of Broadcasters (''NAB'') argues that the Office is without authority to conduct this phase of the rulemaking as any resultant rule would apply retroactively. NAB asserts that neither the ''general rulemaking power of the Copyright Office nor the recordkeeping rulemaking authority provided in Sections 112 or 114 provides'' the express authority to promulgate retroactive rules as required under Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988), and Motion Picture Association of America, Inc. v. Oman, 969 F.2d 1154 (D.C. Cir. 1992). NAB comment at 2. Furthermore, if the Office were to promulgate such a rule, it would be unenforceable ''as the Copyright Office cannot retroactively turn licensed performances into infringement.'' Accordingly, NAB argues that ''as a matter of law and as a matter of policy,'' the Office should

[1] Those regulations did not apply to preexisting subscription services, which are defined in section 114 as services that perform sound recordings by means of noninteractive audio-only subscription digital audio transmissions which were in existence and were making such transmissions to the public for a fee on or before July 31, 1998. 17 U.S.C. 114(j)(11). Requirements for preexisting subscriptions services were announced in 1998, *See*64 FR 34289 (June 24, 1998), and will not be affected by the rules proposed in this notice.

[2] The Office noted that the interim regulations also did not address the format in which records of use should be preserved because of the ≥highly technical nature of delivery of data in an electronic format and the widespread disagreement among SoundExchange and the users of the statutory licenses over formatting.≥ 69 FR at 11517, n.7. As stated on March 11, the Office will deal with such requirements in the future.

not issue retroactive regulations. NAB comment at 1; NAB reply at 1. As will be discussed below, the Office is not imposing any retroactive requirements, but is proposing to use a proxy in lieu of imposing reporting requirements on licensees for the historical period. Since the Office's proposal does not require a licensee to file or report historical data under specific rules, it is not enacting retroactive rules. Thus, there is no need to address NAB's argument at this time.

Discussion

The Office received comments from: the Digital Media Association (''DiMA''); Music Choice; Royalty Logic, Inc. (''RLI''); Sirius Satellite Radio, Inc. (''Sirius'') and XM Satellite Radio, Inc. (''XM Satellite''), jointly; Montpelier Communications LLC d.b.a. Onion River Radio (''Montpelier''); SoundExchange, Inc.; the National Association of Broadcasters (''NAB''); and Intercollegiate Broadcasting System, Inc. (''IBS'') and Harvard Radio Broadcasting Co., Inc. (WHRB [FM]) (''Harvard Radio''), jointly. Reply comments were filed by Collegiate Broadcasters Inc. (''CBI''); DiMA; NAB; SoundExchange; and IBS and Harvard Radio, jointly.

The comments confirmed that the Office faces a formidable task in fashioning regulations governing the reporting of uses of sound recordings that have occurred over the last five years that on the one hand provide copyright owners and performers with sufficient information to identify such use and that on the other hand are not overly burdensome to licensees or too costly to either side. After careful review and consideration of the comments, the Office concludes that there is no effective way to establish reporting requirements for the historic period that would achieve this goal by requiring licensees to report actual performance data.

The primary obstacle in achieving this goal is the fact that few, if any, records of prior use have been maintained to date and those that do exist will be of little or no use in forming the basis of distribution of royalties for the historic period. In other words, in many instances, the information simply does not exist. Therefore, it would make no difference whether services were required to report sample data for up to one week per quarter, as suggested by DiMA, whether the services report only the information actually available to them, as proposed by RLI, or whether the reporting requirements were to be of a more comprehensive nature, as advocated by SoundExchange. The likelihood of obtaining any useful and meaningful data is small. Even assuming that specific reporting requirements for the historic period could be imposed, the comments make clear that some services would be able to provide reports of prior uses with varying degrees of compliance with such requirements while others would not be able to provide any reports at all. This creates inequity among the services. *See*DiMA comment at 3; SoundExchange reply at 4. In addition, the cost and effort that would be required of SoundExchange to process such inconsistent data would be disproportionate to the amount of useful data that would result. Thus, there simply is no way to fully and accurately reflect actual performances for the historical period. Any attempt to do so would impose significant costs on the services and SoundExchange and ultimately would not result in any meaningful or useful data upon which to base a distribution.

The commenters reached the same conclusion as evidenced by their reply comments in which they advocated that a proxy be used in lieu of reporting requirements for the historic period. The proxy that emerged as the one most favored by the commenters was the data already provided by the preexisting subscription services to SoundExchange under the regulations announced in 1998 and now codified at 37 CFR 270.2 for transmissions made under section 114(f). SoundExchange reply at 3–4; DiMA reply at 6; NAB reply at 2. Specifically, SoundExchange would take the royalties paid for a given period in the historic timeframe and then would ''allocate those royalties according to the same percentages used for the allocation of royalties paid by the preexisting subscription services for the corresponding period.'' SoundExchange comment at 19.

The commenters identified several advantages to using this proxy. First, DiMA notes that the transmissions made by preexisting subscription services are the most analogous to the statutorily licensed webcaster transmissions, as both offer ''multiple themed and genre-based channels, and many channels programming varied styles of music within particular genres.'' DiMA reply at 6–7. Similarly, SoundExchange points out that ''royalties paid by one class of statutory licensee can be matched up with a corresponding period'' from the preexisting subscription services, thus providing ''some comfort that new releases and popular songs likely to have been performed by webcasters . . . would be captured in the reports of use'' of the preexisting subscription services. SoundExchange comment at 20. Furthermore, the preexisting subscription services ''transmitted a diverse number of individual sound recordings'' during the historic period so the royalties paid by the licensees here can be allocated among many copyright owners and performers. *Id.*

Another advantage of using reports of the preexisting subscription services as a proxy is that it is cost effective for both licensees and copyright owners and performers. Licensees do not have to spend time and money to compile information that likely would be incomplete or inconsistent. *See*NAB reply at 2. Likewise, since the preexisting subscription services have been providing their reports of use to SoundExchange in a ''standardized, electronic format'' since 1998, these reports have already been ''cleaned up'' and therefore require no additional processing by SoundExchange. Consequently, administrative costs will be lower, which will result in more money being available for distribution. SoundExchange comment at 19; DiMA reply at 7–8.

Moreover, adoption of the reports provided by the preexisting subscription services as a proxy for reporting for the historic period would also level the ''reporting playing field'' among licensees so that ''certain licensees would not be burdened with having to provide reports of use while competitors were permitted to provide no reports of use.'' SoundExchange reply at 4. Therefore, this eliminates any disproportionate burden on licensees that would result from the imposition of reporting requirements for the historic period.

Finally, use of the reports of the preexisting subscription services as a proxy for records of prior use does not impose any reporting requirements on licensees for the historic period. DiMA reply at 8. Therefore, NAB's concerns about the Office engaging in retroactive rulemaking are allayed. *Id.*

While the use of reports of the preexisting subscription services as a proxy for reporting for the historic period has many advantages, the commenters acknowledged the existence of certain disadvantages. For instance, while the reports of the preexisting subscription services may be a reasonably close approximation of the performances of sound recordings for the historic period, it is unavoidable that some copyright owners and performers will not receive full compensation for use of their works and others will receive no compensation at all if their works were performed by webcasters but not by any of the preexisting subscription services.

SoundExchange comment at 16 n.7, 20; SoundExchange reply at 2; DiMA reply at 6. However, there is no good alternative method for identifying and accounting for such performances. As a result, the commenters felt that the benefits of using the reports of the preexisting subscription services as a proxy outweighed the unavoidable drawbacks associated with the use of these reports. *Id.*

Because there is no feasible way to obtain meaningful and useful data through the imposition of reporting requirements, the Office agrees with the commenters that use of a proxy in lieu thereof is the proper course to take. Furthermore, the Office is persuaded by the comments that the reports of the preexisting subscription services represent the most appropriate proxy. Therefore, the Office is proposing to adopt regulations specifying that the records of use submitted by the preexisting subscription services during the period between October 28, 1998 and March 31, 2004, shall be considered the records of use for all services operating under the section 112(e) and section 114 licenses and that no additional records need be filed by the nonsubscription services, the satellite digital radio audio services or new types of subscription services.

In so proposing, the Office acknowledges that use of such a proxy, indeed any proxy, is far from a perfect solution to the problems posed by historical reporting. However, given the futility that would result in requiring licensees to report information that most simply do not have, the Office must conclude that the perfect solution does not exist, and that use of the data from the preexisting subscription services is the optimal method to ensure that royalties collected for the historic period are equitably distributed to copyright owners and performers with minimal delay, cost, and effort. For the reasons set forth in the comments, the Office believes that use of the reports of the preexisting subscription services as a proxy represents the simplest, most practical and most cost-effective solution.

Parties Affected

When the Copyright Office issued interim regulations governing the notice and recordkeeping regulations on a prospective basis, it rejected a request that those regulations not be applicable to the preexisting satellite digital audio radio services which had reached an agreement with SoundExchange. *See*69 FR 11515, 11517 (March 11, 2004). Sirius, XM Satellite and SoundExchange make the same request here that any regulations governing prior uses not apply to preexisting satellite digital audio radio services because of an agreement between those services and SoundExchange ''address[ing] prospective and retroactive notice and recordkeeping requirements.'' Sirius/XM Satellite comment at 1; SoundExchange reply at 3–4.

The Office again denies this request for the reasons set forth in the March 11 **Federal Register** document, specifically that ''it is the Library's responsibility, and the Library's alone'' to promulgate notice and recordkeeping requirements for all services, including the preexisting satellite digital audio radio services that operate under sections 112 and 114. 69 FR at 11518 citing Letter to RIAA, AFM, AFTRA, XM Satellite, and Sirius from the Copyright Office at 1–2 (May 8, 2003). The Office reiterates that the parties to this agreement could have requested that the Office adopt the agreed-upon terms regarding historical reporting, but they did not do so. 69 FR at 11518. Consequently, the proposed regulation governing prior uses will apply to preexisting satellite digital audio services,[3] as well as to non-subscription services, business establishment services, and new subscription services. We once again note that presumably no copyright owner or performer who is a party to the negotiated agreement would be in a position to complain of the failure by a service that is also a party to the agreement to comply with the proposed regulation announced today, assuming that the regulation is adopted as final. *Id.*

Moreover, the proposed regulation announced today will not apply to those entities, such as Montpelier, IBS/Harvard Radio, and CBI, who are signatories to either of the agreements published by the Office on December 24, 2002, (67 FR 78510), or June 11, 2003, (68 FR 35008), in accordance with the Small Webcaster Settlement Act of 2002, Public Law 107–321, 116 Stat. 2780.[4] *See also* 69 FR at 11517 (March 11, 2004). The proposed regulations will also not apply to the three preexisting subscription services because they have already reported their records of use for the relevant license period under the notice and recordkeeping requirements set forth in § 270.2. *See*69 FR at 11517 (March 11, 2004).[5]

Designated Agents

SoundExchange was designated by the Librarian of Congress as the Receiving Agent to receive statements of account and royalty payments from licensees for the license period October 28, 1998, through December 31, 2002. 37 CFR 261.4(b). Additionally, the Librarian designated SoundExchange and RLI as Designated Agents to distribute said royalty payments to copyright owners and performers. *Id.* However, RLI would serve as a designated agent only for those copyright owners and performers who expressly elected RLI as their agent for the distribution of royalties. 37 CFR 261.4(c). In order to make such election, a copyright owner or performer had to notify SoundExchange in writing of his or her desire to elect RLI as their designated agent by ''no later than thirty days prior to the receipt by the Receiving Agent of that royalty payment.'' *Id.* Otherwise, SoundExchange would be the default designated agent. *Id.*

It is the Office's understanding that no copyright owners or performers have elected RLI as their designated agent in accordance with § 261.4(c). If that understanding is incorrect, SoundExchange and RLI are requested to correct it in their comments to this notice of proposed rulemaking. In the meantime, the Office presumes that such an election of RLI as a designated agent has not been made and therefore the proposed regulation does not require SoundExchange to provide to RLI any data from the preexisting subscription services.

Limitation of Liability

In its comments, SoundExchange requested that in the event the Office

[3] The Office notes that currently no statutory rate exists for transmissions made by preexisting satellite digital audio radio services. Therefore, conceivably a question could be raised whether any royalties paid by such services are covered by the license. The Office takes no position, however, regarding the status of these royalties.

[4] The Small Webcaster Settlement Act provided in pertinent part that SoundExchange could enter into agreements with small commercial webcasters and noncommercial webcasters that would, among other things, provide that for a period ending on December 31, 2004, small commercial webcasters and noncommercial webcasters would be governed by notice and recordkeeping provisions other than those established by the Library of Congress.

[5] Music Choice has also asked the Office to apply the same notice and recordkeeping requirements to any eligible subscription, satellite digital audio, business establishment or new subscription services operated by a pre-existing subscription service. Since the adopted rules apply to all licensees who were operating under the section 112(e) and section 114 statutory licenses prior to the second calendar quarter of 2004, its request is moot with respect to the historical time period. Moreover, consideration of the request on a going forward basis has already been addressed. In the Office's earlier notice announcing its interim regulations, it stated that ≥the recordkeeping interim regulations announced today will not apply to preexisting subscription services,≥ thus making it clear that preexisting subscription services are the only services not covered by the interim regulations. 69 FR at 11518.

decided to use the reports of the preexisting subscription services as a proxy for historical reporting, the Office should also adopt regulations ''holding SoundExchange harmless from any under- or over- payments resulting from the use of such data for distribution purposes.'' SoundExchange comment at 20. The Copyright Office does not have the power to excuse SoundExchange, or anyone else, from liability for a breach of a legal obligation. *See*67 FR 45239, 45269 (July 8, 2002). Therefore, we cannot comply with SoundExchange's request. However, we believe that regulations already exist that provide SoundExchange with the reassurance it seeks. Specifically, §§ 261.4(h) and 262.4(g) require that the designated agent distribute royalty payments on a basis that values all performances equally based upon information obtained pursuant to regulations governing records of use. Because the rules proposed today would provide that the reports of the preexisting subscription services shall constitute the records of use for the other services for the historic period, SoundExchange may-indeed, it has no choice but to-rely on those reports in making its distributions.[6]

Comments on the Proposed Regulation

Any party objecting to the proposal to use the reports of the preexisting subscription services as a proxy for reporting requirements for the historic period is requested to set forth in detail how the Office can obtain more accurate information for the historic period and respond to NAB's argument that the Copyright Office does not have the authority to promulgate retroactive recordkeeping regulations.

List of Subjects

Copyright, Sound recordings.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend part 270 of 37 CFR to read as follows:

1. The authority citation for part 270 continues to read as follows:

Authority: 17 U.S.C. 702.

[6] Because the Librarian's decision setting rates and terms for the license period from October 28, 1998 through December 31, 2002 is the subject of an appeal pending before the United States Court of Appeals for the District of Columbia Circuit, the only royalties from the historic period that can be distributed prior to the resolution of that appeal are those collected for the period from January 1, 2003 through March 31, 2004, a period for which final rates and terms have been established. See 69 FR 5693 (February 6, 2004).

PART 270—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSEES

2. Part 270 is proposed to be amended as follows:

a. By redesignating § 270.4 as § 270.5; and

b. By adding a new § 270.4 to read as follows:

§ 270.4 Reports of use of sound recordings under statutory license prior to April 1, 2004.

(a) General. This section prescribes the rules which govern reports of use of sound recordings by nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period from October 28, 1998, through March 31 , 2004.

(b) Reports of use. Reports of use filed by preexisting subscription services for transmissions made under 17 U.S.C. 114(f) pursuant to § 270.2 for use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period October 28, 1998, through March 31, 2004, shall serve as the reports of use for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services for their use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period from October 28, 1998, through March 31, 2004.

Dated: July 8, 2004

Marybeth Peters,

Register of Copyrights.

[FR Doc. 04–15854 Filed 7–12–04; 8:45 am]

BILLING CODE 1410–33–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 30

RIN 0991–AB18

Claims Collection

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) proposes to amend its regulations to implement the provisions of the Debt Collection Improvement Act of 1996 (DCIA), as implemented by the Department of Justice (Justice) and the Department of the Treasury (Treasury) as the Federal Claims Collection Standards (FCCS). The proposed rule implements the final rule promulgated by Justice and Treasury, and would amend the process by which HHS can administratively collect, offset, compromise, suspend and terminate collection activity for civil claims for money, funds, or property, and the rules and process by which HHS can refer civil claims to Treasury, Treasury-designated debt collection centers, or Justice for collection by further administrative action or litigation, as applicable.

DATES: Submit comments on or before September 13, 2004.

ADDRESSES: Comments concerning this proposed rule can be mailed to: Jeffrey Davis, Acting Associate General Counsel, General Law Division, Office of the General Counsel, Department of Health and Human Services, Room 4760 Cohen Building, 330 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Jeffrey Davis, Acting Associate General Counsel; his telephone number is 202–619–0153.

SUPPLEMENTARY INFORMATION:

Background

The Debt Collection Act of 1982 (DCA), Pub. L. 97–365, was implemented on a government-wide basis by the FCCS, set forth at 4 CFR part 101 *et seq.* issued by Justice and the General Accounting Office on March 9, 1984. See 49 FR 8889 (1984). HHS implemented the FCCS at 45 CFR part 30. As mandated by the DCIA, Justice and Treasury jointly promulgated the revised FCCS at 31 CFR parts 900–904 to reflect the legislative changes to the Federal debt collection procedures enacted by the DCIA. The revised FCCS supercede the current FCCS, and removed the Comptroller General as promulgator of the FCCS. HHS is required to implement regulations, consistent with the DCIA and the regulations promulgated by Justice and Treasury. To the extent any provision of this rule is inconsistent with a more specific provision of parts 31, 32 or 33 of this Title, the more specific provision shall apply.

Basic Provisions

In accordance with the requirements of the DCIA and the implementing regulations promulgated by Justice and Treasury at 31 CFR parts 900–904, the proposed regulation establishes the rules and procedures for the

administrative collection, offset, compromise, suspension and termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701 (b), and the process by which HHS can refer civil claims to Treasury, Treasury-designated debt collection centers, or Justice for collection by further administrative action or litigation, as applicable. The proposed regulation does not apply to claims between federal agencies. The proposed rule affects HHS' debtors.

This proposed rule would revise the current Department regulation in accordance with the substantive and procedural requirements of the DCIA and the implementing final rule. The various provisions of the Department's regulation have been redrafted for clarity but do not substantively change the debt collection regulation and are not discussed herein. The following changes to the Department's current debt collection regulation are incorporated in the proposed regulation to reflect the DCIA and the implementing final rule:

1. Demand Letter. One demand should be sufficient. It will include the applicable standards for imposing any interest, penalties, or administrative costs; use of collection agencies, federal salary offset, tax refund offset, administrative offset, and litigation; any rights the debtor may have to seek review of the Department's determination of the debt and to enter into a reasonable repayment agreement; and information regarding the Department's remedies to enforce payment of the debt.

2. Mutual Releases. HHS and debtors will exchange mutual releases of non-tax liabilities, in all appropriate instances, when a claim is compromised.

3. Increase in Amounts. The principal claim amount that HHS is authorized to compromise or to suspend or terminate collection activity thereon, without concurrence by Justice, is increased from $20,000 to $100,000. In addition, the minimum amount of a claim that may be referred to the Justice for litigation is increased from $600 to $2,500.

4. Transferring or Referring Delinquent Debt. There are new debt collection procedures for transferring or referring delinquent debt to Treasury or a Treasury-designated debt collection center for collection.

5. Centralized Administrative Offset. There are new debt collection procedures for mandatory, centralized administrative offset by disbursing officials.

6. Mandatory Credit Bureau Reporting. There are new debt collection procedures for mandatory credit bureau reporting.

7. Prohibition Against Federal Financial Assistance. There are new debt collection procedures prohibiting federal financial assistance in the form of loans, loan guarantees, or loan insurance to debtors, unless waived by the Secretary. Disaster loans are exempt from this prohibition.

8. Army Hold-up List. The use of the Army hold-up list to report indebted contractors to the Department of the Army has been discontinued.

Authority: 31 U.S.C. 3711.

Request for Comments

Comments are requested and must be received at the above address, by the above date.

Reporting and Recordkeeping Requirements

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this proposed rule will impose no new reporting or record-keeping requirements on any member of the public.

Economic Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13258 (February 2002, Amending Executive Order 12866 on Regulatory Planning and Review); the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. 96–354); the Unfunded Mandated Reform Act of 1995 (UMRA, Pub. L. 104–4); and Executive Order 13132 (August 1999, Federalism). Executive Order 12866 (the Order), as amended by Executive Order 13258, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in 1 year). We have determined that the proposed rule is consistent with the principals set forth in the Order, and we find that the proposed rule would not have an effect on the economy that exceeds $100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2). In accordance with the provisions of the Order, the rule was reviewed by the Office of Management and Budget.

Under the RFA, 5 U.S.C. 605(b), if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. The agency has considered the effect that this rule would have on small entities. I hereby certify, under 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribunal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we find that the proposed rule would not have an effect of this magnitude on the economy. Therefore, no further analysis is required under the UMRA.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed the proposed rule under the threshold criteria of Executive Order 13132 and have determined that this proposed rule would not have substantial direct impact on States, or on the distribution of power and responsibilities among the various levels of government. As there are no federalism implications, a federalism impact statement is not required.

Alternatives Considered

The Department seeks to promulgate the proposed rule consistent with the requirements of the DCIA, as implemented at 31 CFR parts 900–904. There is little room for us to consider alternatives. Where the Department has discretion (*e.g.* in section 30.17, whether to require installment agreements to be in writing and in section 30.11 regarding the demand letter), we drafted the proposed rule to be as strong as possible to maximize the Department's debt collection ability and to make the demand letter to be informative as possible.

List of Subjects in 45 CFR Part 30

Administrative practice and procedure, Claims, Debts, Appeals, Government employees, Privacy.

For the reasons set forth in the preamble, HHS proposes to revise 45 CFR part 30 to read as follows:

PART 30—CLAIMS COLLECTION

Subpart A—General Provisions

Sec.
30.1 Purpose, authority, and scope.
30.2 Definitions.
30.3 Antitrust, fraud, exception in the account of an accountable official, and interagency claims excluded.
30.4 Compromise, waiver, or disposition under other statutes not precluded.
30.5 Other administrative remedies.
30.6 Form of payment.
30.7 Subdivision of claims.
30.8 Required administrative proceedings.
30.9 No private rights created.

Subpart B—Standards for the Administrative Collection of Debts

30.10 Collection activities.
30.11 Demand for payment.
30.12 Administrative offset.
30.13 Debt reporting and the use of credit reporting agencies.
30.14 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
30.15 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits or privileges.
30.16 Liquidation of collateral.
30.17 Collection in installments.
30.18 Interest, penalties, and administrative costs.
30.19 Review of cost effectiveness of collection.
30.20 Taxpayer information.

Subpart C—Debt Compromise

30.21 Scope and application.
30.22 Basis for compromise.
30.23 Enforcement policy.
30.24 Joint and several liability.
30.25 Further review of compromise offers.
30.26 Consideration of tax consequences to the Government.
30.27 Mutual release of the debtor and the Government.

Subpart D—Suspending and Terminating Collection Activities

30.28 Scope and application.
30.29 Suspension of collection activity.
30.30 Termination of collection activity.
30.31 Exception to termination.
30.32 Discharge of indebtedness; reporting requirements.

Subpart E—Referrals to the Department of Justice

30.33 Prompt referral.
30.34 Claims Collection Litigation Report.
30.35 Preservation of evidence.
30.36 Minimum amount of referrals.

Authority: 31 U.S.C. 3711(d).

Subpart A—General Provisions

§ 30.1 Purpose, authority, and scope.

(a) *Purpose.* This part prescribes the standards and procedures for the Department's use in the administrative collection, offset, compromise, and suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701 (b) and this part. Covered activities include the collection of debts in any amount; the compromise and suspension or termination of collection activity of debts that do not exceed $100,000, or such higher amount as the Attorney General may prescribe, exclusive of interest, penalties, and administrative costs; and the referral of debts to the Department of the Treasury, Department of the Treasury-designated debt collection centers, or the Department of Justice for collection by further administrative action or litigation, as applicable.

(b) *Authority.* The Secretary is issuing the regulations in this part under the authority contained in 31 U.S.C. 3711(d). The standards and procedures prescribed in this part are authorized under the Federal Claims Collection Act, as amended, Public Law 89–508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (October 25, 1982), the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, 1358 (April 26, 1996) and the Federal Claims Collection Standards at 31 CFR parts 900 through 904.

(c) *Scope.* (1) The standards and procedures prescribed in this part apply to all officers and employees of the Department, including officers and employees of the various Operating Divisions and Regional Offices of the Department, charged with the collection and disposition of debts owed to the United States.

(2) The standards and procedures set forth in this part will be applied except where specifically excluded herein or where a statute, regulation or contract prescribes different standards or procedures.

(3) Regulations governing the use of certain debt collection procedures created under the Debt Collection Improvement Act of 1996, including tax refund offset, administrative wage garnishment, and federal salary offset, are contained in parts 31 through 33 of this chapter.

(4) Further guidance may be found in the Departmental General Administration Manual, Accounting Manual, Personnel Manual, Grants Program Directives, and any other supplemental manual issued by an Operating Division, Office or Program within the Department. In case of conflict or inconsistencies, this regulation takes precedence except as provided by paragraph (c)(2) of this section.

§ 30.2. Definitions.

In this part—

Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Government, including Government corporations.

Appropriate official means the Department official who, by statute or delegation of authority, determines the existence and amount of debt.

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a federal legal holiday, in which case the next business day following the holiday will be considered the last day of the period.

Claim see the definition for the term ''debt.'' The terms claim and debt are synonymous and interchangeable.

Creditor agency means an agency to which a debt is owed, including a debt collection center acting on behalf of a creditor agency.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a federal legal holiday, in which case the next business day will be considered the last day of the period.

Debt or *claim* means an amount of money, funds, or other property determined by an appropriate official of the federal Government to be owed to the United States from any person, organization, or entity, except another federal agency. For the purpose of administrative offset, the term includes an amount owed by an individual to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. Debts include, but are not limited to, amounts owed pursuant to: loans insured or guaranteed by the United States; fees; leases; rents; royalties; services; sales of real or personal property; federal salary overpayments; overpayments to program beneficiaries, contractors, providers, suppliers, and grantees; audit disallowance determinations; civil penalties and

assessments; theft or loss; interest; fines and forfeitures (except those arising under the Uniform Code of Military Justice); and, all other similar sources.

Debt collection center means the Department of the Treasury, or other federal agency, subagency, unit, or division designated by the Secretary of the Treasury to collect debts owed to the United States.

Debtor means an individual, organization, association, partnership, corporation, or State or local government or subdivision indebted to the Government, or the person or entity with legal responsibility for assuming the debtor's obligation.

Debts arising under the Social Security Act are overpayments to, or contributions, reimbursements, penalties or assessments owed by, any entity, individual, or State under the Social Security Act. Such amounts include amounts owed to the Medicare program under section 1862(b) of the Social Security Act. Salary overpayments and other debts that result from the administration of the provisions of the Social Security Act are not deemed to ''arise under'' the Social Security Act for purposes of this part.

Delinquent debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Department means the Department of Health and Human Services, and its Operating Divisions and Regional Offices.

Disbursing official means an officer or employee who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another law.

Disposable pay means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay, remaining after deduction of amounts required by law to be withheld. For purposes of calculating disposable pay, legally required deductions that must be applied first include: tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes, FICA, Medicare; health and life insurance premiums; and retirement contributions. Amounts deducted under garnishment orders, including child support garnishment orders, are not legally required deductions for calculating disposable pay.

Evidence of service means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

Hearing means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If the Secretary determines that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or veracity, the Secretary may provide an oral hearing.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Late charges means interest, penalties, and administrative costs required or permitted to be assessed on delinquent debts.

Legally enforceable means that there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action.

Local government means a political subdivision, instrumentality, or authority of any State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico, or an Indian tribe, band or nation.

Operating Division means each separate component, agency, subagency, and unit within the Department of Health and Human Services, including, but not limited to, the Administration for Children and Families, the Administration on Aging, the Centers for Disease Control and Prevention, the Centers for Medicare & Medicaid Services, the Food and Drug Administration, the National Institutes of Health, Substance Abuse and Mental Health Services Administration, Indian Health Service, Health Resources and Services Administration, Agency for Toxic Substances and Disease Registry, Agency for Healthcare Research and Quality, and the Office of the Secretary.

OPM means the Office of Personnel Management.

Payment authorizing agency means an agency that transmits a voucher to a disbursing official for the disbursement of public money.

Payments made under the Social Security Act means payments by the Department to beneficiaries, providers, intermediaries, physicians, suppliers, carriers, States, or other contractors or grantees under a Social Security Act program, including: Title I (Grants to States for Old-Age Assistance for the Aged); Title II (Federal Old-Age, Survivors, and Disability Insurance Benefits); Title III (Grants to States for Unemployment Compensation Administration); Title IV (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services); Title V (Maternal and Child Health Services Block Grant); Title IX (Miscellaneous Provisions Relating to Employment Security); Title X (Grants to States for Aid to the Blind); Title XI, Part B (Peer Review of the Utilization and Quality of Health Care Services); Title XII (Advances to State Unemployment Funds); Title XIV (Grants to States for Aid to Permanently and Totally Disabled); Title XVI (Grants to States for Aid to the Aged, Blind, and Disabled); Title XVII (Grants for Planning Comprehensive Action to Combat Mental Retardation); Title XVIII (Health Insurance for the Aged and Disabled); Title XIX (Grants to States for Medical Assistance Programs); Title XX (Block Grants to States for Social Services); and, Title XXI (State Children's Health Insurance Program). Federal employee salaries and other payments made by the Department in the course of administering the provisions of the Social Security Act are not deemed to be ''payable under'' the Social Security Act for purposes of this part.

Private collection contractors means private debt collection under contract with the Department to collect a nontax debt or claim owed to the Department. The term includes private debt collectors, collection agencies, and commercial attorneys.

Salary offset means an administrative offset to collect a debt owed by a federal employee through deductions at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

Secretary means the Secretary of Health and Human Services, or the Secretary's designee within any Operating Division or Regional Office.

Taxpayer identification number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

§ 30.3 Antitrust, fraud, exception in the account of an accountable official, and interagency claims excluded.

(a) *Claims involving antitrust violations or fraud.* (1) The standards in this part relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of antitrust laws or to any debt involving fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Unless the Department of Justice returns a referred claim to the Department for further handling in accordance with parts 31 CFR 900 through 904 and this part, only the Department of Justice has the authority to compromise, suspend, or terminate collection activity on such claims.

(2) The standards in this part relating to the administrative collection of claims apply to the extent authorized by the Department of Justice in a particular case.

(3) Upon identification of a debt suspected of involving an antitrust violation or fraud, a false claim, misrepresentation, or other criminal activity or misconduct, the Secretary shall refer the debt to the Office of the Inspector General for review.

(4) Upon the determination of the Office of the Inspector General that a claim is based in whole or in part on conduct in violation of the antitrust laws, or involves fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, the Secretary shall promptly refer the case to the Department of Justice for action.

(5) At its discretion, the Department of Justice may return the claim to the Secretary for further handling in accordance with the standards in 31 CFR parts 900 through 904 and this part.

(b) *Exception in the account of an accountable official.* The standards in this part do not apply to compromise of an exception in the account of an accountable official. Only the Comptroller General may compromise such a claim.

(c) *Interagency claims.* This part does not apply to claims between federal agencies. The Department will attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146.

§ 30.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing in this part precludes the Department from disposing of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code and the Federal Claims Collection Standards, 31 CFR parts 900 through 904. Any statute and implementing regulation specifically applicable to the claims collection activities of the Department will take precedence over this part.

§ 30.5 Other administrative remedies.

The remedies and sanctions available under this part for collecting debts are not intended to be exclusive. Nothing contained in this part precludes using any other administrative remedy which may be available for collecting debts owed to the Department, such as converting the method of payment under a grant from an advancement to a reimbursement method or revoking a grantee's letter-of-credit.

§ 30.6 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, the Department may demand the return of specific property or the performance of specific services.

§ 30.7 Subdivision of claims.

Debts may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711 (a)(2). A debtor's liability arising from a particular transaction or contract shall be considered a single debt in determining whether the debt, exclusive of interest, penalties and administrative costs, exceeds $100,000, or such higher amount as prescribed by the Attorney General for purposes of compromise, or suspension or termination of collection activity.

§ 30.8 Required administrative proceedings.

This part does not supersede, or require omission or duplication of administrative proceedings required by contract, or other laws or regulations. *See for example*, 42 CFR part 50 (Public Health Service), 45 CFR part 16 (Departmental Grant Appeals Board), and 48 CFR part 33 (Federal Acquisition Regulation) and part 333 (Health and Human Services Acquisition Regulation).

§ 30.9 No private rights created.

The standards in this part do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, the Department, its officers, or any other person, nor shall the failure of the Department to comply with any of the provisions of this part be available to any debtor as a defense.

Subpart B—Standards for the Administrative Collection of Debts

§ 30.10 Collection activities.

(a) *General rule.* The Secretary shall aggressively and timely collect all debts arising out of activities of, or referred or transferred for collection actions to, the Department. The collection activities provided under this part shall be undertaken promptly with follow-up action taken as necessary. Normally, the initial written demand for payment shall be made no later than 30 days after a determination by an appropriate official that a debt exists.

(b) *Cooperation with other agencies.* The Department shall cooperate with other agencies in their debt collection activities.

(c) *Transfer of delinquent debts.* (1) *Mandatory transfer.* The Secretary shall transfer debts 180 days or more delinquent to the Department of the Treasury in accordance with the requirements of 31 CFR 285.12. This requirement does not apply to any debt that:

(i) Is in litigation or foreclosure;

(ii) Will be disposed of under an approved asset sale program within one year of becoming eligible for sale;

(iii) Has been referred to a private collection contractor for a period of time acceptable to the Secretary of the Treasury;

(iv) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury (see paragraph (c) (2) of this section);

(v) Will be collected under internal offset procedures within three years after the debt first became delinquent; or

(vi) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States.

(2) *Permissive transfer.* The Secretary may refer a debt less than 180 days delinquent, including debts referred to the Department by another agency, to the Department of the Treasury, or with the consent of the Department of the Treasury, to a Treasury-designated debt collection center to accomplish efficient, cost effective debt collection. Referrals to debt collection centers shall be at the discretion of, and for a time period acceptable to, the Secretary of the Treasury. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

§ 30.11 Demand for payment.

(a) *Written demand for payment.* (1) Written demand, as described in paragraph (b) of this section, shall be

made promptly upon a debtor in terms that inform the debtor of the consequences of failing to cooperate with the Department to resolve the debt.

(2) Normally, the demand letter will be sent no later than 30 days after the appropriate official determines that the debt exists. The demand letter shall be sent by first class mail to the debtor's last known address.

(3) When necessary to protect the Government's interest, for example to prevent the running of a statute of limitations, the written demand for payment may be preceded by other appropriate action under this part, including immediate referral to the Department of Justice for litigation.

(b) *Demand letters.* The specific content, timing, and number of demand letters shall depend upon the type and amount of the debt and the debtor's response, if any, to the Department's letters or telephone calls. Generally, one demand letter should suffice; however, more may be used.

(1) The written demand for payment shall include the following information:

(i) The nature and amount of the debt, including the basis for the indebtedness;

(ii) The date by which payment should be made to avoid late charges and enforced collection, which generally shall be no later than 30 days from the date the demand letter is mailed;

(iii) The applicable standards for imposing any interest, penalties, or administrative costs (*see* § 30.18);

(iv) The rights, if any, the debtor may have to:

(A) Seek review of the Department's determination of the debt, and for purposes of administrative wage garnishment or salary offset, to request a hearing (see 45 CFR parts 32 and 33); and

(B) Enter into a reasonable repayment agreement.

(v) An explanation of how the debtor may exercise any of the rights described in paragraph (b)(1)(iv) of this section;

(vi) The name, address, and phone number of a contact person or office within the Department to address any debt-related matters; and

(vii) The Department's remedies to enforce payment of the debt, which may include:

(A) Garnishing the debtor's wages through administrative wage garnishment;

(B) Offsetting any federal payments due the debtor, including income tax refunds, salary, certain benefit payments such as Social Security, retirement, and travel reimbursements and advances;

(C) Referring the debt to a private collection contractor;

(D) Reporting the debt to a credit bureau or other automated database;

(E) Referring the debt to the Department of Justice for litigation; and

(F) Referring the debt to the Department of the Treasury for any of the collection actions described in paragraphs (b)(1)(vii)(A) through (E) of this section, advising the debtor that such referral is mandatory if the debt is 180 days delinquent.

(2) The written demand for payment should also include the following information:

(i) The debtor's right to inspect and copy all records of the Department pertaining to the debt, or if the debtor or the debtor's representative cannot personally inspect the records, to request and receive copies of such records;

(ii) The Department's willingness to discuss with the debtor alternative methods of payment;

(iii) A debtor delinquent on a debt is ineligible for Government loans, loan guarantees, or loan insurance until the debtor resolves the debt;

(iv) When seeking to collect statutory penalties, forfeiture or other similar types of claim, the debtor's licenses, permits, or other privileges may be suspended or revoked if failure to pay the debt is inexcusable or willful. Such suspension or revocation shall extend to programs or activities administered by the States on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors;

(v) Knowingly making false statements or bringing frivolous actions may subject the debtor to civil or criminal penalties under 31 U.S.C. 3729–3731, 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority, and, if the debtor is a federal employee, to disciplinary action under 5 CFR part 752 or other applicable authority;

(vi) Any amounts collected and ultimately found not to have been owed by the debtor will be refunded;

(vii) For salary offset, up to 15% of the debtor's current disposable pay may be deducted every pay period until the debt is paid in full; and

(viii) Dependent upon applicable statutory authority, the debtor may be entitled to consideration for a waiver.

(c) The Secretary will retain evidence of service indicating the date of mailing of the demand letter. The evidence of service, which may include a certificate of service, may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(d) Prior to, during, or after the completion of the demand process, if the Secretary determines to pursue, or is required to pursue offset, the procedures applicable to offset should be followed (*see* § 30.12). The availability of funds or money for debt satisfaction by offset and the Secretary's determination to pursue collection by offset shall release the Secretary from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(e) *Finding debtors.* The Secretary will exhaust every reasonable effort to locate debtors, using such sources as telephone directories, city directories, postmasters, driving license records, automobile title and license records in State and local government agencies, the IRS, credit reporting agencies and skip locator services. Referral of a confess-judgment note to the appropriate United States Attorney's Office for entry of judgment will not be delayed because the debtor cannot be located.

(f) *Exception.* This section does not require duplication of any notice already contained in a written agreement, letter or other document signed by, or provided to, the debtor.

§ 30.12 Administrative offset.

(a) *Scope.* (1) Administrative offset is the withholding of funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

(2) This section does not apply to:

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716 (c), and implementing regulation at 31 CFR 285.4;

(iii) Debts arising under, or payments made under, the Internal Revenue Code or the tariff laws of the United States;

(iv) Offsets against federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K; 31CFR 285.7; and part 33 of this chapter);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, state law, or federal statutes specifically prohibiting offsets or recoupments for particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected

by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, collection by administrative offset under the authority of 31 U.S.C. 3716 may not be conducted more than 10 years after the Department's right to collect the debt first accrued, unless facts material to the Department's right to collect the debt were not known and could not reasonably have been known by the Secretary. This limitation does not apply to debts reduced to judgment.

(5) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362 and 553, on pending or contemplated collections by offset.

(b) *Centralized administrative offset.* (1) Except as provided in the exceptions listed in § 30.10(c)(1), legally enforceable debts which are 180 days delinquent shall be referred to the Secretary of the Treasury for collection by centralized administrative offset pursuant to and in accordance with 31 CFR 901.3(b). Debts which are less than 180 days delinquent, including debts referred to the Department by another agency, also may be referred to the Secretary of the Treasury for collection by centralized administrative offset.

(2) When referring delinquent debts to the Secretary of the Treasury for centralized administrative offset, the Department must certify, in a form acceptable to the Secretary of the Treasury, that:

(i) The debt is past due and legally enforceable; and

(ii) The Department has complied with all due process requirements under 31 U.S.C. 3716(a) and paragraph (c)(2) of this section.

(3) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Secretary of the Treasury shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the head of the payment certifying or authorizing agency. Also, the Secretary of the Treasury may exempt other classes of payments from centralized offset upon the written request of the head of the payment certifying or authorizing agency.

(c) *Non-centralized administrative offset.* (1) Unless otherwise prohibited by law, when centralized administrative offset under paragraph (b) of this section is not available or appropriate, the Secretary may collect a delinquent debt by conducting non-centralized administrative offset internally or in cooperation with the agency certifying or authorizing payments to the debtor.

(2) Except as provided in paragraph (c)(3) of this section, administrative offset may be initiated only after:

(i) The debtor has been sent written notice of the type and amount of the debt, the intention of the Department to initiate administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(ii) The debtor has been given:

(A) The opportunity to inspect and copy Department records related to the debt;

(B) The opportunity for a review within the Department of the determination of indebtedness; and

(C) The opportunity to make a written agreement to repay the debt.

(3) The due process requirements under paragraph (c)(2) of this section may be omitted when:

(i) Offset is in the nature of a recoupment, i.e., the debt and the payment to be offset arise out of the same transaction or occurrence;

(ii) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets covered by the Contracts Disputes Act); or

(iii) In the case of non-centralized administrative offset conducted under paragraph (c)(1) of this section, the Department first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the Secretary shall give the debtor such notice and an opportunity for review as soon as practical and shall promptly refund any money ultimately found not to have been owed to the Government.

(4) When the debtor previously has been given any of the required notice and review opportunities with respect to a particular debt, such as under § 30.11 of this part, the Department need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) Before requesting that a payment authorizing agency conduct non-centralized administrative offset, the Department shall:

(i) Provide the debtor with due process as set forth in paragraph (c)(2) of this section; and

(ii) Provide the payment authorizing agency written certification that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the Department has fully complied with this section.

(6) When a creditor agency requests that the Department, as the payment authorizing agency, conduct non-centralized administrative offset, the Secretary shall comply with the request, unless the offset would not be in the best interest of the United States with respect to the program of the Department, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset, including salary offset.

(7) When collecting multiple debts by non-centralized administrative offset, the Department will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund and the Federal Employee Retirement System.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (c)(2) of this section, the Department may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with 5 CFR part 831, subpart R, or under the Federal Employee Retirement System (FERS) in accordance with 5 CFR part 845, subpart D. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund or under FERS. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in 31 CFR 901.3(b)(4).

(e) *Review requirements.* (1) For purposes of this section, whenever the Secretary is required to afford a debtor a review within the Department, the debtor shall be provided with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Secretary determines that the question of the indebtedness cannot be resolved

by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Department will carefully document all significant matters discussed at the hearing.

(3) An oral hearing is not required with respect to debt collection systems where determinations of indebtedness rarely involve issues of credibility or veracity, and the Secretary has determined that a review of the written record is adequate to correct prior mistakes.

(4) In those cases when an oral hearing is not required by this section, the Secretary shall accord the debtor a ''paper hearing,'' that is, a determination of the request for reconsideration based upon a review of the written record.

§ 30.13 Debt reporting and use of credit reporting agencies.

(a) *Reporting delinquent debts.* (1) The Secretary will report delinquent debts over $100 to credit bureaus or other automated databases. Debts arising under the Social Security Act are excluded from this paragraph (a).

(2) Debts owed by individuals will be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).

(3) Once a debt has been referred to the Department of the Treasury for collection, any subsequent reporting to or updating of a credit bureau or other automated database may be handled by the Department of the Treasury.

(4) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the automatic stay, 11 U.S.C. 362, and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

(5) If the debtor has not received prior written notice under § 30.11(b), before reporting a delinquent debt under this section, the Secretary shall provide the debtor at least 60 days written notice of the amount and nature of the debt; that the debt is delinquent and the Department intends to report the debt to a credit bureau (including the specific information that will be disclosed); that the debtor has the right to dispute the accuracy and validity of the information being disclosed; and, if a previous opportunity was not provided, that the debtor may request review within the Department of the debt or rescheduling of payment. The Secretary may disclose only the individual's name, address, and social security number and the nature, amount, status and history of the debt.

(b) *Use of credit reporting agencies.* The Secretary may also use credit reporting agencies to obtain credit reports to evaluate the financial status of loan applicants, potential contractors and grantees; to determine a debtor's ability to repay a debt; and to locate debtors. In the case of an individual, the Secretary may disclose, as a routine use under 5 U.S.C. 552a(b)(3), only the individual's name, address, and Social Security number and the purpose for which the information will be used.

§ 30.14 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) Subject to the provisions of paragraph (b) of this section, the Secretary may contract with private collection contractors to recover delinquent debts, provided that:

(1) The Secretary retains the authority to resolve disputes, compromise debts, suspend or terminate collection action, and refer debts to the Department of Justice for litigation;

(2) The private collection contractor is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee unless the Secretary has granted such authority prior to the offer;

(3) The contract provides that the private collection contractor is subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) The Secretary shall use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, the Secretary may refer debts to private collection contractors pursuant to a contract between the Department and the private collection contractor only if such debts are not subject to the requirement to transfer debts to the Department of the Treasury for debt collection under 31 U.S.C. 3711 (g) and 31 CFR 285.12(e).

(c) Debts arising under the Social Security Act (which can be collected by private collection contractors only by the Department of Treasury after the debt has been referred to that Department for collection) are excluded from this section.

(d) The Secretary may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law. A contract under paragraph (a) of this section may provide that the fee a private collection contractor charges the Department for collecting the debt is payable from the amounts collected.

(e) The Department may enter into contracts for locating and recovering assets of the United States including unclaimed assets. However, before entering into a contract to recover assets of the United States that may be held by a state government or financial institution, the Department must establish procedures that are acceptable to the Secretary of Treasury.

(f) The Secretary may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the Department for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

§ 30.15 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.

(a)(1) Unless waived by the Secretary, financial assistance in the form of loans, loan guarantees, or loan insurance shall not be extended to any person delinquent on a debt owed to the United States. This prohibition does not apply to disaster loans. Grants, cooperative agreements, and contracts are not considered to be loans.

(2) The authority to waive the application of this section may be delegated to the Chief Financial Officer and re-delegated only to the Deputy Chief Financial Officer.

(3) States that manage federal activities, pursuant to approval from the Secretary, should ensure that appropriate steps are taken to safeguard against issuing licences, permits, or other privileges to debtors who fail to pay their debts to the Federal Government.

(b) The Secretary will report to the Department of the Treasury any surety that fails to honor its obligations under 31 U.S.C. 9305.

(c) In non-bankruptcy cases, when seeking to collect statutory penalties, forfeitures, or other types of claims, the Secretary may suspend or revoke licenses, permits, or other privileges of a delinquent debtor if the failure to pay the debt is found to be inexcusable or willful. Such suspension or revocation will extend to programs or activities

administered by the States on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors.

(d) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, before taking any action to suspend or revoke under paragraph (c) of this section, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 30.16 Liquidation of collateral.

(a)(1) The Secretary will liquidate security or collateral through the exercise of a power of sale in the security instrument or a non-judicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interests of the United States.

(2) Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(3) The Secretary will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with other requirements under law or contract.

(b) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the automatic stay, 11 U.S.C. 362, and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 30.17 Collection in installments.

(a) Whenever feasible, the total amount of a debt shall be collected in one lump sum payment. If a debtor is financially unable to pay a debt in one lump sum, either by cash or administrative offset, the Secretary may accept payment in regular installments. The Secretary will obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations as described in § 30.22 (a)(1).

(b) *Installment payment agreements.* (1) When the Secretary agrees to accept payments in regular installments, a legally enforceable written agreement should be obtained from the debtor that specifies all the terms and conditions of the agreement, and that includes a provision accelerating the debt in the event of a default.

(2) The size and frequency of the payments should reasonably relate to the size of the debt and the debtor's ability to pay. Whenever feasible, the installment agreement will provide for full payment of the debt, including interest and charges, in three years or less.

(3) In appropriate cases, the agreement should include a provision identifying security obtained from the debtor for the deferred payments.

§ 30.18 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h) and (i) of this section, the Department shall charge interest, penalties, and administrative costs on delinquent debts owed to the United States. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) *Interest.* The Department shall charge interest on delinquent debts owed the United States as follows:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by law. For debts not paid by the date specified in the written demand for payment made under § 30.11, the date of delinquency is the date of mailing of the notice. The date of delinquency for an installment payment is the due date specified in the payment agreement.

(2) Unless a different rate is prescribed by statute, contract, or a repayment agreement, the rate of interest charged shall be the rate established annually by the Secretary of the Treasury pursuant to 31 U.S.C. 3717. The Department may charge a higher rate if necessary to protect the rights of the United States but must document in writing the reasons for charging the higher rate.

(3) Unless prescribed by statute or contract, the rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the Department may require payment of interest at a new rate that reflects the Department of the Treasury rate in effect at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section, unless prescribed by statute or contract. If, however, the debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) *Administrative costs.* The Department shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs should be based on actual costs incurred or a valid estimate of the actual costs. Calculation of administrative costs shall include all direct (personnel, supplies, etc.) and indirect collection costs, including the cost of providing a hearing or any other form of administrative review requested by a debtor, and any costs charged by a collection agency under § 30.14. These charges will be assessed monthly, or per payment period, throughout the period that the debt is overdue. Such costs may also be in addition to other administrative costs if collection is being made for another federal agency or unit.

(d) *Penalty.* Unless otherwise established by contract, repayment agreement, or statute, the Secretary will charge a penalty of six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency.

(e) When there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt, an administrative debt may be increased by the cost of living adjustment in lieu of charging interest and penalties under this section. Administrative debt includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Such increases to administrative debts shall be computed annually.

(f) *Priority.* When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal.

(g) *Waiver.* (1) The Secretary shall waive the collection of interest and administrative charges imposed

pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. The Secretary may extend this 30-day period on a case-by-case basis if the Secretary determines that such action is in the best interest of the Government, or otherwise warranted by equity and good conscience.

(2) The Secretary also may waive interest, penalties, and administrative charges charged under this section, in whole or in part, without regard to the amount of the debt, based on:

(i) The criteria set forth at § 30.22 (a)(1) through (4) for the compromise of debts; or

(ii) A determination by the Secretary that collection of these charges is:

(A) Against equity and good conscience; or

(B) Not in the best interest of the United States.

(h) *Review.* (1) Except as provided in paragraph (h)(2) of this section, administrative review of a debt will not suspend the assessment of interest, penalties, and administrative costs. While agency review of a debt is pending, the debtor either may pay the debt or be liable for interest and related charges on the uncollected debt. When agency review results in a final determination that any amount was properly a debt and the debtor chose to retain the amount in dispute, the Secretary shall collect from the debtor the amount determined to be due, plus interest, penalties and administrative costs on such debt amount, as calculated under this section, starting from the date the debtor was first made aware of the debt and ending when the debt is repaid. The Department may impose and waive interest and related charges on debts not subject to 31 U.S.C. 3717 in accordance with the common law or other statutory authority.

(2) *Exception.* Interest, penalties, and administrative cost charges will not be imposed on a debt for periods during which collection activity has been suspended under § 30.29(c)(1) pending agency review or consideration of waiver if statute prohibits collection of the debt during this period.

§ 30.19 Review of cost effectiveness of collection.

Periodically, the Secretary will compare costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges will be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.

§ 30.20 Taxpayer information.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or any other authority, the Secretary may send a request to the Department of the Treasury in accordance with 31 CFR 901.11 to obtain a debtor's mailing address from the records of the IRS.

(b) Mailing addresses obtained under paragraph (a) of this section may be used to enforce collection of a delinquent debt and may be disclosed to other agencies and to collection agencies for collection purposes.

Subpart C—Debt Compromise

§ 30.21 Scope and application.

(a) *Scope.* The standards set forth in this subpart apply to the compromise of debts pursuant to 31 U.S.C. 3711. The Secretary may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, the Department when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed $100,000, or any higher amount authorized by the Attorney General.

(b) *Application.* Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept a compromise rests with the Department of Justice. The Secretary shall evaluate the compromise offer, using the factors set forth in this subpart. If an offer to compromise any debt in excess of $100,000 is acceptable to the Department, the Secretary shall refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice using a Claims Collection Litigation Report (CCLR), which may be obtained from the Department of Justice's National Central Intake Facility. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. Department of Justice approval is not required if the Secretary rejects a compromise offer.

§ 30.22 Bases for compromise.

(a) The Secretary may compromise a debt if the full amount cannot be collected based upon inability to pay, inability to collect the full debt, cost of collection, or doubt debt can be proven in court.

(1) *Inability to pay.* The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information. In determining a debtor's inability to pay the full amount of the debt within a reasonable time, the Secretary will obtain and verify the debtor's claim of inability to pay by using credit reports or a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. The Secretary may use a Departmental financial information form or may request suitable forms from the Department of Justice or the local United States Attorney's Office. The Secretary also may consider other relevant factors such as:

(i) Age and health of the debtor;

(ii) Present and potential income;

(iii) Inheritance prospects;

(iv) The possibility that assets have been concealed or improperly transferred by the debtor; and

(v) The availability of assets or income that may be realized by enforced collection proceedings.

(2) *Inability to collect full debt.* The Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings.

(i) In determining the Government's ability to enforce collection, the Secretary will consider the applicable exemptions available to the debtor under state and federal law, and may also consider uncertainty as to the price the collateral or other property will bring at a forced sale.

(ii) A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(3) *Cost of collection.* The cost of collecting the debt does not justify the enforced collection of the full amount.

(i) The Secretary may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise of such cases may reflect an appropriate discount for the administrative and litigation costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts.

(ii) In determining whether the costs of collection justify enforced collection of the full amount, the Secretary will

consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principal, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(4) *Doubt debt can be proven in court.* There is significant doubt concerning the Government's ability to prove its case in court.

(i) If there is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard to the availability of witnesses and other evidentiary support for the Government's claim.

(ii) In determining the litigation risks involved, the Secretary will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(b) *Installments.* The Secretary generally will not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, the Secretary shall, except in the case of compromises based on paragraph (a)(4) of this section, obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. The Office of the General Counsel should be consulted concerning the appropriateness of including such a requirement in the case of compromises based on paragraph (a)(4) of this section. Whenever possible, the Secretary will obtain security for repayment in the manner set forth in subpart B of this part.

§ 30.23 Enforcement policy.

The Secretary may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance if the Department's enforcement policy, in terms of deterrence and securing compliance, present and future, will be adequately served by the Secretary's acceptance of the sum to be agreed upon.

§ 30.24 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, the Secretary will pursue collection against all debtors, as appropriate. The Secretary will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible.

(b) The Secretary will ensure that a compromise agreement with one debtor does not release the Department's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 30.25 Further review of compromise offers.

If the Secretary is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the Secretary's delegated compromise authority, the Secretary may refer the offer to the Civil Division or other appropriate litigating division in the Department of Justice, using a CCLR accompanied by supporting data and particulars concerning the debt. The Department of Justice may act upon such an offer or return it to the Secretary with instructions or advice.

§ 30.26 Consideration of tax consequences to the Government.

In negotiating a compromise, the Secretary will consider the tax consequences to the Government. In particular, the Secretary will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements *see* § 30.32.

§ 30.27 Mutual release of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by the Secretary will be implemented by means of a mutual release. The terms of such mutual release shall provide that the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

Subpart D—Suspending and Terminating Collection Activities

§ 30.28 Scope and application.

(a) *Scope.* The standards set forth in this subpart apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the Department of Justice for litigation, the Secretary may suspend or terminate collection under this subpart with respect to debts arising out of activities of, or referred or transferred for collection services to, the Department.

(b) *Application.* (1) If, after deducting the amount of partial payments or collections, the principal amount of the debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice.

(2) If the Secretary believes that suspension or termination of any debt in excess of $100,000 may be appropriate, the Secretary shall refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice, using the CCLR. The referral will specify the reasons for the Secretary's recommendation. If prior to referral to the Department of Justice, the Secretary determines that a debt is plainly erroneous or clearly without merit, the Secretary may terminate collection activity regardless of the amount involved without obtaining Department of Justice concurrence.

§ 30.29 Suspension of collection activity.

(a) The Secretary may suspend collection activity on a debt when:

(1) The Department cannot locate the debtor;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) *Financial condition.* Based on the current financial condition of a debtor, the Secretary may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity, and:

(1) The applicable statute of limitations has not expired;

(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716 (e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c) *Waiver and review.* (1) The Secretary shall suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits the Secretary from collecting the debt during that time.

(2) If the statute under which the waiver or administrative review request is sought does not prohibit collection activity pending consideration of the request, the Secretary may use discretion, on a case-by-case basis, to suspend collection. Collection action ordinarily will be suspended upon a request for waiver or review if the Secretary is prohibited by statute or regulation from issuing a refund of amounts collected prior to agency consideration of the debtor's request. However, collection will not be suspended when the Secretary determines that the request for waiver or review is frivolous or was made primarily to delay collection.

(d) Upon learning that a bankruptcy petition has been filed with respect to a debtor, in most cases the Secretary must suspend collection activity on the debt, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless the Secretary can clearly establish that the automatic stay has been lifted or is no longer in effect. The Office of the General Counsel will be contacted immediately for legal advice, and the Secretary will take the necessary legal steps to ensure that no funds or money are paid by the Department to the debtor until relief from the automatic stay is obtained.

§ 30.30 Termination of collection activity.

(a) The Secretary may terminate collection activity when:

(1) The Department is unable to collect any substantial amount through its own efforts or through the efforts of others;

(2) The Department is unable to locate the debtor;

(3) Costs of collection are anticipated to exceed the amount recoverable;

(4) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(5) The debt cannot be substantiated; or

(6) The debt against the debtor has been discharged in bankruptcy.

(b)(1) Collection activity will not be terminated before the Secretary has pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible.

(2) Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude the Secretary from retaining a record of the account for purposes of:

(i) Selling the debt, if the Secretary of the Treasury determines that such sale is in the best interest of the United States;

(ii) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(iii) Offsetting against future income or assets not available at the time of termination of collection activity; or

(iv) Screening future applicants for prior indebtedness.

(c) Generally, the Secretary shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. The Secretary may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, when the Department is a known creditor of a debtor the claims of the Department may survive a discharge if the Department did not receive formal notice of the bankruptcy proceedings. When the Department believes that it has claims or offsets that may have survived the discharge of the debtor, the Office of the General Counsel should be contacted for legal advice.

§ 30.31 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, the Secretary may refer debts to the Department of Justice for litigation even though termination of collection activity may otherwise be appropriate.

§ 30.32 Discharge of indebtedness; reporting requirements.

(a) *Discharge.* (1) Before discharging a delinquent debt, also referred to as close out of the debt, the Secretary shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711 (g)(9), and parts 30 through 33 of this chapter, including, as applicable, administrative offset; tax refund offset; federal salary offset; credit bureau reporting; administrative wage garnishment; litigation; foreclosure; and referral to the Department of the Treasury, Department of the Treasury-designated debt collection centers, or private collection contractors.

(2) Discharge of indebtedness is distinct from termination or suspension of collection activity under this subpart, and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part and 31 CFR parts 900 through 904.

(3) When the Department discharges a debt in full or in part, further collection action is prohibited. Therefore, before discharging a debt the Secretary must:

(i) Make the determination that collection action is no longer warranted; and

(ii) Terminate debt collection action.

(b) In accordance with 31 U.S.C. 3711 (i), the Secretary shall use competitive procedures to sell a delinquent debt upon termination of collection action if the Secretary of the Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action, including the sale of a delinquent debt, the Secretary may not discharge a debt until the requirements of 31 U.S.C. 3711 (i) have been meet.

(c) Upon discharge of an indebtedness, the Secretary must report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. The Secretary may request that the Department of the Treasury or Department of the Treasury-designated debt collection centers file such a discharge report to the IRS on the Department's behalf.

(d) When discharging a debt, the Secretary must request that litigation counsel release any liens of record securing the debt.

Subpart E—Referrals to the Department of Justice

§ 30.33 Prompt referral.

(a)(1) The Secretary promptly shall refer to the Department of Justice for litigation debts on which aggressive collection activity has been taken in accordance with subpart B of this part, and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with subpart D of this part.

(2) The Secretary may refer to the Department of Justice for litigation those debts arising out of activities of, or referred or transferred for collection services to, the Department.

(b)(1) Debts for which the principal amount is over $1,000,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs shall be referred to the Department of Justice Civil Division or other division responsible for litigating such debts at the Department of Justice, Washington D.C.

(2) Debts for which the principal amount is $1,000,000 or less, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs shall be referred to the Nationwide Central Intake Facility of the Department of Justice as required by the CCLR instructions.

(c)(1) Consistent with aggressive agency collection activity and the standards contained in this part and 31 CFR parts 900 through 904, debts shall be referred to the Department of Justice as early as possible, and, in any event, well within the period for initiating timely lawsuits against the debtors.

(2) The Secretary shall make every effort to refer delinquent debts to the Department of Justice for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, the Secretary will make every effort to refer these delinquent debts to the Department of Justice for litigation within one year from the date the loan was presented to the Department for payment or re-insurance.

(d) The Department of Justice has exclusive jurisdiction over debts referred to it pursuant to this subpart. Upon referral of a debt to the Department of Justice, the Secretary shall:

(1) Immediately terminate the use of any administrative collection activities to collect the debt;

(2) Advise the Department of Justice of the collection activities utilized to date, and their result; and

(3) Refrain from having any contact with the debtor and direct all debtor inquiries concerning the debt to the Department of Justice.

(e) After referral of a debt under this subpart, the Secretary shall immediately notify the Department of Justice of any payments credited by the Department to the debtor's account. Pursuant to 31 CFR 904.1 (b), after referral of the debt under this subpart, the Department of Justice shall notify the Secretary of any payment received from the debtor.

§ 30.34 Claims Collection Litigation Report.

(a)(1) Unless excepted by the Department of Justice, the Secretary will complete the CCLR, accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to the Department of Justice for litigation.

(2) The Secretary shall complete all of the sections of the CCLR appropriate to each debt as required by the CCLR instructions, and furnish such other information as may be required in specific cases.

(b) The Secretary shall indicate clearly on the CCLR the actions that the Department wishes the Department of Justice to take with respect to the referred debt. The Secretary may indicate specifically any of a number of litigation activities which the Department of Justice may pursue, including enforced collection, judgement lien only, renew judgement lien only, renew judgement lien and enforced collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) The Secretary also shall use the CCLR to refer a debt to the Department of Justice for the purpose of obtaining approval of a proposal to compromise the debt, or to suspend or terminate administrative collection activity of the debt.

§ 30.35 Preservation of evidence.

The Secretary will maintain and preserve all files and records that may be needed by the Department of Justice to prove the Department's claim in court. When referring debts to the Department of Justice for litigation, certified copies of the documents that form the basis for the claim should be provided along with the CCLR. Upon its request, the original documents will be provided to the Department of Justice.

§ 30.36 Minimum amount of referrals.

(a) Except as in paragraph (b) of this section, claims of less than $2,500 exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General may prescribe, shall not be referred for litigation.

(b) The Secretary shall not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller amount is important to ensure compliance with the policies and programs of the Department;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to the Department for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and federal law and the judicial remedies available to the Government.

(c) The Secretary should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in the Department of Justice prior to referring claims valued at less than the minimum amount.

Dated: April 1, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–15693 Filed 7–12–04; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 33

RIN #0991–AB19

Salary Offset

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) proposes to add specific rules concerning involuntary salary offset by adding a new part 33 to title 45 CFR. The proposed rule implements 5 U.S.C. 5514, as amended by the salary offset provisions of the Debt Collection Improvement Act of 1996 (DCIA), as implemented by the Office of Personnel Management at 5 CFR part 550, subpart K. Involuntary salary offset was previously included in the Department's more general claims collection regulations at 45 CFR part 30.

DATES: Submit comments on or before September 13, 2004.

ADDRESSES: Comments concerning this proposed rule can be mailed to: Jeffrey

Davis, Acting Associate General Counsel, General Law Division, Office of the General Counsel, Department of Health and Human Services, Room 4760 Cohen Building, 330 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Jeffrey Davis, Associate General Counsel, 202–619–0153.

SUPPLEMENTARY INFORMATION:

Background

Current HHS regulations at 45 CFR part 30 provide standards and procedures for the collection and disposition of debts owed the United States, including collection by administrative offset. Standards and procedures for collection of debts from the current pay of federal employees by involuntary salary offset has been included in the administrative offset provisions of part 30. These current HHS regulations are based on the Debt Collection Act of 1982 (DCA), Pub. L. No. 97–365, which was implemented on a government-wide basis by the Federal Claims Collection Standards (FCCS), set forth at 4 CFR part 101 issued by the Department of Justice and the General Accounting Office on March 9, 1984 (49 FR 8889 (1984)), and the salary offset regulations set forth at 5 CFR part 550, subpart K issued by the Office of Personnel Management on July 3, 1984 (49 FR 27472). The current HHS rules are in the process of being amended to comply with the Debt Collection Improvement Act of 1996 (DCIA) Pub. L. 104–134, as implemented by the Department of Treasury and the Department of Justice at 31 CFR 900–904. Since there are very specific rules that apply to salary offset that go beyond those applicable to administrative offset generally, and because salary offset has a separate statutory basis, the Department wants to take this opportunity to segregate the provisions and provide separate guidance to specifically address the standards and procedures applicable to salary offset.

Basic Provisions

This proposed rule prescribes the Department's standards and procedures for the collection of debts owed by federal employees to the United States through involuntary salary offset, including changes made by the DCIA. Briefly, such changes provide for centralized computer matching through the Department of Treasury, an exclusion from the prior notice and hearing requirements for certain pay adjustments, and a priority for federal tax levies.

Authority 5 U.S.C. 5514

Request for Comments

Comments are requested and must be received at the above address, by the above date.

Reporting and Recordkeeping Requirements

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this proposed rule will impose no new reporting or record-keeping requirements on any member of the public.

Economic Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13258 (February 2002, Amending Executive Order 12866 on Regulatory Planning and Review); the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. 96–354); the Unfunded Mandated Reform Act of 1995 (UMRA, Pub. L. 104–4); and Executive Order 13132 (August 1999, Federalism). Executive Order 12866 (the Order), as amended by Executive Order 13258, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in 1 year). We have determined that the proposed rule is consistent with the principals set forth in the Order, and we find that the proposed rule would not have an effect on the economy that exceeds $100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2). In accordance with the provisions of the Order, the proposed rule will be reviewed by the Office of Management and Budget.

Under the RFA, 5 U.S.C. 605(b), if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. The agency has considered the effect that this rule would have on small entities. I hereby certify, under 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribunal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we find that the proposed rule would not have an effect of this magnitude on the economy. Therefore, no further analysis is required under the UMRA.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed the proposed rule under the threshold criteria of Executive Order 13132 and have determined that this proposed rule would not have substantial direct impact on States, or on the distribution of power and responsibilities among the various levels of government. As there are no federalism implications, a federalism impact statement is not required.

Alternatives Considered

Title 5 CFR part 550, subpart K, provides the standards to be used by Federal agencies to prepare regulations implementing 5 U.S.C. 5514. There is little room for us to consider alternatives, but where the Department has discretion (*i.e.*, in § 33.1, specifying that the regulations cover Government-wide collections and in § 33.6, specifying that if the petition for hearing is untimely, the Secretary may grant the request if the employee can establish that the delay was the result of circumstances beyond the employee's control, or that the employee failed to receive actual notice of the filing deadline), we drafted the proposed rule to be as strong as possible to maximize the Department's debt collection ability and so that the process is fair as possible to debtors.

These regulations will be submitted to the Office of Personnel Management for review prior to publication of the final rule, as required by 5 CFR part 550, subpart K.

List of Subjects in 45 CFR Part 33

Administrative practice and procedure, Claims, Debts, Claims, Debt collection, Hearings, Wages, Salary offset and Government employees.

For the reasons set forth in the preamble, HHS proposes to add 45 CFR part 33 as follows:

PART 33—SALARY OFFSET

Sec.
33.1 Purpose, authority and scope.
33.2 Definitions.
33.3 General rule.
33.4 Notice requirements before offset.
33.5 Review of department records relating to the debt.
33.6 Hearings.
33.7 Obtaining the services of a hearing official.
33.8 Voluntary repayment agreement in lieu of salary offset.
33.9 Special review.
33.10 Procedures for salary offset.
33.11 Salary offset when the Department is the creditor agency but not the paying agency.
33.12 Salary offset when the Department is the paying agency but not the creditor agency.
33.13 Interest, penalties, and administrative costs.
33.14 Non-waiver of rights.
33.15 Refunds.
33.16 Additional administrative collection action.

Authority: 5 U.S.C. 5514; 5 CFR Part 550, Subpart K.

§ 33.1 Purpose, authority and scope.

(a) *Purpose.* This part prescribes the Department's standards and procedures for the collection of debts owed by federal employees to the United States through involuntary salary offset.

(b) *Authority.* 5 U.S.C. 5514; 5 CFR Part 550, subpart K;

(c) *Scope.* (1) This part applies to internal and Government-wide collections of debts owed by Federal employees by administrative offset from the current pay account of the debtor without his or her consent.

(2) The procedures contained in this part do not apply to any case where an employee consents to collection through deduction(s) from the employee's pay account, or to debts arising under the Internal Revenue Code or the tariff laws of the United States, or where another statute explicitly provides for, or prohibits, collection of a debt by salary offset (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(3) This part does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the Secretary. Similarly, this part does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(4) Nothing in this part precludes the compromise of the debt, or the suspension or termination of collection actions, in accordance with part 30 of this title.

§ 33.2 Definitions.

In this part—

Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

Agency means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; and court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government Corporation.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal legal holiday, in which case the next business day will be considered the last day of the period.

Debt means an amount determined by an appropriate official to be owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Debt collection center means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711 (g).

Debtor means a federal employee who owes a debt to the United States.

Delinquent debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Department means the Department of Health and Human Services, its Staff Divisions, Operating Divisions, and Regional Offices.

Disposable pay means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay, remaining after deduction of amounts required by law to be withheld. For purposes of calculating disposable pay, legally required deductions that must be applied first include: tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes, FICA, Medicare; health and life insurance premiums; and retirement contributions. Amounts deducted under garnishment orders, including child support garnishment orders, are not legally required deductions for calculating disposable pay.

Employee means any individual currently employed by an agency, as defined in this section, including seasonal and temporary employees and current members of the Armed Forces or a Reserve of the Armed Forces (Reserves).

Evidence of service means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice of intent to offset provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

Hearing means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If the Secretary determines that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or veracity, the Secretary may provide an oral hearing.

Hearing official means a Departmental Appeals Board administrative law judge or appropriate alternate as outlined in § 33.7(a)(2).

Paying agency means the agency employing the individual and authorizing the payment of his or her current pay.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 owed by a federal employee through deductions at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

Secretary means the Secretary of Health and Human Services, or the Secretary's designee within any Staff Division, Operating Division or Regional Office.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to this Department or another agency as

required or permitted by 5 U.S.C. 5584, 8346 (b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 33.3 General rule.

(a) Whenever a delinquent debt is owed to the Department by an employee, the Secretary may, subject to paragraphs (b) through (d) of this section, involuntarily offset the amount of the debt from the employee's disposable pay.

(b) Unless provided by another statute pertaining to a particular type of debt (*i.e.* 42 U.S.C. 292r, Health professionals education, 42 U.S.C. 297c, Nurse education), the Department may not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.

(c) Except as provided in paragraph (d) of this section, prior to initiating collection through salary offset under this part, the Secretary must first provide the employee with the following:

(1) Written notice of intent to offset as described in § 33.4; and

(2) An opportunity to petition for a hearing, and, if a hearing is provided, to receive a written decision from the hearing official within 60 days on the following issues:

(i) The determination of the Department concerning the existence or amount of the debt; and

(ii) The repayment schedule, unless it was established by written agreement between the employee and Department.

(d) The provisions of paragraph (c) of this section do not apply to:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a federal benefits program requiring periodic deduction from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 33.4 Notice requirements before offset.

(a) At least 30 days before the initiation of salary offset under this part, the Secretary shall mail, by first class mail, to the employee's last known address, a written notice informing the debtor of the following:

(1) The Secretary has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(3) The amount, stated either as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of disposable pay, the frequency, the commencement date, and the duration of the intended deductions;

(4) An explanation of the Department's policies concerning the assessment of interest, penalties, and administrative costs, stating that such assessments must be made unless waived in accordance with 31 CFR 901.9 and § 30.18 of this title;

(5) The employee's right to inspect and copy all records of the Department pertaining to the debt, or if the employee or the employee's representative cannot personally inspect the records, to request and receive copies of such records;

(6) If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset, or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset, provided the agreement is in writing, signed by both the employee and the Department, and documented in the Department's files;

(7) The right to a hearing conducted by an impartial hearing official with respect to the existence and amount of the debt, or the repayment schedule, so long as a petition is filed by the employee as prescribed in § 33.6;

(8) Time limitations and other procedures or conditions for inspecting Department records pertaining to the debt, establishing an alternative repayment agreement, and requesting a hearing;

(9) The name, address, and telephone number of the person or office within the Department who may be contacted concerning the procedures for inspecting Department records, establishing an alternative repayment agreement and requesting a hearing;

(10) The name and address of the office within the Department to which the petition for a hearing should be sent, which generally will be the Operating Division or Staff Division responsible for collecting the debt;

(11) A timely and properly filed petition for a hearing will stay the commencement of the collection proceeding;

(12) The Department will initiate action to effect salary offset not less than 30 days from the date of mailing the notice of intent, unless the employee properly files a timely petition for a hearing,

(13) A final decision on a hearing, if one is requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceeding;

(14) Knowingly false or frivolous statements, representations or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code; part 752 of title 5, Code of Federal Regulations; or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or under any other applicable statutory authority; and

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or under any other applicable statutory authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) The Secretary will retain evidence of service indicating the date of mailing of the notice.

§ 33.5 Review of department records relating to the debt.

(a) To inspect or copy Department records relating to the debt, the employee must send a written request to

the Department official or office designated in the notice of intent to offset stating his or her intention. The written request must be received by the Department within 15 days from the employee's receipt of the notice.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the employee of the location and time when the employee may inspect and copy such records. If the employee or employee's representative is unable to personally inspect such records as the result of geographical or other constraints, the Department shall arrange to send copies of such records to the employee.

§ 33.6 Hearings.

(a)(1) *Petitions for hearing.* To request a hearing concerning the existence or amount of the debt or the offset schedule established by the Department, the employee must send a written petition to the office designated in the notice of intent to offset, *see* § 33.4(a)(10), within 15 days of receipt of the notice.

(2) The petition must:

(i) Be signed by the employee;

(ii) Fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position; and

(iii) Specify whether an oral or paper hearing is requested. If an oral hearing is requested, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(3) The timely filing of a petition for hearing shall stay any further collection proceedings.

(b) *Failure to timely request.* (1) If the petition for hearing is filed after the 15-day period provided for in paragraph (a)(1) of this section, the Secretary may grant the request if the employee can establish that the delay was the result of circumstances beyond the employee's control, or that the employee failed to receive actual notice of the filing deadline.

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the offset schedule established by the Department, if the employee:

(i) Fails to file a timely request for a hearing unless such failure is excused; or

(ii) Fails to appear at an oral hearing, of which the employee was notified, unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(c) *Form of hearings.* (1) *General.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing. If the hearing will be a review of the written record, the employee shall be notified that he or she should submit evidence and arguments in writing to the hearing official by a specified date, after which the record shall be closed. The date specified shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone because an issue of credibility or veracity is involved. Where an oral hearing is appropriate, the hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing, *i.e.*, the rules of evidence need not apply. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and arguments;

(ii) Informal meetings in which the hearing official interviews the employee; or

(iii) Formal written submissions with an opportunity for oral presentations.

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, the hearing official will make the determination based upon an review of the available written record.

(4) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this part. Witnesses who testify in oral hearings will do so under oath or affirmation.

(d) *Written decision.* (1) *Date of decision.* The hearing officer shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than sixty (60) days after the date on which the hearing petition was received by the creditor agency, unless the employee requested a delay in the proceedings, in which case the 60-day decision period shall be extended by the number of days by which the hearing was postponed. The recipient of an employee's request for a hearing must forward the request expeditiously to the Departmental Appeals Board so as to not jeopardize the Boards's ability to issue a decision within this 60 day period.

(2) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions, including a determination whether the employee's petition for hearing was baseless and resulted from an intent to delay creditor agency collection activity; and

(iii) The terms of any repayment schedule, if applicable.

(e) *Failure to appear.* In the absence of good cause shown, an employee who fails to appear at a hearing shall be deemed, for the purpose of this part, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled and make a determination based upon oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date, and both parties shall be given reasonable notice of the time and place of the new hearing.

§ 33.7 Obtaining the services of a hearing official.

(a)(1) When the Department is the creditor agency, the office designated in § 33.4 (a)(10) shall schedule a hearing, if one is requested by an employee, before a hearing official.

(2) When the Department cannot provide a prompt and appropriate hearing before an administrative law judge or a hearing official furnished pursuant to another lawful arrangement, the office designated in § 33.4 (a)(10) may:

(i) When the debtor is not an employee of the Department, contact an agent of the employee's paying agency designated in 5 CFR part 581, Appendix A, to arrange for a hearing official; or

(ii) When the debtor is an employee of the Department, contact an agent of any agency designated in 5 CFR part 581, Appendix A, to arrange for a hearing official.

(b)(1) When another agency is the creditor agency, it is the responsibility of that agency to arrange for a hearing if one is requested. The Department will provide a hearing official upon the request of a creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(2) Services rendered to a creditor agency under paragraph (b)(1) of this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, *as amended,* 31 U.S.C. 1535.

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 and this part. A creditor agency may make a certification to the Secretary of the Treasury under 5 CFR 550.1108 or a paying agency under 5 CFR 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through other means, such as offset of other Federal payments or litigation.

§ 33.8 Voluntary repayment agreement in lieu of salary offset.

(a)(1) In response to the notice of intent to offset, the employee may propose to establish an alternative schedule for the voluntary repayment of the debt by submitting a written request to the Department official designated in the notice of intent to offset. An employee who wishes to repay the debt without salary offset shall also submit a proposed written repayment agreement. The proposal shall admit the existence of the debt, and the agreement must be in such form that it is legally enforceable. The agreement must:

(i) Be in writing;

(ii) Be signed by both the employee and the Department;

(iii) Specify all the terms of the arrangement for payment; and

(iv) Contain a provision accelerating the debt in the event of default by the employee, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to deduction of a greater amount.

(2) Any proposal under paragraph (a)(1) of this section must be received by the Department within 30 days of the date of the notice of intent to offset.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the employee whether the proposed repayment schedule is acceptable. It is within the Secretary's discretion to accept a proposed alternative repayment schedule, and to set the necessary terms of a voluntary repayment agreement.

(c) No voluntary repayment agreement will be binding on the Secretary unless it is in writing and signed by both the Secretary and the employee.

§ 33.9 Special review.

(a) A Department employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Secretary of the amount of the salary offset or voluntary repayment installments, based on materially changed circumstances, such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b)(1) In determining whether an offset would prevent the employee from meeting essential subsistence expenses, *i.e.*, food, housing, clothing, transportation, and medical care, the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(i) Income from all sources;

(ii) Assets and liabilities;

(iii) Number of dependents;

(iv) Food, housing, clothing, transportation, and medical expenses; and

(v) Exceptional and unusual expenses, if any.

(2) When requesting a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents as described in paragraph (b)(1) of this section, stating why the current salary offset or payments result in an extreme financial hardship to the employee.

(c)(1) The Secretary shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes extreme financial hardship on the employee.

(2) Within 30 calendar days of the receipt of the request and supporting documents, the Secretary shall notify the employee in writing of such determination, including, if appropriate, a revised offset or repayment schedule.

(d) If the special review results in a revised offset or repayment schedule, the Secretary shall provide a new certification to the paying agency.

§ 33.10 Procedures for salary offset.

(a) *Method and source of deductions.* Unless the employee and the Secretary have agreed to an alternative repayment arrangement under § 33.8, a debt shall be collected in lump sum or by installment deductions at officially established pay intervals from an employee's current pay account.

(b) *Limitation on amount of deduction.* Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any pay period must not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(c) *Duration of deductions.* (1) *Lump sum.* If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay, the debt generally will be collected in one lump-sum deduction.

(2) If the employee is financially unable to pay in one lump-sum or the amount of the debt exceeds 15 percent of the employee's disposable pay for an officially established pay interval, the debt shall be collected in installments. Except as provided in paragraphs (e) and (f) of this section, installment deductions must be made over a period not greater than the anticipated period of active duty or employment.

(d) *When deductions may begin.* (1) Deductions will begin on the date stated in the notice of intent, unless an alternative repayment agreement under § 33.8 has been accepted or the employee has filed a timely request for a hearing.

(2) If the employee files a timely petition for hearing as provided in § 33.6, deductions will begin after the hearing official has provided the employee with a hearing and a final written decision has been rendered in favor of the Department.

(e) *Liquidation from final check.* If an employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset under to 31 U.S.C. 3716 from subsequent payments of any nature (*e.g.*, final salary payment or lump-sum leave) due the employee from the paying agency as of the date of separation.

(f) *Recovery from other payments due a separated employee.* If the debt cannot be satisfied by offset from any final payment due the employee on the date of separation, the Secretary will liquidate the debt, where appropriate, by administrative offset under 31 U.S.C. 3716 from later payments of any kind due the former employee (*e.g.*, lump sum leave payment).

§ 33.11 Salary offset when the Department is the creditor agency but not the paying agency.

(a) *Centralized administrative offset.* (1) Under 31 U.S.C. 3716, the Department shall notify the Secretary of

the Treasury of all past-due, legally enforceable debts which are 180 days delinquent for purposes of collection by centralized administrative offset. This includes debts which the Department seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt.

(2) Prior to offset of the pay account of an employee, the Department must comply with the requirements of 5 U.S.C. 5514; 5 CFR part 550, subpart K, and this part. Specific procedures for notifying the Secretary of the Treasury of a debt for purposes of collection by administrative offset, including salary offset, are contained in 31 CFR parts 285 and 901 and part 30 of this title.

(b) *Non-centralized administrative offset.* When salary offset through centralized administrative offset under paragraph (a) of this section is not possible, the Department may attempt to collect a debt through non-centralized administrative offset in accordance with part 30 of this title.

(1) *Format of the request.* Upon completion of the procedures established in this part and pursuant to 5 U.S.C. 5514, the Department shall:

(i) Certify in writing to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Departmental regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(ii) If the collection is to be made in installments, advise the paying agency of the number of installments to be collected, the amount or percentage of disposable pay to be collected in each installment, and the commencement date of the installments, if a date other than the next officially established pay period is required.

(iii) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and this written consent or statement is forwarded to the paying agency, advise the paying agency of the action(s) taken under 5 U.S.C. 5514 and this part, and give the date(s) the action(s) was taken.

(2) *Requesting recovery from current paying agency.* (i) Except as otherwise provided in this paragraph, the Department shall submit a certified debt claim containing the information specified in paragraph (a) of this section, and an installment agreement, or other instruction on the payment schedule, if applicable, to the employee's paying agency.

(ii) If the employee is in the process of separating from the Federal government, the Department shall submit the certified debt claim to the employee's paying agency for collection as provided in § 33.10(e). The paying agency must certify the total amount of its collection on the debt and send a copy of the certification to the employee and another copy to the Department. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments that may be due the employee from other Federal Government sources, the paying agency will provide written notification of the outstanding debt to the agency responsible for making such payments to the employee, stating the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Department must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(iii) If the employee is already separated and all payments due from the employee's former paying agency have been paid, the Department may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 or 5 CFR 845.401) or other similar funds, be administratively offset to collect the debt. *See* 31 U.S.C. 3716 and 31 CFR 901.3.

(iv) If the employee transfers to another paying agency, the Department must submit a properly certified debt claim to the new paying agency before collection can be resumed; however, the Department need not repeat the due process procedures described in 5 U.S.C. 5514 and this part. The Department shall review the debt to ensure that collection is resumed by the new paying agency.

§ 33.12 Salary offset when the Department is the paying agency but not the creditor agency.

(a) *Format of the request.* (1) When the Department is the paying agency and another agency is the creditor agency, the creditor agency must certify, in writing, to the Department that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(2) If the collection is to be made in installments, the creditor agency must also advise the Department of the number of installments to be collected, the amount or percentage of disposable pay to be collected in each installment, and the commencement date of the installments, if a date other than the next officially established pay period is required.

(3) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the Department, the creditor agency must advise the Department of the action(s) taken under 5 U.S.C. 5514, and give the date(s) the action(s) was taken.

(b) *Requests for recovery.* (1) *Complete claim.* When the Department receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officially established pay interval. The employee must receive written notice as described in § 33.10 that the Department has received a certified debt claim from the creditor agency, including the amount, and written notice of the date deductions from salary will commence and the amount of such deductions.

(2) *Incomplete claim.* When the Department receives an incomplete debt claim from a creditor agency, the Secretary shall return the debt claim with a notice that procedures under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(c) *Review.* The Secretary is not required or authorized to review the merits of the determination with respect to the amount or validity of the debt certified by the creditor agency.

(d) *Employees separating.* If an employee begins separation action before the Department collects the total debt due the creditor agency, the following actions will be taken:

(1) To the extent possible, the balance owed the creditor agency will be liquidated from a final salary check, or other final payments of any nature due the employee from the Department;

(2) The Secretary will certify the total amount of the Department's collection on the debt and send a copy of the

certification to the employee and another copy to the creditor agency; and

(3) If the Department's collection does not fully satisfy the debt, and the Secretary is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments that may be due the employee from other Federal Government sources, the Secretary will provide written notification of the outstanding debt to the agency responsible for making such payments to the employee. The written notification shall state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Department shall furnish a copy of this written notification to the creditor agency so that it can file a properly certified debt claim with the agency responsible for making such payments.

(e) *Employees who transfer to another paying agency.* If, after the creditor agency has submitted a debt claim to the Department, the employee transfers from the Department to a different paying agency before the debt is collected in full, the Secretary shall:

(1) Certify the total amount of the collection made on the debt; and

(2) Furnish a copy of the certification to the employee and another copy to the creditor agency along with notice of the employee's transfer.

§ 33.13 Interest, penalties, and administrative costs.

Debts owed to the Department shall be assessed interest, penalties and administrative costs in accordance with 45 CFR 30.18.

§ 33.14 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt collected under this part shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of law or contract, unless there are statutory or contractual provisions to the contrary.

§ 33.15 Refunds.

(a) The Secretary shall promptly refund any amounts paid or deducted under this part when:

(1) A debt is waived or otherwise found not owing to the United States; or

(2) The employee's paying agency is directed by administrative or judicial order to refund amount deducted from the employee's current pay.

(b) Unless required or permitted by law or contract, refunds shall not bear interest.

§ 33.16 Additional administrative collection action.

Nothing contained in this part is intended to preclude the use of any other appropriate administrative remedy.

Dated: April 1, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–15692 Filed 7–12–04; 8:45 am]

BILLING CODE 4150–26–P

Notices

Federal Register

Vol. 69, No. 133

Tuesday, July 13, 2004

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

DEPARTMENT OF AGRICULTURE

Center for Nutrition Policy and Promotion; Notice of Proposal for Food Guide Graphic Presentation and Consumer Education Materials; Opportunity for Public Comment

AGENCY: Center for Nutrition Policy and Promotion, USDA.

ACTION: Notice.

SUMMARY: The Food Guide Pyramid, USDA's current food guide, is an educational tool that interprets and helps Americans use the Dietary Guidelines for Americans. It provides guidance on types and amounts of foods to eat that meet current scientific standards for healthful eating to help consumers assess and improve their diets. The USDA Center for Nutrition Policy and Promotion (CNPP) has initiated a broad-based review and update of the Pyramid, including its suggested food intake patterns, its graphic presentation, and new educational materials for professionals and consumers. The update is being conducted by USDA in consultation with the Department of Health and Human Services (HHS). This notice announces a proposed Food Guidance System for the food guide's graphic presentation and education materials. Written and oral public comments are solicited on the proposed Food Guidance System including ideas for a new food guide graphic. A public meeting will be held on August 19, 2004 for additional stakeholder input. Comments are welcomed on all aspects of the proposed Food Guidance System and are specifically requested on six topics described in this notice.

DATES: 1. Written comments on the proposed plan for revising the food guide's graphic presentation and consumer education materials can be submitted and must be received by the Agency on or before August 27, 2004.

2. A public meeting for stakeholder input will be held on August 19, 2004, from 9 a.m. to 12:30 p.m. Requests to participate in this meeting must be received by 5 p.m. e.d.t. on August 12, 2004.

ADDRESSES: 1. Submit written comments to Food Guide Pyramid Reassessment Team, USDA Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, VA 22302. No electronic written comments will be accepted or considered.

2. The public meeting for stakeholder input will be held at the Jefferson Auditorium, USDA South Building, 1400 Independence Avenue SW., Washington, DC. Submit requests to participate to *respond@cnpp.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Relationship to the Dietary Guidelines for Americans

The Food Guide Pyramid, USDA's current food guide, is an educational tool that interprets and helps Americans implement the Dietary Guidelines for Americans and other nutritional standards. Updating of the Pyramid is being coordinated with the review and revision of the Guidelines, a collaborative effort by USDA and the Department of Health and Human Services (HHS). Proposed Food Intake Patterns for the new food guide have been presented to and discussed with the 2005 Dietary Guidelines Advisory Committee for the purpose of obtaining the Committee's input into the process and outcomes. After receipt of the Committee report, the Food Intake Patterns will be finalized in consultation with HHS. The final Food Intake Patterns will reflect the recommendations of the 2005 Dietary Guidelines for Americans. The Dietary Guidelines and the final Food Intake Patterns will be used in development of all consumer messages and materials.

II. Background on the Food Guide Pyramid

USDA has provided food guidance to the American public for over 100 years; the Food Guide Pyramid is the current graphic representation of this guidance. The Pyramid was originally released in 1992. It was designed to help Americans make choices that are (1) adequate in meeting nutritional standards but (2) moderate in energy level and in food components often consumed in excess. Its goal was to make ''total diet'' recommendations. This differed from previous food guides that were concerned with adequacy only and were presented as ''foundation diets'' to which other foods could be added. What is ''adequate'' and ''moderate'' is determined by recommendations from established authoritative bodies, expert panels such as the Dietary Guidelines Advisory Committee and the National Academies of Sciences' Institute of Medicine (IOM) committees. These science-based daily food intake patterns form the foundation for both the graphic presentation of the food guidance and for consumer messages about appropriate food choices and amounts to eat. A full description of how the original food patterns for the Pyramid and the graphic presentation were developed has been published in ''USDA's Food Guide Pyramid: Background and Development,'' available at *http://www.usda.gov/cnpp/pyramid.html.* Proposed updates to the food intake patterns were described in a previous **Federal Register** notice (available at *http://www.cnpp.usda.gov/pyramid-update/index.html).* This earlier notice (68 FR 53536, September 11, 2003) solicited public comments on the proposed Food Intake Patterns. All comments that were received have been posted on the CNPP Web site (same URL as above) and are being considered in the development of the final Food Intake Patterns. These proposed food patterns were developed to meet current nutritional standards and were based on the same philosophical goals that were used in developing the original Pyramid—including the goals to represent a total diet that is both adequate and moderate. The updated food intake patterns also reflect current food consumption choices, in a nutrient dense form (with lowest fat and added sugars content), with amounts modified to meet nutritional goals. The nutritional standards for the proposed food patterns included the IOM Dietary Reference Intakes released between 1997 and 2002 and the *2000 Dietary Guidelines for Americans.* Incorporation of nutritional standards from the 2004 IOM report on water and electrolytes is underway.

III. Proposal for a Food Guidance System for Graphic Presentation and Educational Materials

Most Americans are familiar with the Food Guide Pyramid, but few follow its recommendations in their entirety. The purpose for developing a new consumer presentation and materials is to help motivate consumers to put the food intake patterns into practice in order to improve their food choices. To accomplish this CNPP plans to develop and implement a system that includes focused messages and individualized educational tools. It is envisioned that the system will be delivered through multiple channels (*e.g.*, print, internet, media) that connect with the individual and tailor information to their needs. The goals for this system are (1) to increase consumer awareness of the new science-based nutrition guidance, (2) to encourage consumers to make positive changes in their food choices, and (3) to educate consumers about food choices and amounts to eat.

To reach these goals, CNPP proposes a Food Guidance System that will (1) use a graphic image as a symbol to represent the overall system and (2) define and communicate specific nutritional guidance messages clearly through multiple channels and materials. Proposed components of this system are described in the following sections.

A. Motivational/Awareness Components

1. *Graphic:* CNPP proposes developing a graphic symbol to represent the Food Guidance System to the public and to identify/brand Food Guidance System materials. This graphic is not intended for use as a stand-alone educational tool because the food guidance messages to be conveyed are too complex for any single graphic. The rationale for this approach is described in section IV of this notice.

2. *Slogan:* CNPP also proposes to develop a concise statement to be used in conjunction with the graphic symbol. The slogan will be designed to encourage consumers to make healthy food choices. It will not specifically try to convey other educational messages, but may link with statements directing consumers to sources where they can access food guidance system educational messages and additional information.

B. Educational Components

1. *Daily Food Intake Patterns:* CNPP proposes using the revised Daily Food Intake Patterns to identify appropriate food choices and amounts, based on age, sex, and activity level. These food intake patterns list amounts to eat from five major food groups, as well as subgroups within the vegetable and grains groups. They also identify maximum amounts of added fats and sugars that fit within the caloric goal for each pattern. The proposed food intake patterns are the result of USDA's technical research process and were described at 68 FR 53539 of the September 11, 2003 **Federal Register**. The food intake patterns will be finalized after the 2005 Dietary Guidelines Advisory Committee report is completed. CNPP envisions that the intake patterns will be disseminated in their detailed format primarily to professionals. They will also form the basis for interactive and print consumer materials in a simplified or individualized format.

2. *Core Messages and Framework:* CNPP proposes developing a set of core messages for the Food Guidance System. These messages are intended to help individuals use the food intake patterns in selecting appropriate food choices and amounts. They will be used as the basis for development of educational materials. Federal agencies, health professionals, and nutrition educators may use the framework to incorporate the core messages into their nutrition education programs and materials. The core messages will give specific recommendations for making food choices and will be sufficiently detailed to be actionable. They are proposed as directional statements that will improve food choices for most Americans in comparison to their typical choices. The messages are intended to result in behavioral changes that will:

a. Keep caloric intake balanced with energy expenditure to prevent weight gain, promote weight loss, and/or maintain a healthy weight.

b. Promote nutrient dense food choices to increase the intake of vitamins, minerals, fiber, and other key nutrients, especially those that are often low in typical diets.

c. Lower chronic disease risks by lowering intake of saturated fats, trans fats, cholesterol, sodium, and other food components that are often consumed in excessive amounts.

3. *Interactive personalized guidance tools:* CNPP proposes developing a portfolio of interactive, educational tools for the new Food Guidance System that could be accessed through the Internet, CD–ROMs, or other venues. These tools will individualize food intake recommendations and help consumers make healthful food choices. They will also be designed to provide additional nutrition and health information for consumers ''on demand.'' For example, consumers would be able to access specific information about food sources of calcium if and when they want it. It is envisioned that these tools will provide varied levels of information based on a consumer's interest and needs. For example:

a. Level 1 will provide individualized daily food intake recommendations—identifying appropriate food choices and amounts from each food group and subgroup. These recommendations would be based on user-provided personal characteristics such as age, sex, height, weight, and physical activity level.

b. Level 2 will provide more individualized information to help consumers plan their food choices. It will allow users to make sample food choices and give them immediate visual feedback on how these choices compare to their personal food intake recommendations.

The interactive tools are not envisioned to replace but rather to work in concert with CNPP's existing Interactive Healthy Eating Index (IHEI) and Interactive Physical Activity Tool (IPAT). The new tools will provide links to the IHEI and IPAT for consumers wanting a detailed assessment of their own diet or physical activity level.

4. *Print materials and tools:* CNPP proposes developing print materials and tools to provide core consumer messages for specific target audiences such as schools, food assistance programs, and nutrition education programs. A visually appealing pamphlet and poster for a general consumer audience are currently planned as the first print materials to be developed.

All print materials will incorporate a subset of the consumer messages (educational component B2) that are appropriate for the target audience. For example, a poster intended for young children would include specific messages appropriate for this age group such as eating foods from each food group. The messages may be translated into words or visual images that are appropriate for the specific audience and material. Audiences with specific needs for materials, such as low literacy food program participants, will be identified. All print materials will incorporate the graphic symbol and slogan (motivational/awareness components 1 and 2) in addition to selected educational messages.

IV. Rationale for the Food Guidance System Approach

In planning the approach for the revised food guidance materials, the

development, use of, and consumer understanding of the original graphic image were examined. The original Pyramid graphic was designed to be used in conjunction with a 32-page booklet of nutrition advice titled The Food Guide Pyramid. (The booklet is available on-line at *http://www.usda.gov/cnpp/pyramid.html*.) The booklet provides more detailed advice about making food choices for health than provided by the Pyramid graphic alone. However, many professionals and consumers are unaware of the educational booklet and assume that the Pyramid's nutritional guidance is limited to the information on the graphic image. During the development of the original Pyramid, extensive consumer research with several shapes was conducted to select and confirm which shape best communicated several key messages. Based on this research, the Pyramid shape was selected to communicate the messages of variety, proportionality, and moderation. Among the other shapes that were tested, the bowl shape was found to communicate the variety message well and it was considered appealing by many consumers. However, the bowl shape did not communicate the proportionality and moderation messages as well as the pyramid shape.

The Pyramid graphic has been widely used as a stand-alone educational tool. It appears on posters and on food packages and is used as a handout in health or nutrition education programs. In some instances, the general information in the graphic has been misinterpreted as specific advice. For example, the range of servings shown for each food group, intended to reflect caloric needs of the overall population, has been misunderstood to mean that an individual consumer can select any number of servings within the overall range. While the Pyramid graphic was not intended to provide complete nutritional guidance by itself, it has been successful in communicating several basic messages. Recent USDA research has found that many consumers can identify one or more of the key messages that the Pyramid graphic was intended to convey. For example, a number mentioned variety, moderation, or balance as ''what the Pyramid graphic tells you to do.'' Others referred to the concept of proportionality, stating that you should eat more from the base and less as you move up to the top. However, detailed messages about the food groups—placement, amounts to eat—were not well understood by consumers when viewing the graphic without supplemental materials.

Stakeholders have proposed adding more nutrition education concepts (*e.g.*, types of fat, water, exercise, nutrient density) to the graphic. Depicting all of the key nutritional guidance messages on a single graphic may increase the complexity of the image to the point that it cannot be understood at all. Details about food group placement, for example, are already missed by most consumers. Rather than further complicating the image, the proposed plan is to simplify the graphic and use it as a symbol, to identify food guidance messages and materials and to remind consumers to make healthful food choices. Then, educational materials that communicate the key guidance messages will be developed and identified or ''branded'' by using the graphic symbol on these materials. To the extent possible, these guidance materials will be developed in formats that are individualized, specific, and concrete to assure that intended messages are clear and useful.

V. Process for Development of Consumer Materials

A. Consideration of All Comments and Ideas Received in Response to This Notice

CNPP will carefully consider all written and oral comments and suggestions received in response to this notice. All ideas submitted for the graphic symbol and for any educational materials can and may be used in the design and development process. It is understood that all ideas presented are offered freely for any potential use by USDA or others, and that no credit or other compensation will be made if these ideas are used.

B. Design and Testing Under Contract

CNPP is contracting to develop the consumer materials through the USDA contracting process. To assure consistency with anticipated Dietary Guidelines consumer materials and coordination of the ''look and feel'' of all Federal guidance materials, the development will be conducted in consultation with HHS. The contractor will be responsible for designing, developing, and consumer testing all of the Food Guidance System elements described in this notice. CNPP staff will work closely with the contractor and final decisions about all products will be made by USDA.

C. Consumer Research To Test Understanding, Appeal, Motivational Elements, Usability and Usefulness

As part of the design and development process, all potential images, messages, and materials will be tested with consumers to determine how well they communicate intended messages, how actionable they are, and how appealing they are to consumers. Results from the consumer research will be used to revise and finalize the materials. For many elements of the system, several rounds of consumer testing are envisioned to test early prototypes and then further refine the materials.

D. Finalization and Release

Release of initial materials is planned for early 2005. CNPP envisions that these initial materials will include the graphic symbol and slogan, the core consumer messages, level 1 of the interactive tool, a pamphlet, and a poster.

E. Implementation

CNPP plans to work with its Federal partners to implement the Food Guidance System. Guiding principles for use of all Food Guidance System materials will be developed. In addition, a plan for evaluation will be included as part of the development and implementation of all tools and materials. Implementation strategies include:

1. *Internet accessibility of all materials:* CNPP plans to make all print, graphic, and internet materials available in usable and/or downloadable format through the CNPP website. Additional web venues will also be explored to maximize the visibility and accessibility of the materials.

2. *Partnerships:* CNPP plans to work in coordination and collaboration with other information multipliers (such as educators) to foster widespread use of the food guide graphic, slogan, messages and materials. Partnerships may be sought with nutrition, health, and education organizations; trade associations; Federal, state, and local government agencies; and food companies. Guiding principles to maintain the integrity of the System and guidance messages and an organizational plan for partnerships will be developed within guidelines approved by the USDA Office of the General Counsel.

3. *Media:* CNPP plans to work with the media to create opportunities to increase accessibility and communication of the Food Guidance System messages and materials.

VI. Topics of Particular Interest To CNPP for Comment

Comments are welcomed on all aspects of the proposed Food Guidance System. CNPP has particular interest in receiving comments from the public on the following issues and questions:

A. *Advantages and disadvantages of retaining current shape for graphic and other potential shapes to use as a representative of the overall Food Guidance System.* The current graphic, the Food Guide Pyramid, has attained a high level of recognition among American consumers. The proposed new graphic is envisioned as a simplified symbol to represent the system but not provide detailed information. Is the high level of recognition that the pyramid shape has attained as a symbol of food guidance important in considering a shape for the new symbol? How is a pyramid shape viewed in relation to food guidance? How could USDA best capitalize on the recognition the original Pyramid has attained? Are there reasons that a different shape would be preferable? What other shapes or graphic ideas might better communicate dietary guidance messages?

B. *Usefulness of the proposed strategies to highlight both motivational/awareness and educational messages.* The proposed plan outlined in section III of this notice identifies both motivational/awareness elements and educational elements for the food guidance system. What are the pros and cons to implementing this strategy? How can these elements be designed to best complement each other? Would other strategies better communicate the multiple consumer messages of the food guidance system?

C. *Advantages and disadvantages of the plan to individualize guidance in contrast to ''generalized'' messages.* A major factor considered in the development of this proposed plan was that ''one size'' does not fit all for nutrition guidance. There are some universal messages such as the need for nutrients. However, with the rising incidence of obesity and overweight has come an increased need to focus on specific energy intake levels and therefore specific recommendations for types and amounts of food to consume. How can educational materials best be designed to provide this more specific guidance? What are the pros and cons of attempting to provide individualized rather than general guidance? What guidance messages are appropriate as general messages?

D. *Advantages and disadvantages of the planned focus on core messages in contrast to use of a graphic to represent educational messages.* The original Pyramid graphic was successful in communicating several basic concepts. However, many consumers have not grasped specific concepts such as food group placement and amounts recommended to eat by viewing the graphic alone. Now, additional issues and messages are being proposed for incorporation into food guidance for consumers. Given the number and complexity of food guidance messages that must be communicated, CNPP has proposed that the graphic not be considered as an educational tool to communicate all of these messages. A framework containing core educational messages is envisioned for use in the development of all materials, with the graphic used to identify or ''brand'' these materials as part of the Food Guidance System. Is this plan feasible? Is it preferable to using the graphic to communicate essential food guidance messages? What advantages and disadvantages are there in using the graphic as a symbol to represent the system rather than as an educational tool?

E. *Key components for effective interactive educational tools.* The premise for the educational components of the new Food Guidance System is to help consumers improve their food choices through use of personalized guidance. CNPP envisions doing this through development of interactive educational tools accessible through the internet, on CD–ROMs, or other venues. What makes an effective personalized or interactive tool? What information should be provided to help consumers who seek only basic information on appropriate food choices and amounts? What information should be added for consumers that want to plan and assess their diets? What elements should be developed to help consumers personalize their diets? What caveats should be considered in developing individualized guidance?

F. *Channels of delivery for the Food Guidance System.* Once the new Food Guidance System is released, what are the most efficient and effective ways to reach consumers? Are internet-based and print educational materials most accessible to educators (information multipliers) and consumers? CNPP has proposed using the internet as one of the key channels for delivering Food Guidance System elements. Are there audiences that will not be able to access this information? What alternatives are available for reaching these audiences?

VII. Public Disclosure and Availability of Comments

All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. CNPP plans to make the comments publicly available by posting a copy of all comments on the CNPP Web site at *http://www.cnpp.usda.gov/pyramid-update.*

Dated: July 2, 2004.

Eric J. Hentges,

Executive Director, Center for Nutrition Policy and Promotion.

[FR Doc. 04–15710 Filed 7–12–04; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–057–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity to support the National Animal Health Monitoring System's national Poultry 2004 study.

DATES: We will consider all comments that we receive on or before September 13, 2004.

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

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 04–057–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–057–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–057–1'' on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to

submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket 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.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information on the national Poultry 2004 study, contact Mr. Chris Quatrano, Management Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E6, Fort Collins, CO 80526–8117; (970) 494–7207. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System, Poultry 2004.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of our Nation's livestock and poultry. Disease surveillance plays an important role in protecting the health of the U.S. livestock and poultry populations.

In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases. Information from the studies conducted by NAHMS is disseminated to and used by livestock and poultry producers, consumers, animal health officials, private veterinary practitioners, animal industry groups, policymakers, public health officials, media, educational institutions, and others to improve the productivity and competitiveness of U.S. agriculture.

NAHMS' national studies have evolved into a collaborative industry and government initiative to help improve product quality and to determine the most effective means of producing animal and poultry products. APHIS is the only agency responsible for collecting national data on animal and poultry health. Participation in any NAHMS study is voluntary, and all data are confidential.

NAHMS will initiate a national study titled Poultry 2004 on premises with backyard flocks in the United States. Particular attention will be focused on Alabama, Arkansas, California, Delaware, Georgia, Iowa, Indiana, Maryland, Minnesota, Missouri, Mississippi, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, and Virginia. These 18 States account for 80 percent of broiler production, 74 percent of the layer inventory, and 85 percent of the turkeys raised. In addition, personal interviews will be conducted at live markets in the United States and a mail survey will also be sent to members of the United Gamefowl Breeders Association. The purpose of the study is to support the U.S. poultry industry by identifying potential disease transmission routes within backyard flocks and describing management practices related to control of disease spread. The potential benefits to the U.S. poultry industry include increased production through the identification of potential disease transmission vectors and enhanced management techniques.

The specific objectives of the Poultry 2004 study include the following: (1) Identify and describe the current population density of backyard poultry flocks around the commercial operations within States that account for a large proportion of U.S. poultry production; (2) assess current movement and handling practices among small and large producers that could potentially spread poultry disease; (3) identify common movement, biosecurity, and cleaning and disinfection practices at live bird markets; and (4) disseminate information on the benefits of proper biosecurity techniques to poultry owners.

We are asking the Office of Management and Budget (OMB) to approve the information collection activity for the national Poultry 2004 study.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.42 hours per response.

Respondents: Backyard poultry owners within a 1-mile radius of a commercial poultry operation, members of the United Gamefowl Breeders Association, and live bird market managers.

Estimated annual number of respondents: 3,675.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 3,675.

Estimated total annual burden on respondents: 1,801 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of July, 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15806 Filed 7–12–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–059–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the importation of horses, ruminants, swine, and dogs from regions of the world where screwworm is considered to exist.

DATES: We will consider all comments that we receive on or before September 13, 2004.

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

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–059–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–059–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–059–1'' on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket 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.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding the importation of horses, ruminants, swine, and dogs from regions of the world where screwworm is considered to exist, contact Dr. Glen I. Garris, Assistant to the Associate Deputy Administrator, Emergency Management, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737; (301) 734–8073. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm.

OMB Number: 0579–0165.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of our Nation's livestock and poultry.

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subparts C, D, E, and F of the regulations govern the importation of horses, ruminants, swine, and dogs, respectively, and include provisions for the inspection and treatment of these animals if imported from any region of the world where screwworm is considered to exist. Screwworm is a pest native to tropical areas of South America, the Indian subcontinent, Southeast Asia, tropical and sub-Saharan Africa, and the Arabian peninsula. Screwworm causes extensive damage to livestock and other warmblooded animals.

The horses, ruminants, swine, and dogs must be accompanied to the United States by a certificate signed by a full-time salaried veterinary official of the exporting region stating that the animal has been inspected, under certain conditions, and found free of screwworm and, as appropriate, that the animal was treated for screwworm.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Full-time salaried veterinary officials of exporting regions.

Estimated annual number of respondents: 40.

Estimated annual number of responses per respondent: 4.

Estimated annual number of responses: 160.

Estimated total annual burden on respondents: 40 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of July 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15807 Filed 7–12–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–060–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the interstate movement of sheep and goats and an indemnity program to help prevent the spread of scrapie.

DATES: We will consider all comments that we receive on or before September 13, 2004.

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

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–060–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–060–1.

• E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–060–1'' on the subject line.

• Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket 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.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the domestic regulations to help prevent the spread of scrapie, contact Dr. Diane Sutton, Senior Staff Veterinarian, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 734–6954. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Scrapie in Sheep and Goats; Interstate Movement Restrictions and Indemnity Program.

OMB Number: 0579–0101.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of our Nation's livestock and poultry.

Scrapie is a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats. It is a member of a class of diseases called transmissible spongiform encephalopathies (TSEs). Its control is complicated because the disease has an extremely long incubation period without clinical signs of disease.

The regulations in 9 CFR part 79 restrict the interstate movement of certain sheep and goats to help prevent the spread of scrapie. APHIS also has regulations at 9 CFR part 54 for an indemnity program to compensate owners of sheep and goats destroyed because of scrapie.

The scrapie disease control program requires the use of a number of information collection activities, including cooperative agreements; applications from owners to participate in the Scrapie Flock Certification Program; post-exposure management and monitoring plans; scrapie test records; applications for indemnity payments; certificates, permits, and owner statements for the interstate movement of certain sheep and goats; applications for premises identification numbers; and applications for APHIS-approved eartags, backtags, or tattoos.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.133378666 hours per response.

Respondents: Flock owners, market operators, accredited veterinarians, and State animal health authorities.

Estimated annual number of respondents: 150,000.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 750,000.

Estimated total annual burden on respondents: 100,034 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of July 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15808 Filed 7–12–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–063–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the importation of fruits and vegetables.

DATES: We will consider all comments that we receive on or before September 13, 2004.

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

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–063–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–063–1.

• E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body

of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–063–1'' on the subject line.

• Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket 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.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of fruits and vegetables, contact Mr. Alan S. Green, Assistant Director, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8311. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Fruits and Vegetables.

OMB Number: 0579–0128.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for preventing plant pests from entering the United States and controlling and eradicating plant pests in the United States. The Plant Protection Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine (PPQ) program of USDA's Animal and Plant Health Inspection Service is responsible for implementing the regulations that carry out the intent of this Act. The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

The regulations in § 319.56–2w allow papayas to be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands from certain regions of Brazil, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama under specified conditions. Allowing papayas to be imported necessitates the use of certain information collection activities, including completing phytosanitary inspection certificates, maintaining fruit fly monitoring records, and marking the cartons.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.002 hours per response.

Respondents: Papaya producers and plant health officials in Brazil, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

Estimated annual number of respondents: 50.

Estimated annual number of responses per respondent: 10.

Estimated annual number of responses: 500.

Estimated total annual burden on respondents: 501 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of July 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15812 Filed 7–12–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–049–1]

National Wildlife Services Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, we are giving notice of a meeting of the National Wildlife Services Advisory Committee.

DATES: The meeting will be held on August 17 through 19, 2004, from 8 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Mrs. Joanne Garrett, Director, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234; (301) 734–7921.

SUPPLEMENTARY INFORMATION: The National Wildlife Services Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Wildlife Services (WS) program. The Committee also serves as a public forum enabling those affected by the WS program to have a voice in the program's policies.

The meeting will focus on operational and research activities and will be open to the public. Due to time constraints, the public will not be able to participate in the Committee's discussions. However, written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mrs. Joanne Garrett at the address listed under **FOR FURTHER INFORMATION CONTACT**, or may be filed at the meeting. Please refer to Docket No. 04–049–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal

Advisory Committee Act (5 U.S.C. App. II).

Parking and Security Procedures

Please note that a fee of $2.25 is required to enter the parking lot at the USDA Center. The machine accepts $1 bills and quarters.

Upon entering the building, visitors should inform security personnel that they are attending the National Wildlife Services Advisory Committee meeting. Identification is required. Visitor badges must be worn at all times while inside the building.

Done in Washington, DC, this 7th day of July 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15811 Filed 7–12–04; 8:45 am]

BILLING CODE 3410–13–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Province Advisory Committee will meet in Newport, OR, July 22, 2004. The theme of the meeting of Introduction/Overview/Business Planning. The agenda includes: Payments to Counties Update, Monitoring Trip Update, BLM Industry Settlement, PAC Subcommittee Update, Public Comment and Round Robin.

DATES: The meeting will be held July 22, 2004, beginning at 9 a.m.

ADDRESSES: The meeting will held at the Hallmark Resort, 744 SW., Elizabeth Street, Newport, OR.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–75–7075, or write to Siuslaw National Forest Supervisor, PO Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council Discussion is limited to Forest Service/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 2:45 p.m. for fifteen minutes. The meeting is expected to adjourn around 3:30 p.m.

Dated: July 7, 2004.

Michael A. Harvey,

Assistant Recreational Staff.

[FR Doc. 04–15797 Filed 7–12–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introduction, (2) Approval of Minutes, (3) Public Comment, (4) Small Diameter Wood CD, (5) Web site Update, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on July 26, 2004, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; E-mail *ggaddini@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by July 23, 2004 will have the opportunity to address the committee at those sessions.

Dated: July 8, 2004.

Robert McCabe,

Acting Designated Federal Official.

[FR Doc. 04–15796 Filed 7–12–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Thirtymile Creek Watershed, MT

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), The Natural Resources Conservation Service gives notice of the deauthorization of Federal funding for the Thirtymile Creek Watershed Project, Blaine County, Montana effective July 1, 2004.

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

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

Dated: July 2, 2004.

Dave White,

State Conservationist.

[FR Doc. 04–15781 Filed 7–12–04; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee and the California, New Mexico and Texas Subcommittees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a community forum of the Arizona State Advisory Committee and the California, New Mexico and Texas Subcommittees will convene at 10 a.m. (PDT) and adjourn at 6 p.m. (PDT), Friday, August 27, 2004 and Saturday, August 28, 2004 from 10 a.m. to 2 p.m. The purpose of the community forum will be to obtain current information from public and private individuals and organizations on concerns of conditions and activities along the United States-Mexico border. Also, an open session will be conducted.

Persons desiring additional information, or planning a presentation to the Committee, should contact Arthur Palacios, Civil Rights Analyst, Western Regional Office, (213) 894–3437. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington DC, July 2, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–15837 Filed 7–12–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–846)

Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Final Results of the Ninth New Shipper Review

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

ACTION: Notice of final results and partial rescission of the sixth antidumping duty administrative review and final results of the ninth new shipper review.

SUMMARY: On March 5, 2004, the Department of Commerce published the preliminary results and preliminary partial rescission of the sixth antidumping duty administrative review, and the preliminary results and final rescission of the ninth new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. *See Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Sixth Antidumping Duty Administrative Review and Preliminary Results and Final Rescission of the Ninth New Shipper Review*, 69 FR 10402 (March 5, 2004) (''*Preliminary Results*''). These reviews examined 21 exporters[1] (''the respondents''), five of which are exporters included in three exporter/producer combinations and one of which is a new shipper. The period of review is April 1, 2002, through March 31, 2003 (''POR''). We gave interested parties an opportunity to comment on our preliminary results.

Based on the additional publicly available information placed on the record for these final results and the comments received from the interested parties, we have made changes in the margin calculations for the respondents in these reviews. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: July 13, 2004.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1280, or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2004, the Department published in the **Federal Register** the Preliminary Results (see 69 FR 10402).

On March 25, 2004, and in accordance with 19 CFR 351.301(c)(3)(ii), the petitioner&[2] submitted additional publicly available information for consideration in the final results.

On May 10, 2004, the petitioner submitted its case brief, and on May 17, 2004, the respondents submitted a rebuttal brief.

Scope of Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all–terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi–finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we continue to find that no shipments of subject merchandise were made to the United States during the POR by the exporters which are part of the three exporter/producer combinations (*i.e.*, Xianjiang, CAIEC, Laizhou CAPCO, Laizhou Luyuan and Shenyang Honbase) which received zero rates in the less–than-fair–value (''LTFV'') investigation, or the four exporters (*i.e.*, Shanxi Fengkun, Hengtai, Golden Harvest and Xumingyuan) which made no–shipment claims (*see Preliminary Results* at 69 FR 10404). Therefore, in accordance with 19 CFR 351.213(d)(3), we are rescinding the administrative review with respect to all of the above–mentioned companies because we found no evidence that these companies made shipments of the subject merchandise during the POR.

[1] The names of the respondents in the sixth administrative review are as follows: (1) China National Industrial Machinery Import & Export Corporation (''CNIM''); (2) Laizhou Automobile Brake Equipment Company, Ltd. (''LABEC''); (3) Longkou Haimeng Machinery Co., Ltd. (''Longkou Haimeng''); (4) Laizhou Hongda Auto Replacement Parts Co., Ltd. (''Hongda''); (5) Hongfa Machinery (Dalian) Co., Ltd. (''Hongfa''); (6) Qingdao Gren (Group) Co. (''GREN''); (7) Qingdao Meita Automotive Industry Company, Ltd. (''Meita''); (8) Shandong Huanri (Group) General Company (''Huanri General''); (9) Yantai Winhere Auto-Part Manufacturing Co., Ltd. (''Winhere''); (10) Zibo Luzhou Automobile Parts Co., Ltd. (''ZLAP''); (11) Longkou TLC Machinery Co., Ltd (''LKTLC''); (12) Zibo Golden Harvest Machinery Limited Company (''Golden Harvest''); (13) Shanxi Fengkun Metallurgical Limited Company Hengtai Brake System Co., Ltd. (''Hengtai''); (16) China National Machinery and Equipment Import & Export (Xianjiang) Corporation (''Xianjiang''); (17) China National Automotive Industry Import & Export Corporation (''CAIEC''); (18) Laizhou CAPCO Machinery Co., Ltd. (''Laizhou CAPCO''); (19) Laizhou Luyuan Automobile Fittings Co. (''Laizhou Luyuan''); and (20) Shenyang Honbase Machinery Co., Ltd. (''Shenyang Honbase''). The respondent in the new shipper review is (21) Laizhou City Luqi Machinery Co., Ltd. (''Luqi'').

The excluded exporter/producer combinations are: (1) Xianjiang/Zibo Botai Manufacturing Co., Ltd.; (2) CAIEC/Laizhou CAPCO; (3) Laizhou CAPCO/Laizhou CAPCO; (4) Laizhou Luyuan/Laizhou Luyuan or Shenyang Honbase; or (5) Shenyang Honbase/Laizhou Luyuan or Shenyang Honbase.

[2] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

Analysis of Comments Received

All issues raised in the case brief are addressed in the Issues and Decision Memorandum (''*Decision Memo*''), which is hereby adopted by this notice. A list of the issues raised, all of which are in the *Decision Memo*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at http://ia.ita.doc.gov/. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on the use of additional publicly available information and the comments received from the interested parties, we have made changes in the margin calculation for each respondent. For a discussion of these changes, *see* the ''Margin Calculations'' section of the *Decision Memo*.

For the final results, we calculated average surrogate percentages for factory overhead, selling, general and administrative expenses, and profit using the 2002–2003 financial data of Kalyani Brakes Limited and Mando Brake Systems India Limited. *See Decision Memo* at Comments 1 and 2.

We corrected a missing data problem in ZLAP's factors of production database which we inadvertently did not do in the preliminary results.

Final Results of Reviews

We determine that the following weighted–average margin percentages exist for the following companies during the period April 1, 2002, through March 31, 2003:

Manufacturer/producer/exporter	Margin Percent
China National Industrial Machinery Import & Export Corporation	0.17 (de minimis)
Hongfa Machinery (Dalian) Co., Ltd.	0.00
Laizhou Automobile Brake Equipment Company, Ltd.	0.01 (de minimis)
Laizhou City Luqi Machinery Co., Ltd.	0.00
Laizhou Hongda Auto Replacement Parts Co., Ltd.	0.00
Longkou Haimeng Machinery Co., Ltd.	0.01 (de minimis)
Longkou TLC Machinery Co., Ltd.	0.02 (de minimis)
Qingdao Gren (Group) Co.	0.04 (de minimis)
Qingdao Meita Automotive Industry Company, Ltd.	0.14 (de minimis)
Shandong Huanri (Group) General Company	0.00
Yantai Winhere Auto–Part Manufacturing Co., Ltd.	0.02 (de minimis)
Zibo Luzhou Automobile Parts Co., Ltd.	0.00
PRC NME entity	43.32

Assessment Rates

The Department shall determine, and US Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we calculated importer- or customer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. Where the respondent did not report actual entered value, we calculated individual importer- or customer–specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the sales examined. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer–specific assessment rate is zero or de minimis (*i.e.*, less than 0.50 percent). To determine whether the per–unit duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer- or customer–specific *ad valorem* ratios based on export prices. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. For entries of the subject merchandise during the POR from companies not subject to this review, we will instruct CBP to liquidate them at the cash deposit rate in effect at the time of entry.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments of brake rotors from the PRC that are manufactured and exported by Luqi, and entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review.

The following deposit rates shall be required for merchandise subject to the order, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) and (a)(2)(B) of the Act: (1) the cash deposit rate for CNIM, GREN, Haimeng, Hongda, Hongfa, Huanri General, LABEC, LKTLC, Luqi (*i.e.*, for subject merchandise manufactured and exported by Luqi), Meita, Winhere and ZLAP, will be zero; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity and for subject merchandise exported by Luqi but not manufactured by it will continue to be the PRC–wide rate (*i.e.*, 43.32 percent); and (4) the cash deposit rate for non–PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

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

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act, and 19 CFR 351.213 and 351.214.

Dated: July 6, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix--Issues in Decision Memo

Comments

1. Whether to revise the methodology used in the preliminary results to calculate the surrogate selling, general and administrative expense (SG&A) for Kalyani Brakes Limited (Kalyani)
2. Whether to continue to use data contained in Rico Auto Industries Limited's (Rico) 2000–2001 financial statement to calculate surrogate ratios for factory overhead, SG&A and profit

[FR Doc. 04–15835 Filed 7–12–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 2002–2003 Administrative Review and Partial Rescission of Review

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

ACTION: Notice of final results of 2002–2003 administrative review and partial rescission of the review.

SUMMARY: We have determined that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were not made below normal value during the period June 1, 2002, through May 31, 2003. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes to the margin calculation of the reviewed company. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margin for this firm is listed below in the section entitled ''Final Results of the Review.'' Based on these final results of review, we will instruct U.S. Customs and Border Protection not to assess antidumping duties on the subject merchandise exported by this company.

EFFECTIVE DATE: July 13, 2004.

FOR FURTHER INFORMATION CONTACT: S. Anthony Grasso or Andrew R. Smith, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3853 or (202) 482–1276, respectively.

Background

On March 5, 2004, the Department published the preliminary results of this review of tapered roller bearings and parts thereof, finished and unfinished (''TRBs'') from the People's Republic of China (''PRC''). *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2002–2003 Administrative Review and Partial Rescission of Review,* 69 FR 10424 (March 5, 2004) *(''Preliminary Results'').* The period of review (''POR'') is June 1, 2002, through May 31, 2003. This review covers the following producers or exporters (referred to collectively as ''the respondents''): Peer Bearing Company—Changshan (''CPZ''), Shanghai United Bearing Co., Ltd. (''SUB''), and Yantai Timken Co., Ltd. (''Yantai Timken''). We invited parties to comment on the *Preliminary Results.* On April 12, 2004, we received a case brief from the Timken Company (''the petitioner''). On April 19, 2004, SUB submitted a rebuttal brief.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act'').

Scope of Review

Merchandise covered by this order is TRBs from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Rescission of Review in Part

As noted in the *Preliminary Results,* on August 20, 2003, Yantai Timken, and on January 21, 2004, CPZ, withdrew their requests for review. The petitioner did not request reviews of either of these companies. Therefore, pursuant to 19 CFR § 351.213(d)(1), for the reasons explained in the *Preliminary Results,* and because no other party requested a review of these companies, we are rescinding the review with respect to CPZ and Yantai Timken.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' from Jeffrey May, Deputy Assistant Secretary, Group I, Import Administration, to James J. Jochum, Assistant Secretary, Import Administration, dated July 6, 2004 *(''Decision Memorandum''),* which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum.* Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, located in Room B–099 of the main Department building (''CRU''). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn* under the heading ''China PRC.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received and a reexamination of surrogate value data, we have made one change to our calculations for the final results. To calculate the surrogate value for the steel used to manufacture rollers, we used Japanese exports to Indonesia instead of the Indonesian import data relied on in the *Preliminary Results. See Decision Memorandum* at Comment 2.

Final Results of Review

We determine that the following dumping margin exists for the period June 1, 2002, through May 31, 2003:

Exporter/manufacturer	Weighted-average margin percentage
Shanghai United Bearing Co., Ltd	0.00

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the

requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was *de minimis*, we will order the Customs Service to liquidate without regard to antidumping duties.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of these final results for all shipments of TRBs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be the rate shown above except that, for firms whose weighted-average margins are less than 0.5%, and therefore, *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the rate will be the PRC country-wide rate, which is 60.95 percent; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

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

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: July 6, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—List of Comments and Issues in the Decision Memorandum

Comment 1: Source of Data Used to Benchmark the Cup and Cone Surrogate Data

Comment 2: Use of Japanese Exports to Value the Roller Steel Input

Comment 3: Use of an Indian Inflator to Adjust the Indian Price of Electricity

Comment 4: U.S. Customs Duties and U.S. Inland Freight Possibly Incurred by Shanghai United Bearing Co., Ltd.

Comment 5: Shanghai United Bearing Co., Ltd.'s U.S. Sales.

[FR Doc. 04–15836 Filed 7–12–04; 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, NOAA, 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 advice.

DATES: The meeting will be held Thursday, July 29, 2004, from 8:30 a.m. to 2:30 p.m. The times and agenda topics 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 Crowne Plaza Times Square Hotel, 1605 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Captain Roger Parsons, Designated Federal Official, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland, 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 for verbal comments or questions from the public on Thursday, July 29, 2004, at approximately 11:30 a.m. 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 July 20, 2004. Written comments received by the HSRP Designated Federal Official after July 20, 2004, will be distributed to the HSRP, but may not be reviewed prior to the meeting date. Approximately thirty (30) 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: Topics planned for discussion at the meeting include: (1) National Hydrographic Survey Priorities, (2) Physical Oceanographic Real-Time System, (3) Integrated Ocean Observing System, (4) U.S. Government Hydrographic/Oceanographic Fleet, and (5) Public Statements.

Dated: June 25, 2004.

Captain Roger L. Parsons,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 04–15774 Filed 7–12–04; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000616180–4159–09; I.D. 070604B]

RIN 0648–ZA91

U.S. Climate Change Science Program Synthesis and Assessment Product Prospectus

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice and request for public comment.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to announce the availability of the Prospectus (Prospectus) for the U.S. Climate Change Science Program (CCSP) Synthesis and Assessment Product addressing the CCSP Topic: ''Temperature trends in the lower atmosphere–steps for understanding and reconciling differences'' for public comment. This Prospectus describes plans for scoping, drafting, reviewing, producing, and disseminating the final synthesis and assessment product for the listed CCSP Topic.

DATES: Comments must be received by August 12, 2004.

ADDRESSES: The Prospectus is posted on the CCSP Program Office web site. The address to access the Prospectus is: *http://www.climatescience.gov/Library/sap/sap1–1/sap1–1prospectus-draft.pdf*. Detailed instructions for making comments on the Prospectus are provided on the CCSP web site; *http://www.climatescience.gov/Library/sap/sap1–1/sap1–1prospectus-draft.htm*. Please insure that submitted comments are prepared in accordance with these instructions.

FOR FURTHER INFORMATION CONTACT: Richard H. Moss, Ph.D., Director, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419–3476.

SUPPLEMENTARY INFORMATION: The CCSP, which was established by the President in 2002, coordinates and integrates scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that support climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues. The Prospectus addressing the CCSP Topic: ''Temperature trends in the lower atmosphere - steps for understanding and reconciling differences'' is one of 21 such products that will be produced by the CCSP.

Dated: July 6, 2004.

James R. Mahoney,

Assistant Secretary of Commerce for Oceans and Atmosphere, Director, Climate Change Science Program.

[FR Doc. 04–15826 Filed 7–12–04; 8:45 am]

BILLING CODE 3510–KB–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 13, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 7, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Student Assistance General Provisions—Subpart E (Verification of Student Aid Application Information).

Frequency: Annually.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 3,030,215.

Burden Hours: 1,022,384.

Abstract: Verification of Application Information for Title IV Student Financial Assistance Programs. Applicant's and in some cases the applicant's parent or spouse must provide documentation to support data listed on the application for assistance.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2577. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–15777 Filed 7–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 12, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 7, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Request for OMB Clearance of Title VI applications for seven discretionary grant programs.

Frequency: The grant competition cycles for the programs included in this collection vary. Four programs compete annually, one program competes every three years, and two programs compete every four years.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 577.

Burden Hours: 45,861.

Abstract: Institutions of higher education use the applications to request grants under the seven Title VI, International Education Programs.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2575. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW, Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–15778 Filed 7–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On July 7, 2004, the Department of Education published a notice in the **Federal Register** (Page 40881, Column 3) for the information collection, ''Paul Douglas Teacher Scholarship Program Performance Report.'' The title of this information collection has been corrected. The corrected title is ''Targeted Teacher Deferments (Teacher Shortage Areas)''. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: July 8, 2004.

Angela C. Arrington,

Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 04–15803 Filed 7–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities—Reading Interventions for Students With Mental Retardation; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.324K.

Dates: Applications Available: July 14, 2004.

Deadline for Transmittal of Applications: August 30, 2004.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Estimated Available Funds: $4,800,000.

Estimated Average Size of Awards: $600,000.

Maximum Award: We will reject any application from a single entity that proposes a budget exceeding $600,000 for a single budget period of 12 months. However, we will consider proposals up to $1,000,000 per year if the proposal is from multiple institutions, or any other group of eligible parties that meet the requirements of 34 CFR 75.127 to 75.129, and permits assembling of larger samples that address the priority described elsewhere in this notice. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 8.

Note: Given a sufficient number of approved high quality applications, the Department intends to fund at least one project addressing students with mild to moderate mental retardation, at least one project addressing students with moderate to

severe mental retardation, and at least one project addressing the full continuum of mild to severe mental retardation.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to produce, and advance the use of, knowledge to improve the results of education and early intervention for infants, toddlers, and children with disabilities.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (*see* sections 661(e)(2) and 672 of IDEA).

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Reading Interventions for Students with Mental Retardation.

Background: This priority addresses the development and evaluation of scientifically based reading interventions for students with mental retardation. This population includes students with a range of intellectual disabilities on a continuum from mild to severe mental retardation. This priority stems from the recognition that there is a lack of adequate scientifically based research on interventions that will accelerate development of reading skills in students with mental retardation. In addition, the extent to which progress in reading interventions generalizes to performance on content-based assessments such as those permitted in State accountability assessments is not established. Finally, there are questions specific to students with mental retardation that involve whether improvement in reading skills impacts functional skills, adaptive behavior, and school/community integration or whether improvement of reading skills in a classroom or curricular contexts is generalized to other settings and applications.

One promising approach to research on reading instruction for students with mental retardation may be derived from research on interventions with established efficacy for students with intellectual levels in the average range. The critical question is the extent to which such interventions are effective with students who function at intellectual levels associated with mental retardation. Although many initial reading intervention studies excluded students with intellectual levels below the average range, more recent interventions have included many students participating in regular education classes. The range of intellectual levels, largely on verbal measures, typically includes a small number of children with scores more than two standard deviations below the mean as well as students at the cusp of decisions concerning the presence of mild to moderate mental retardation. Many of these students would have been categorized as students with mental retardation in the past and are now often identified in the learning disability category. Irrespective of the category, little empirical evidence exists showing that scores on measures of intelligence are strongly related to responses to these interventions. In addition, this evidence largely involves the use of word recognition measures as outcomes. The extent to which such gains generalize to the other important domains of reading, especially fluency and comprehension, is not known, especially in lower performing students. Moreover, the findings of these studies are rarely linked to State content standards as exemplified by general assessments or alternate assessments based on grade level achievement standards or alternate achievement standards.

A second promising approach is derived from studies utilizing approaches based on the functional analysis of behavior involving, for example, stimulus control methods, direct teaching of functional skills, and other promising approaches. It is recognized that such interventions have involved direct teaching of academic content or the use of functional skills that may improve access to the general curriculum. Also, it is important to link research on interventions to State content standards as exemplified by general assessments or alternate assessments based on grade-level achievement standards or alternate achievement standards.

Comparisons of the relative efficacy of these two approaches are encouraged, especially in relation to improved reading abilities, adequate yearly progress, access to and progress in the general education curriculum and transfer to adaptive behavior and school/community integration, including daily routines. It is especially important for these types of interventions to clearly specify the target behavior, timeframe for progress, prompting system, reward system, requirements for fading and transfer, and other components of the intervention. Generalization beyond the target behavior into components clearly representative of word recognition, fluency, and comprehension is critical. Although whole group instruction and cooperative learning activities within an inclusive environment do show evidence of efficacy, students with intellectual disabilities typically require systematic and often individualized instruction.

Although these two approaches are readily apparent in the existing literature, other well-justified approaches may be proposed that represent combinations of principles from these two approaches or some other approach to instruction.

Priority: This priority is for research on the development and evaluation of reading interventions involving one or both of two target groups addressing (1) students with performance levels in the range of mild to moderate mental retardation; and (2) students with performance levels in the range of moderate to severe mental retardation. It is anticipated that in order to address the first target group, currently existing reading interventions with evidence of efficacy will be evaluated and, if necessary, adapted for students. Please note that the sample may include children who perform somewhat above levels associated with mild mental retardation, especially given the nature of the error of measurement associated with such categorical designations. However, including children who obtain intelligence test scores within one standard deviation of the mean is not encouraged. To address the second target group, interventions specifically designed for individuals in the range of moderate to severe mental retardation may need to be developed and implemented.

Applicants are allowed some startup time to organize the research, but should explain the rationale for the time period they begin data collection and budget appropriately for the startup period. Within a month of receiving the award, grantees will be required to meet in Washington, DC to develop common procedures that will permit linking of the funded studies. This linking may require agreement on a set of common identification measures for children and outcome measures collected by all projects that will help evaluate findings across studies and generalize findings.

In addition to the following specific requirements, all applications must (i) provide a compelling rationale addressing the theoretical foundation of the research and its link to reading, relevant prior empirical evidence supporting the proposed project, and the practical importance of the proposed project; (ii) include clear, concise

hypotheses or research questions; (iii) present a clear description of the sample or study participants, including justification for exclusion and inclusion criteria and, where groups or conditions are involved, strategies for assigning participants to groups; (iv) provide clear descriptions and a rationale for all data collection procedures and measures to be used; and (v) present a detailed data analysis plan that justifies and explains the selected analytic strategy, shows clearly how the measures and analyses relate to the hypotheses or research questions, and indicates how the results will be interpreted. Quantitative studies should include a power analysis to provide some assurance that the sample is of sufficient size. Innovation is encouraged provided the rationale is clearly outlined, there is some evidence suggesting that the approach has promise, and the study design permits a rigorous evaluation of the approach.

In addition, proposals must:

(a) Address the conceptual basis and critical elements of the reading interventions, particularly in terms of the components of reading that are addressed. It is recommended that the components be consistent with reports that address the empirical evidence supporting the nature of proficient reading, such as the National Reading Panel, the National Research Council's Preventing Reading Difficulties in Young Children, and the Rand Reading Comprehension reports.

(b) Address the duration of the interventions. Students with mental retardation may require longer periods of intervention in order to respond. Applicants must provide a rationale for: (1) The duration of the interventions, (2) how the interventions with evidence of efficacy need to be modified, and (3) if applicable, the manipulation of duration and intensity of the intervention as a component of the research. Some evidence from studies not specifically targeting children with mental retardation suggests that students with severe reading problems respond to interventions on highly targeted reading skills over short periods of time (*e.g.*, eight weeks) when the intervention is delivered with high intensity (*e.g.*, two hours per day). However, longer term interventions may be needed to promote transfer, generalization, and improved access to and progress in the general education curriculum. These are empirical questions that could be the focus of a sequence of studies conducted under this application.

(c) Clearly define the populations of interest so that results can be replicated and questions concerning factors related to response to intervention can be addressed. The etiologies of children with mental retardation are diverse and often occur in association with a variety of genetic and environmental factors as well as with other disabilities, such as autism and pervasive developmental disorders. No subdivision of the children with mental retardation is intended for the purposes of this competition. Applicants are encouraged to assemble diverse samples, so long as etiological factors, co-morbidities, and indices of mild to severe mental retardation are carefully documented as possible variables in explaining variations in response to reading interventions. Defining the population may include providing data on the intellectual and adaptive behavior levels of the students as formally assessed.

(d) Evaluate multiple reading outcomes through the use of reliable and valid assessment instruments that establish whether gains generalize to domains involving word recognition, fluency, and comprehension. To the extent practicable, such assessments should include both norm referenced and criterion-referenced assessments, the latter related to established benchmarks, such as State content standards and alternate achievement standards as they are developed. A strong theoretical basis for selecting and measuring outcomes is important.

(e) Propose follow-up evaluation intervals of sufficient length to evaluate the maintenance and generalization of gains in different reading skills. Although the specification of the follow-up intervals may depend on the nature of the intervention, it is important to carefully address maintenance and generalization in terms of sufficiently long follow-up intervals and the impact on word recognition, fluency, comprehension, and improved access to and progress in the general education curriculum. Several years of follow-up may be important depending on the nature of the intervention and the goals of the research; however, only a maximum of five years of funding is available through this competition. For some smaller scale projects, where the goal is simply to determine the efficacy of an existing intervention in the sample of interest, long-term follow-up may not be essential. Larger projects utilizing more established interventions will need longer follow-ups, especially if the goal is to link the intervention to mastery of State content standards or alternate achievement standards. These interventions could occur across one or more school years as a sequence of interventions addressing different components of the reading process.

(f) Specifically evaluate the extent to which gains in reading skills are associated with (1) progress in the general education curriculum, and (2) changes in functional skills (including language and communication), and adaptive behavior (including level of independent function and integration into the general education classroom and, if applicable, community).

(g) Summarize and build upon the empirical evidence on the efficacy of an intervention for the population of interest.

(h) Utilize experimental designs appropriate for questions involving efficacy. In particular, the Department encourages designs involving random assignment to intervention and appropriate comparison groups, but recognizes that other designs may be appropriate, such as the use of multiple baseline designs for students with severe cognitive disabilities. Even in the latter instance, the use of comparison subjects randomly assigned at some point not to receive the intervention should be considered. When appropriate, the sample size should be large enough to indicate adequate power for detecting small to moderate effects of the intervention, to permit generalization to other contexts, and to permit examination of factors that predict response to intervention. Applicants proposing to use other approaches, such as quasi-experiments with matched groups and statistical controls, should carefully justify their approach in terms of the ability to make causal inferences, and provide a compelling rationale for why random assignment is not practical or appropriate. Observational, survey, or qualitative methodologies are encouraged as a complement to experimental methodologies to assist in the identification of factors that may explain the effectiveness or ineffectiveness of the intervention. Mediating and moderating variables that are measured in the intervention condition that are also likely to affect outcomes in the comparison condition should be measured in the comparison condition (*e.g.*, student time-on-task, teacher experience/time in position).

(i) Provide detailed descriptions of data analysis procedures. For quantitative data, specific statistical procedures should be cited. For qualitative data, the specific methods used to index, summarize, and interpret data should be delineated. In addition, documentation of the resources required to implement the program and a cost analysis must be part of the study.

(j) Provide information documenting the credentials and level of preparation

required to deliver the intervention (*e.g.*, certified teacher, paraprofessional) and the nature and extent of professional development, coaching, and monitoring required in order to implement the intervention effectively. In addition, other components found to be effective in previous studies, including team planning, positive behavior supports, parental involvement, administrative leadership, and related factors should be considered and documented.

(k) Provide information about and a rationale concerning the education setting and environment in which the intervention is effective (*e.g.*, regular education inclusion classroom, regular education classroom with pull-out support, self-contained classroom, community setting). The size of the instructional group is an important consideration, especially given the emerging evidence that small group instruction is as effective as 1:1 instruction in the reading area.

(l) Include in the research designs components that permit the identification and assessment of factors impacting the fidelity of implementation and quality of instruction (if applicable) through quantitative and qualitative approaches and specifically address relations of fidelity and quality of implementation and outcomes.

(m) Provide methods and rationale that permit systematic, empirical evaluation of factors that predict differential response to intervention. Qualitative analyses of these types of process variables are entirely appropriate, particularly as they relate to the context and environment in which the intervention is differentially successful, so long as qualitative methods are not proposed for questions of efficacy.

(n) Provide a plan for potentially sustaining the intervention and scaling it to other settings. Scaling is not required, but the potential for scaling should be considered.

(o) Address the use of technology, including augmentative and alternative communication (AAC) devices, and other forms of assistive technology, if appropriate, especially for students with moderate to severe mental retardation or with severe oral language disorders. If such devices are used, the link with enhanced reading must be demonstrated. Interventions that involve the use of computers are also appropriate.

(p) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(q) If the project has a Web site, include relevant information and documents in an accessible form.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of the IDEA makes the public comment requirements inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1461 and 1472.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $4,800,000.

Estimated Average Size of Awards: $600,000.

Maximum Award: We will reject any application that proposes a budget exceeding $600,000 for a single budget period of 12 months. However, we will consider proposals up to $1,000,000 per year if the proposal is from multiple institutions, or any other group of eligible parties that meet the requirements of 34 CFR 75.127 to 75.129, and permits assembling of larger samples that address this initiative. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 8.

Note: Given a sufficient number of approved high quality applications, the Department intends to fund at least one project addressing students with mild to moderate mental retardation, at least one project addressing students with moderate to severe mental retardation, and at least one project addressing the full continuum of mild to severe mental retardation.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.324K.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the résumés, the bibliography, the references, the letters of support, or the appendix. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 14, 2004.

Deadline for Transmittal of Applications: August 30, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in EDGAR 34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities Program—Reading Interventions for Students with Mental Retardation—CFDA Number 84.324K is one of the competitions included in this project. If you are an applicant under the Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities Program—Reading Interventions for Students with Mental Retardation, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

• Your participation is voluntary.

• When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.

• You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

• You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities Program—Reading Interventions for Students with Mental Retardation competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities Program—Reading Interventions for Students with Mental Retardation at: *http://www.grants.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and

send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing indicators and measures that will yield information on various aspects of the quality of the Research and Innovation to Improve Services and Results for Children with Disabilities program. Included in these indicators and measures will be those that assess the quality and relevance of newly funded research projects. Two indicators will address the quality of new projects. First, an external panel of eminent senior scientists will review the quality of a randomly selected sample of newly funded research applications, and the percentage of new projects that are deemed to be of high quality will be determined. Second, because much of the Department's work focuses on questions of effectiveness, newly funded applications will be evaluated to identify those that address causal questions and then to determine what percentage of those projects use randomized field trials to answer the causal questions. To evaluate the relevance of newly funded research projects, a panel of experienced education practitioners and administrators will review descriptions of a randomly selected sample of newly funded projects and rate the degree to which the projects are relevant to practice.

Other indicators and measures are still under development in areas such as the quality of project products and long-term impact. Data on these measures will be collected from the projects funded under this notice. Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

We will notify grantees of the performance measures once they are developed.

VII. Agency Contact

For Further Information Contact: Kristen Lauer, U.S. Department of Education, 400 Maryland Avenue, SW., room 4077, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7412.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: July 8, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–15840 Filed 7–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–112–000]

The Governors of: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; Notice of Petition for Declaratory Order

June 30, 2004.

Take notice that on June 25, 2004, the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont (collective, the Petitioners) filed a Joint Petition for Declaratory Order to Form a New England Regional State Committee. The Petitioners informed the Commission of their collective intention to form a non-profit corporation, the New England States Committee on Electricity (NESCOE), that will serve as the New England region's regional state committee. Petitioners state that NESCO will focus on developing and making policy recommendations related to resource adequacy and system planning, and will affirmatively investigate and report to the New England Governors on policy questions concerning the possibility of a regional authority for siting of interstate transmission facilities.

The Petitioners request the Commission's declaratory order to require RTO New England (RTO–NE) and the New England participating transmission owners (TOs) provide NESCOE, absent exigent circumstances, with written notice of any proposed additions or changes to market rules or tariffs within a reasonable time before filing the proposed additions or changes to market rules or tariffs within a reasonable time before filing the proposal; require that RTO–NE and the TOs give NESCOE a reasonable opportunity to make determinations regarding any proposed additions or changes to market rules and tariffs that affect matters within the scope of NESCOE's responsibility; require RTO–NE and the TOs to file with the Commission any determinations made by NESCOE, along with an explanation of how the determination was incorporated into RTO–NE's or the TOs' proposal or why it was not followed; require that RTO–NE or the TOs file NESCOE's determinations with the Commission pursuant to their respective authorities under section 205 of the Federal Power Act; require NESCOE to be funded by a regional tariff administered by the RTO–NE and ultimately collected from all New England retail electricity customers;

and, require that RTO–NE, the New England Power Pool, and the TOs file amendments to their respective jurisdictional tariffs and agreements to reflect the Commission's intention in the declaratory order resulting from this Petition.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: July 16, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1521 Filed 7–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–115–000, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Filings

July 6, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket Nos. EL04–115–000 and ER04–983–000]

Take notice that on July 2, 2004, the New York Independent System Operator, Inc. (NYISO) filed a request for a settlement conference, and an alternative four-part remedial plan that would address the effects of a Transmission Congestion Contract (TCC) database transcription error on several recent TCC auctions. NYISO states that the remedial plan includes proposed tariff revisions that the NYISO is submitting under its authority to file tariff revisions in ''exigent circumstances''.

NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, on the New York State Public Service Commission.

Comment Date: July 12, 2004.

2. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER98–1438–021 and EC98–24–013]

Take notice that on June 30, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to the Midwest ISO's Open Access Transmission Tariff in compliance with the Commission's June 2, 2004 Order, *Independent Transmission System Operator, Inc., et al.*, 107 FERC ¶ 61,205 (2004). The Midwest ISO has requested an effective date of July 1, 2004.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region and in addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO states that it will provide hard copies to any interested parties upon request.

Comment Date: July 21, 2004.

3. New England Power Pool and ISO New England Inc.

[Docket No. ER02–2330–028]

Take notice that on June 30, 2004, ISO New England Inc. (ISO) submitted a Status Report on Development of Day-Ahead Load Response Program as directed by the Commission's order issued November 17, 2003, 105 FERC ¶ 61,211.

ISO states that copies of the filing have been served on all parties to the above-captioned proceeding.

Comment Date: July 21, 2004.

4. New England Power Pool

[Docket No. ER03–345–003]

Take notice that on June 30, 2004, ISO New England Inc. (ISO) submitted a Semi-Annual Status Report on Load Response Programs as directed by the Commission order issued February 25, 2003, 102 FERC ¶ 61,202.

ISO states that copies of the filing have been served on all parties to the above-captioned proceeding, as well as on the governors and electric utility regulatory agencies for the six New England states that comprise the NEPOOL Control Area. In addition, all NEPOOL Participants Committee members are being furnished with an electronic copy of the status report.

Comment Date: July 21, 2004.

5. Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG

[Docket No. ER03–563–037] Power Marketing Inc.

Take notice that on June 29, 2004, Devon Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Power LLC (collectively Applicants) tendered for filing an errata to the April 7, 2004 filing in Docket No. ER04–563–032 of their True-Up Schedules to the Cost-of-Service Agreements between each Applicant and ISO New England Inc. (ISO–NE).

Applicants state that they have provided copies of the errata filing to ISO–NE and served each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: July 20, 2004.

6. Calpine Energy Services, L.P.

[Docket No. ER04–889–001]

Take notice that on June 30, 2004, Calpine Energy Services, L.P. (CES) tendered for filing an amendment to its May 29, 2004 application submitting a rate schedule for reactive power from the Calpine Parlin Energy Center facility for sale to PJM Interconnection, L.L.C. CES requests an effective date of August 1, 2004.

Comment Date: July 21, 2004.

7. Pacific Gas and Electric Company

[Docket No. ER04–972–000]

Take notice that on June 30, 2004, Pacific Gas and Electric Company

(PG&E) tendered for filing a Generator Special Facilities Agreement (GSFA), and Generator Interconnection Agreement (GIA) between PG&E and Lompoc Wind Project, LLC (Lompoc) (collectively, Parties). PG&E requests an effective date of March 31, 2004.

PG&E states that copies of this filing have been served upon Lompoc, California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: July 21, 2004.

8. Central Maine Power Company

[Docket No. ER04–973–000]

Take notice that on June 30, 2004, Central Maine Power Company (CMP) tendered for filing, in accordance with section 1.18 of the Settlement Agreement approved in Docket Nos. ER00–26–000, *et al.*, an informational filing containing the data used to update the formula rates in CMP's Open Access Transmission Tariff. CMP states that the charges associated with the updated data took effect June 1, 2004.

CMP states that copies of this filing were served on Commission Staff and the Maine Public Utilities Commission.

Comment Date: July 21, 2004.

9. Avista Corporation

[Docket No. ER04–974–000]

Take notice that Avista Corporation (Avista) on June 30, 2004 tendered for filing proposed revisions to its Open Access Transmission Tariff (OATT), to comply with the Commission's Order No. 2003, *Standardization of Interconnection Agreements and Procedures,* FERC Stats. & Regs. Preambles ¶ 31,146 (2003) and Order No. 2003–A, 106 FERC ¶ 61,220. Avista requests an effective date of September 1, 2004.

Avista states that it has served copies of this filing on the Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission. Additionally, Avista states that it has sent a letter by U.S. mail to all of its Transmission Customers to notify them that this filing has been made and to let them know that a copy of the filing can be obtained on the Avista OASIS.

Comment Date: July 21, 2004.

10. Southwestern Electric Power Company

[Docket No. ER04–975–000]

Take notice that on June 30, 2004, Southwestern Electric Power Company (SWEPCO) submitted for filing actuarial reports in support of the amounts to be collected in SWEPCO's 2003 actual and 2004 projected formula rates for post-employment benefits other than pensions as directed by the Statement of Financial Accounting Standard No. 106, issued by the Financial Accounting Standards Board, and the collection in such formula rates of other post-employment benefits as directed by Statement of Financial Accounting Standard No. 112, issued by the Financial Accounting Standards Board. SWEPCO requests an effective date of January 1, 2003.

SWEPCO states that it has served copies of the transmittal letter on all of its formula rate customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment Date: July 21, 2004.

11. Entergy Services, Inc.

[Docket No. ER04–976–000]

Take notice that on June 30, 2004, Entergy Services, Inc. (Entergy Services), on behalf of the Entergy Operating Companies, which include Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing a Network Integration Transmission Service Agreement and a Network Operating Agreement between Entergy Services and the City of Ruston, Louisiana. Entergy Services requests an effective date of June 1, 2004.

Comment Date: July 21, 2004.

12. New England Power Company

[Docket No. ER04–977–000]

Take notice that on June 30, 2004, New England Power Company (NEP) submitted for filing Second Revised Service Agreement No. 200 between NEP and Rhode Island State Energy Statutory Trust 2000, as successor in interest by merger to Rhode Island State Energy Partners, L.P., (RISEST) for Firm Local Generation Delivery Service under NEP's FERC Electric Tariff, Second Revised Volume No. 9. NEP requests an effective date of June 30, 2004.

NEP states that copies of the filing have been served upon RISEST and the Rhode Island Public Utilities Commission.

Comment Date: July 21, 2004.

13. Calpine Energy Services, L.P.

[Docket No. ER04–978–000]

Take notice that on June 30, 2004, Calpine Energy Services, L.P. (CES) tendered for filing, under section 205 of the Federal Power Act, a rate schedule for reactive power from the Calpine Newark Energy Center facility for sale to PJM Interconnection, L.L.P. CES requests an effective date of September 1, 2004.

Comment Date: July 21, 2004.

14. PJM Interconnection, L.L.C.

[Docket No. ER04–979–000]

Take notice that on June 30, 2004, PJM Interconnection, L.L.C. (PJM) filed revisions to the PJM Open Access Transmission Tariff and Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to support PJM's participation in an agreement with First Energy Solutions Corp. (FE) that allows PJM to request redispatch under certain circumstances of specified FE generating units outside the PJM region to help alleviate transmission constraints within the PJM region. PJM requests an effective date of July 1, 2004.

PJM states that copies of the filing were served on all PJM members and the utility regulatory commissions in the PJM region.

Comment Date: July 21, 2004.

15. Conectiv Bethlehem, LLC

[Docket No. ER04–980–000]

Take notice that on June 30, 2004, Conectiv Bethlehem, LLC (CBLLC) submitted for filing its Second Revised Rate Schedule FERC No. 1, a rate schedule and cost support for its Reactive Supply and Voltage Control from Generation Sources Service to be provided by its 1090 MW generating station located in Bethlehem, Pennsylvania, pursuant to Section 205 of the Federal Power Act and Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff. CBLLC seeks an effective date of September 1, 2004.

CBLLC states that it has served copies of the filing upon PJM, PP&L Electric Utilities Corporation and the Pennsylvania Public Utility Commission.

Comment Date: July 21, 2004.

16. Connecticut Yankee Atomic Power Company

[Docket No. ER04–981–000]

Take notice that on July 1, 2004, Connecticut Yankee Atomic Power Company (CY) submitted for filing revisions to CY's wholesale power contract, Connecticut Yankee Atomic Power Company, Rate Schedule FERC Nos. 10 and 11 (the Power Contract) to increase collections to recover the costs of completing the decommissioning of CY's retired nuclear generating plant. CY requests an effective date of September 1, 2004.

CY states that copies of this filing have been served on CY's wholesale customers and regulators in the states of Massachusetts, Connecticut, Rhode

Island, Vermont, Maine and New Hampshire.

Comment Date: July 22, 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. E4–1522 Filed 7–12–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL03–3–005 and AD03–7–005]

Price Discovery in Natural Gas and Electric Markets Natural Gas Price Formation; Notice Closing Comment Period

July 7, 2004.

On June 25, 2004, the Staff of the Federal Energy Regulatory Commission, in conjunction with Staff of the Commodity Futures Trading Commission, held a technical conference to explore the adequacy of natural gas and electricity price formation, the level of reporting of energy transactions to price index developers, actions taken by price index developers to improve the information available to the market, the overall level of liquidity in wholesale natural gas and electricity markets, and the use of price indices in jurisdictional tariffs. Staff heard from speakers representing all segments of the natural gas and electricity industries and price index developers.

Any party wishing to provide additional or supplemental comments as a result of issues discussed at the conference should file such comments no later than July 16, 2004. Comments may be filed electronically via the Internet in lieu of filing by paper. *See* 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link. For additional information, please contact Ted Gerarden of the Office of Market Oversight & Investigations at 202–502–6187 or by e-mail at *Ted.Gerarden@ ferc.gov*.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1520 Filed 7–12–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0093, FRL–7786–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Clean Air Act Tribal Authority, EPA ICR Number 1676.04, OMB Control Number 2060–0306

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 13, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0093, to EPA online using EDOCKET (our preferred method), by email to a-and-r-Docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Air Docket, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Darrel Harmon, Office of Air & Radiation, Mail Code: 6101A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7416; fax number: (202) 501–0394; email address: *harmon.darrel@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2004–0093, which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the

electronic docket at 67 *FR* 38102 (May 31, 2002), or go to www.epa.gov./edocket.

Affected entities: Entities potentially affected by this action are State; Local; or Tribal Governments.

Title: Clean Air Act Tribal Authority.

Abstract: This ICR requests clearance of EPA's review and approval process for determining Tribe eligibility to carry out the Clean Air Act (CAA). Tribes may choose to submit a CAA eligibility determination and a CAA program application to EPA at the same time for approval and EPA will review both submittals simultaneously. EPA will use this information to determine if a Tribe meets the statutory criteria under section 301(d) of the CAA and is qualified for purposes of implementing an Air Quality Program. Section 114 of the CAA is the authority for the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The estimated number of respondent Tribes applying for CAA programs over the next three years is 27. The annual average is 9, 27 respondents divided by 3 years. EPA estimates 40 hours per respondent for an annual burden is 387 hours. The average respondent per hour labor cost is $73.44. A factor of 110% was added to each labor cost category per Office of Management and Budget policy. The figure is based on the U.S. Bureau of Labor Statistics' Table 4, ''State and local government, by occupational and industry group,'' for state and local government workers. The annual per respondent cost is $2937.60. The annual total cost is estimated to be, $26,438.40 per year for a total of $79,315.20 over the three year collection period. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 7, 2004.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 04–15817 Filed 7–12–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7786–3]

Science Advisory Board Staff Office; Notification of Upcoming Meeting of the Science Advisory Board Environmental Health Committee and the Integrated Human Exposure Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's Science Advisory Board (SAB) Staff Office is announcing a public meeting of the SAB Environmental Health Committee and the Integrated Human Exposure Committee.

DATES: July 26, 2004. Monday, July 26, 2004, from 9 a.m. to 5 p.m. (Eastern Time).

ADDRESSES: The public meeting of the committees will be held at the SAB Conference Center located at the Woodies Building, 1025 F Street, NW., Room 3705, Washington, DC, 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public meeting may contact Dr. Sue Shallal, Designated Federal Officer (DFO), by telephone/voice mail at (202) 343–9977, fax at (202) 233–0643, by e-mail at *shallal.suhair@epa.gov,* or by mail at U.S. EPA SAB (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB and the meeting location may be found on the SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background

The Integrated Human Exposure Committee (IHEC) and the Environmental Health Committee (EHC) of the chartered SAB will hold a public meeting pursuant to the Federal Advisory Committee Act, Public Law 92–463. The SAB IHEC provides advice through the chartered SAB to EPA on many of the exposure assessment issues that come before the chartered SAB. The SAB EHC often provides advice through the chartered SAB to EPA on the development and use of guidelines for human health risk assessments. As a follow-up to their joint meeting in December 2003, the SAB IHEC and EHC, will receive briefings and updates on EPA Risk Assessment activities and determine how the chartered SAB can best assist the Agency with regards to its future initiatives.

Availability of Meeting Materials

A copy of the agenda for the meeting that is the subject of this notice will be posted on the SAB Web site prior to the meeting.

Procedures for Providing Public Comments

It is the policy of the SAB to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at the meeting will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). Interested parties should contact the DFO in writing (e-mail, fax or mail—see contact information above) by close of business July 19, 2004, in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting.

Written Comments: Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments

should be received in the SAB Staff Office at least seven business days prior to the meeting date so that the comments may be made available to the panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations

Individuals requiring special accommodations to access the public meetings listed above should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 7, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–15819 Filed 7–12–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRC–7786–5]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that a proposed purchaser agreement associated with the Fairmont Coke Works Property, Marion, West Virginia was executed by the Agency and by the United States Department of Justice. The Fairmont Coke Works Property is adjacent to the Big John's Salvage Site, Hoult Road. The Purchaser Agreement would compromise and settle claims of the United States against the Fairmont Coke Works Site Custodial Trust. In consideration of and in exchange for the United States's Covenant Not to Sue, and the removal of Lien, the Trust shall satisfy all obligations under sections V & VI, including but not limited to Access and Due Care, and all obligations established in the Memorandum of Agreement between the State of West Virginia Department of Environmental Protection and the United States Fish and Wildlife Service. In addition, the Trust shall abide by the principles of Stakeholder Involvement and Redevelopment.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before August 12, 2004.

ADDRESSES: The proposed agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed agreement may be obtained from Bonnie Pugh Winkler, U.S. Environmental Protection Agency, Assistant Regional Counsel (3RC44), 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''Fairmont Coke Works Site'', and ''EPA Docket No. CERC–03–2004–0001PP'', and should be forwarded to Bonnie Pugh Winkler at the above address.

FOR FURTHER INFORMATION CONTACT: Bonnie Pugh Winkler (3RC44), Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, *Winkler.bonniepugh@epa.gov,* Phone: (215) 814–2680.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–15818 Filed 7–12–04; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act; Schedule Change; FCC To Hold Open Commission Meeting, Thursday, July 8, 2004

Please note that the time for the Federal Communications Commission Open Meeting is rescheduled from 9:30 a.m. to 10 a.m.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 8, 2004, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Consumer and Governmental Affairs	The Consumer and Governmental Affairs Bureau will present a report on the Commission's ''Lands of Opportunity: Building Rural Connectivity'' outreach initiative that is designed to ensure all Americans living in rural areas have access to affordable and quality telecommunications services.
2	Office of Engineering and Technology	*Title:* Modification of parts 2 and 15 of the Commission's Rules for unlicensed devices and equipment approval (ET Docket No. 03–201). *Summary:* The Commission will consider a Report and Order concerning changes to several technical rules for unlicensed radiofrequency devices contained in parts 0, 2, and 15.
3	Wireless Telecommunications	*Title:* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services (WT Docket No. 02–381); 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services (WT Docket No. 01–14); and Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation (WT Docket No. 03–202). *Summary:* The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking concerning deployment of wireless services in rural areas.
4	Wireless Telecommunications	*Title:* Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Deployment of Secondary Markets (WT Docket No. 00–230).

Item No.	Bureau	Subject
		Summary: The Commission will consider a Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking concerning policies and procedures to promote the development of secondary markets in wireless radio spectrum usage rights.
5	Wireline Competition	*Title:* Review of the section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338). *Summary:* The Commission will consider a Second Report and Order concerning the reinterpretation of section 252(i) of the Communications Act of 1934, as amended.
6	Wireless Telecommunications, Office of Engineering and Technology.	*Title:* Improving Public Safety Communications in the 800 MHz Band (WT Docket No. 02–55); Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels (WT Docket No. 02–55); Amendment of part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (ET Docket No. 00–258); Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service (RM–9498); Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service (RM–10024); Amendment of section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service (ET Docket No. 95–18). Related orders implement changes in other bands made necessary to facilitate 800 MHz band reconfiguration. *Summary:* The Commission will consider a Report and Order, Fifth Report and Order, Memorandum Opinion and Order, and Order concerning reconfiguring the 800 MHz band to abate interference being encountered by public safety communications systems and other 800 MHz systems that do not employ cellular architecture.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.* Audio and video tapes of this meeting can be purchased from CACI Productions, 14151 Park Meadow Drive, Chantilly, VA 20151, (703) 679–3851.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15977 Filed 7–9–04; 2:36 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

July 8, 2004.

Deletion of Agenda Item From July 8, 2004, Open Meeting

The following item has been deleted from the list of Agenda items scheduled for consideration at the July 8, 2004, Open Meeting and previously listed in the Commission's Notice of July 1, 2004.

5	Wireline Competition	*Title:* Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338). *Summary:* The Commission will consider a Second Report and Order concerning the reinterpretation of section 252(i) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15978 Filed 7–9–04; 2:36 pm]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, July 19, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 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, July 9, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–15940 Filed 7–9–04; 1:19 pm]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974: Republication of a System of Records Notice

AGENCY: General Services Administration.

ACTION: Notice of an updated system of records subject to the Privacy Act of 1974.

SUMMARY: The General Services Administration (GSA) is updating and republishing a notice for the system of records, Payroll Information Processing System (PIPS), GSA/PPFM–9, which is being renamed the Payroll Accounting, and Reporting (PAR) System and updated to reflect organizational and address changes and upgraded automated processes. The revisions do not require an advance public comment period since they are minor in nature and do not meet the Office of Management and Budget criteria for a revised system of records under OMB Circular A–130, Appendix 1.

EFFECTIVE DATE: The notice is effective on the date of publication.

FOR FURTHER INFORMATION CONTACT: The GSA Privacy Act Officer. Telephone: (202) 501–1452. Address: Office of the Chief People Officer (C), General Services Administration, 1800 F Street NW., Washington DC 20405.

Dated: June 28, 2004.

June V. Huber,

Director, Office of Information Management.

GSA/PPFM–9

SYSTEM NAME:

Payroll Accounting and Reporting (PAR) System, GSA/PPFM–9.

SYSTEM LOCATION:

The record system is located in the General Services Administration (GSA) Heartland Finance Center in Kansas City, Missouri; in commissions, committees, and small agencies serviced by GSA; and in administrative offices throughout GSA. Data is stored in an Oracle database (ORA2) on the HFC1 server. The operational functionality of PAR is managed and utilized by the GSA Heartland Finance Center's National Payroll Center (NPC) in Kansas City.

PERSONS COVERED BY THE SYSTEM:

Those covered are present and former employees of GSA and of commissions, committees, and small agencies serviced by GSA; and persons in intern, youth employment, and work/study programs.

TYPE OF RECORD SYSTEM:

PAR provides complete functionality for an employee's entire service life from initial hire through final payment and submission of retirement records to the Office of Personnel Management (OPM). The system holds payroll records, and includes information received by operating officials as well as personnel and finance officials administering their program areas, including information regarding nonsupport of dependent children. The system also contains data needed to perform detailed accounting distributions, provide for tasks such as mailing checks and bonds, and preparing and mailing tax returns and reports. The record system may contain:

a. Employee's name, Social Security Number, date of birth, sex, work schedule, and type of appointment.

b. Service computation date for assigning leave, occupational series, position, grade, step, salary, award amounts, and accounting distribution.

c. Time, attendance, and leave; Federal, State, and local tax; allotments; savings bonds; and other pay allowances and deductions.

d. Tables of data for editing, reporting, and processing personnel and pay actions, which include nature-of-action code, organization table, and salary table.

e. Information regarding court-ordered payments to support dependent children, including amounts in arrears.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C. part I, chapter 5, section 552a, is the basic authority. The authority for using Social Security Numbers is Executive Order 9397, 26 CFR 31.6011(b)(2), and 26 CFR 31.6109–1. Authority for maintaining data on court-ordered support of a dependent child is Executive Order 12953, dated February 27, 1995.

PURPOSE:

To maintain an automated information system to support the day-to-day operating needs of the payroll program. The system can provide payroll statistics for all types of Government organizations, and allows many uses for each data element entered. The system has a number of outputs:

For the payroll office, outputs include comprehensive payroll reports; accounting distribution of costs; leave data summary reports; each employee's statement of earnings, deductions, and leave every payday; State, city, and local unemployment compensation reports; Federal, State, and local tax reports; Forms W–2, Wage and Tax Statement; and reports of withholding and contributions.

For the Office of Human Resources Services, outputs include data for reports of Federal civilian employment.

The system also provides data to GSA staff and administrative offices to use for management purposes.

ROUTINE USES OF THE RECORD SYSTEM, INCLUDING TYPES OF USERS AND THEIR PURPOSES IN USING THE SYSTEM:

a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agency becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose requested information to a court or other authorized agency regarding payment or nonpayment of court-ordered support for a dependent child.

c. To disclose information to Congressional staff in response to a request from the person who is the subject of the record.

d. To disclose information to an expert, consultant, or contractor of the agency for performing a Federal duty.

e. To disclose information to a Federal, State, or local agency maintaining civil, criminal, enforcement, or other information to obtain information needed to make a decision on hiring or retaining an employee; issuing a security clearance; letting a contract; or issuing a license, grant, or other benefit.

f. To disclose requested information to a Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; or clarifying a job.

g. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; union official or other official engaged in investigating or settling a grievance, complaint, or appeal filed by an employee.

h. To disclose information to the Office of Management and Budget for reviewing private relief legislation at any stage of the clearance process.

i. To provide a copy of the Department of the Treasury Form W–2, Wage and Tax Statement, to the State, city, or other local jurisdiction that is authorized to tax the employee's compensation. The record is provided by a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury under 5 U.S.C. 5516, 5517, and 5520.

j. To disclose information to the Office of Human Resources Services in reporting civilian employment.

k. To disclose information to agency administrative offices who may restructure the data for management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in file folders, within locked power files; microfiches in cabinets; and computer records within a computer and attached equipment. All paper records are secured with the National Payroll Center (NPC), which is a secured area at the GSA NPC in Kansas City, Missouri.

RETRIEVAL:

Records are filed by name or Social Security Number at each location.

SAFEGUARDS:

Records are stored in locked power files, within the NPC in Kansas City, when not in use by an authorized person. Electronic records are protected by a password system. The NPC is a secured access facility.

DISPOSAL:

The Heartland Finance Center disposes of the records by shredding or burning, as scheduled in the handbook GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS:

Director, National Payroll Center, General Services Administration (6BCY), 1500 East Bannister Road, Kansas City, MO 64131.

NOTIFICATION PROCEDURE:

An individual inquiry should be addressed to the system manager.

RECORD REVIEW PROCEDURES:

An individual request should be addressed to the system manager. Furnish full name, Social Security Number, address, telephone number, approximate dates and places of employment, and nature of the request.

PROCEDURE TO CONTEST A RECORD:

GSA rules for contesting the content of a record and appealing an initial decision are in 41 CFR 105–64.

RECORD SOURCES:

The sources are the individuals themselves, other employees, supervisors, officials of other agencies, State governments, record systems GSA/HRO–37, OPM/GOVT–1, EEOC/GOVT–1, and private firms.

[FR Doc. 04–15829 Filed 7–12–04; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: ''Voluntary Customer Surveys Generic Clearance for the Agency for Healthcare Research and Quality'' (formerly known as Voluntary Customer Satisfaction Survey Generic Clearance for the Agency for Healthcare Research and Quality). In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection request to allow AHRQ to conduct customers surveys.

DATES: Comments on this notice must be received by September 13, 2004.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5022, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Voluntary Customer Surveys Generic Clearance for the Agency for Healthcare Research and Quality''

In response to Executive Order 12862, the Agency for Healthcare Research and Quality (AHRQ) plans to conduct voluntary customer surveys to assess strengths and weaknesses in agency program services. Customer surveys to be conducted by AHRQ may include readership surveys from individuals using AHRQ automated and electronic technology databases to determine datisfaction with the information provided or surveys to assess effects of the grants streamlining efforts. Results of these surveys will be used in future program planning initiatives and to redirect resources and efforts, as needed, to improve AHRQ program services. The current clearance will expire September 30, 2004. This is a request for a generic approval from OMB to conduct customer surveys over the next three years.

Method of Collection

The data will be collected using a combination of methodologies appropriate to each survey. These methodologies include:

- Evaluation forms;
- Mail surveys;
- Focus groups;
- Automated and electronic technology (*e.g.,* e-mail, Web-based surveys, instant fax, AHRQ Publications Clearinghouse customer feedback); and,
- Telephone surveys.

Estimated Annual Respondent Burden

Type of survey	Number of respondents	Average burden/response	Total hours of burden
Mail/Telephone Surveys	51,200	.15	7,680
Automated/Web-based	52,000	.163	8,476
Focus Groups	200	1.0	200

Type of survey	Number of respondents	Average burden/response	Total hours of burden
Totals	103,400	NA	16,356

Request for Comments

In accordance with the above cited Paperwork Reduction Act legislation, comments on the AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a mater of public record.

Dated: July 6, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–15786 Filed 7–12–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Request for Applications To Determine the Pharmacokinetics of Clostridium Botulinum Neurotoxins A, B, C, E, and F, Program Announcement Number 04099

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: Request for Applications To Determine the Pharmacokinetics of Clostridium Botulinum Neurotoxins A, B, C, E, and F, Program Announcement Number 04099.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Request for Applications to Determine the Pharmacokinetics of Clostridium Botulinum Neurotoxins A, B, C, E, and F, Program Announcement Number 04099.

Times and Dates: 1 p.m.–1:30 p.m., July 29, 2004 (open); 1:30 p.m.–3:30 p.m., July 29, 2004 (closed).

Place: Teleconference number 1–877–951–9728, pass code 362242.

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 Program Announcement Number 04099.

Contact Person for More Information: Trudy Messmer, Ph.D., Scientific Review Administrator, National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., MS–C19, Atlanta, GA 30333, telephone (404) 639–37706.

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: July 7, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15792 Filed 7–12–04; 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 (SEP): Monitoring Atypical HIV Strains Among Persons Newly Diagnosed With HIV Using Blood Spots vs. Diagnostic Sera, Program Announcement Number 04118

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): Monitoring Atypical HIV Strains Among Persons Newly Diagnosed with HIV Using Blood Spots vs. Diagnostic Sera, Program Announcement Number 04118.

Times and Dates: 8:30 a.m.–9:15 a.m., August 3, 2004 (open), 9:15 a.m.–4:15 p.m., August 3, 2004 (closed).

Place: The Westin Buckhead Atlanta, 3391 Peachtree Road, NE., Atlanta, GA 30326, Telephone Number (404) 365–0065.

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 Special Emphasis Panel (SEP): Monitoring Atypical HIV Strains Among Persons Newly Diagnosed with HIV Using Blood Spots vs. Diagnostic Sera, Program Announcement Number 04118.

For Further Information Contact: Noreen L. Qualls, DrPH, Scientific Review Administrator, Centers for Disease Control, National Center for HIV, STD, Office of the Associate Director for Science, 1600 Clifton Road NE., Mailstop E07, Atlanta, GA 30333, Telephone (404) 639–8006.

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: June 29, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15795 Filed 7–12–04; 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 (SEP): Research Into the Public Health Aspects of West Nile Virus in the United States, PA #04052

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): Research into the Public Health

Aspects of West Nile Virus in the United States, PA #04052.

Times and Dates: 8:30 a.m.–9 a.m., August 2, 2004 (Open). 9:15 a.m.–6 p.m., August 2, 2004 (Closed). 8:30 a.m.–9 a.m., August 3, 2004 (Open). 9:15 a.m.–6 p.m., August 3, 2004 (Closed).

Place: Renaissance Concourse Hotel, One Hartsfield Centre Parkway, Atlanta, GA 30354, Telephone (404) 209–9999.

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: Research into the Public Health Aspects of West Nile Virus in the United States, PA #04052.

For Further Information Contact: Trudy Messmer, Ph.D., Scientific Review Administrator, Centers for Disease Control, National Center for Infectious Diseases, 1600 Clifton Road NE., Mailstop C19, Atlanta, GA 30333, Telephone (404) 639–2176.

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: July 1, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15800 Filed 7–12–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Initial Discussions for Concepts of Total Inward Leakage (TIL) Requirements and Test Methods for Halfmask Respirators Including Elastomeric and Filtering Facepiece Styles.

Date and Time: 9 a.m.–5 p.m., August 25, 2004.

Place: Marriott Key Bridge Hotel located at 1401 Lee Highway, Arlington, Virginia.

Status: This meeting is hosted by NIOSH and will be open to the public, limited only by the space available. The meeting room will accommodate approximately 50 people. Sleeping Rooms are reserved under a NIOSH/National Personal Protective Technology Laboratory (NPPTL) Public Meeting room block for the evening of Tuesday, August 24, 2004, at the government rate of $150 per night. The NIOSH/NPPTL public meeting must be referenced to receive this special rate. Interested parties should make hotel reservations directly with the Marriott at 1–800–228–9290 or 703/524–6400 before the cut-off date of August 4, 2004. Interested parties should confirm their attendance to this meeting by completing a registration form and forwarding it by e-mail (*npptlevents@cdc.gov*) or fax (304–285–4459) to the NPPTL Event Management Office. A registration form may be obtained from the NIOSH Homepage (*www.cdc.gov/niosh*) by selecting conferences and then the event.

An opportunity to make presentations regarding the discussions of concepts for standards and testing processes for TIL requirements and test methods suitable for halfmask respirators will be given. Requests to make such presentations at the public meeting should be made by e-mail or the NPPTL Event Management Office (*npptlevents@cdc.gov*). All requests to present should include the name, address, telephone number, relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes.

After reviewing the requests for presentations, NPPTL Event Management will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

Comments on the topics presented in this notice and at the meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513–533–8285. Comments may also be submitted by e-mail to *niocindocket@cdc.gov*. E-mail attachments should be formatted in Microsoft Word. Comments should be submitted to Niosh no later than September 25, 2004, and should reference Docket Number NIOSH\036 in the subject heading.

Purpose: NIOSH will initiate discussions of conceptual standards and testing processes for TIL requirements and test methods suitable for halfmask respirators. NIOSH also wishes to obtain comments from individuals regarding the tentative schedules and priorities for future TIL respirator and other personal protective equipment standards development efforts. NIOSH will present information to attendees concerning the concept development for the overall TIL program and the initial concept for TIL testing for halfmask respirator testing and certification requirements. Participants will be given an opportunity to ask questions on these topics and to present individual comments for consideration. Interested participants may obtain a copy of the TIL concept paper from the NIOSH NPPTL web site, address: *www.cdc.gov/niosh/npptl*. The April 20, 2004, concept paper will be used as the basis for discussion at the public meeting. NIOSH wishes to obtain comments from individuals regarding the priorities for future standards efforts following the completion of the halfmask TIL standard.

For Further Information Contact: NPPTL Event Management, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone 304–285–4750, Fax 304–285–4459, E-mail *npptlevents@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 7, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15799 Filed 7–12–04; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0247]

Determination of Regulatory Review Period for Purposes of Patent Extension; CAMPATH

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CAMPATH and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product CAMPATH (alemtuzumab). CAMPATH is indicated for the treatment of B-cell chronic lymphocytic leukemia (B-CLL) in patients who have been treated with alkylating agents and who have failed fludarabine therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CAMPATH (U.S. Patent No. 5,545,403) from Millenium and Ilex Partners, L.P., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 18, 2003, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of CAMPATH represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CAMPATH is 3,423 days. Of this time, 2,921 days occurred during the testing phase of the regulatory review period, while 502 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective: December 25, 1991. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 25, 1991.

2. The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act: December 23, 1999. The applicant claims December 22, 1999, as the date the product license application (BLA) for CAMPATH (BLA 103948/0) was initially submitted. However, FDA records indicate that BLA 103948/0 was submitted on December 23, 1999.

3. The date the application was approved: May 7, 2001. FDA has verified the applicant's claim that BLA 103948/0 was approved on May 7, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 632 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 13, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 10, 2005. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management (see **ADDRESSES**). Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 21, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–15802 Filed 7–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0279]

Developing Drug Information Association/Food and Drug Administration Workshop: Pharmacogenomic Combination Product Co-Development; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA), in cooperation with the Drug Information Association (DIA), is announcing a public meeting to solicit views and to provide an interactive forum for discussion of industry and other perspectives and experience derived from the development of recently approved pharmacogenomic combination products. The input received at the meeting, comments received during the meeting, and comments made to the docket after the meeting, may be considered in developing a draft guidance on this topic.

DATES: The public meeting will be held on July 29, 2004, from 8 a.m. to 5:30 p.m. Attendees must register to attend. Submit written or electronic requests to speak at the public meeting by July 26, 2004. Submit written or electronic comments before or after the meeting by August 30, 2004.

ADDRESSES: The public meeting will be held at the Marriott Crystal Gateway Hotel, 1700 Jefferson Davis Hwy., Arlington, VA. A copy of the meeting's program is available on the Internet at *http://www.diahome.org/Content/Events/04040.pdf*.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT:

Those wishing to speak should contact: Allen Rudman, Office of Clinical Pharmacology and Biopharmaceutics, Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7691, e-mail: *RUDMANA@CDER.FDA.GOV*.

Those wishing to register for the meeting should contact: Drug Information Association, P.O. Box 827192, Philadelphia, PA 19182–7192, e-mail: *DIA@DIAHOME.ORG*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is embarking on a new initiative to develop guidance for the codevelopment of pharmacogenomic-based therapeutic drug and biological products and the diagnostic tests that are necessary for therapeutic decision making. A number of diagnostic tests could be developed for use with drug or biological products including, for example, tests related to treatment decisions, such as whether patients should be treated, the dose used for treatment, or to identify the risks associated with treatment. FDA expects to develop guidance for the codevelopment of therapeutic and diagnostic products where both will be necessary in the clinical management of patients.

In preparation for drafting the guidance, FDA and DIA have planned a 1-day mini-meeting, in collaboration with Pharmaceutical Research and Manufacturers of America, Biotechnology Industry Organization, Advanced Medical Technology Association, Medical Device Manufacturers Association, the DIA Biotechnology Special Interest Action Committee, and the Pharmacogenomics Working Group, to identify important issues related to the codevelopment of pharmacogenomic combination products. FDA believes it is important to receive input from industry and other interested parties through a public meeting before drafting the guidance.

Previously, FDA and industry have cosponsored two multi-day meetings on pharmacogenomics in May 2002 and November 2003, respectively. This collaboration between industry, FDA, and other interested parties has also facilitated the writing and issuance of the draft guidance for industry entitled ''Pharmacogenomic Data Submissions,'' which was issued in November 2003 and is currently being finalized.

II. Goals of the Meeting

The primary intent of this mini-meeting is to provide an interactive forum for discussing industry and other perspectives and experience derived from the development of recently approved pharmacogenomic combination products. This meeting is intended to be highly interactive, identify issues, and address questions that will provide FDA with valuable information to consider during development of guidance for industry on the codevelopment of pharmacogenomic combination products for therapeutic and diagnostic use.

Key areas identified for particular focus include the following:

- Industry vision of an ideal codevelopment process and regulatory framework,
- Clinical trial design and statistical challenges for the codevelopment of therapeutic and diagnostic pharmacogenomic products,
- Case studies to explore detailed considerations for the analytical validation of pharmacogenomic diagnostic products, and
- Clinical utility of pharmacogenomic diagnostic products.

Specific goals of the meeting include the following:

1. Provide greater awareness and understanding of the regulatory and scientific challenges of codeveloping pharmacogenomic combination products.
2. Obtain greater clarity on the clinical and statistical design issues that affect the codevelopment of drug and pharmacogenomic combination products.
3. Provide an opportunity to help define the elements that are needed in guidance for industry to enhance the codevelopment of pharmaogenomic combination products.
4. Provide pharmaceutical, biological product, device industries, and other public stakeholders with an opportunity to identify issues and propose recommendations for FDA consideration as it develops formal guidance on the codevelopment of pharmaogenomic combination products.

III. Intended Audience

This meeting is intended for developers and potential developers of therapeutic drug and biological products and pharmacogenomic-based diagnostic products to be developed and approved with them as combination products. Other interested persons may include regulatory/clinical decision-makers, designers of clinical and laboratory validation protocols, clinical pharmacologists, physicians, biostatisticians, and geneticists working in industry or academia.

IV. Request for Comments

Regardless of attendance at the meeting, interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the topics presented in this document. The agency welcomes comments before and after the meeting. Two paper copies of mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–15935 Filed 7–9–04; 2:24 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[CFDA 93.145, HRSA 04–076]

Cooperative Agreement for a Twinning Center (CATC)

AGENCIES: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: This notice announces the availability of funds for a Cooperative Agreement for the establishment of a Twinning Center (TC) to support twinning and volunteer activities as part of the implementation of the President's Emergency Plan for AIDS Relief (the President's Emergency Plan). The Cooperative Agreement will be awarded for a 5-year project period.

Program Purpose: The purpose of this funding is to support the President's Emergency Plan by strengthening human and organizational capacity through twinning and use of health care volunteers to rapidly expand the pool of trained providers, managers, and allied health staff delivering quality HIV/AIDS services to people with HIV/AIDS. Fourteen countries including 12 in African and two in the Caribbean (Botswana, Côte d'Ivoire, Ethiopia, Guyana, Haiti, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda and Zambia), are the focus of the initiative, based on high HIV burden and limited country resources. A fifteenth country, outside of Africa and the Caribbean, will soon

be added to the initiative. The President's Emergency Plan is intended to complement other bilateral and international support efforts, including support through the Global Fund to Fight AIDS, Tuberculosis, and Malaria.

Two of the strategies outlined in the President's Emergency Plan for human and institutional capacity building are twinning and volunteer activities, which will be implemented through a TC and a Volunteer Health-Care Corps (VHC), although other strategies, including other forms of training, will be employed. The volunteer activities under this program will exist within the twinning partnerships, although the TC will also coordinate with the activities of target country volunteers outside of the twinning activities. The guiding principle for the TC and VHC is that the implementation of this program will be based on *the needs of the targeted country* as identified by the U.S. Government country teams, including Department of Health and Human Services (HHS) field offices and United States Agency for International Development (USAID) missions.

The definition of ''twinning'' for the purposes of this Notice of Availability of Funds (NOAF) for a Cooperative Agreement for a Twinning Center (CATC) is the definition developed by the Canadian Interagency Coalition on AIDS and Development in its publication *Beyond Our Borders: A Guide to Twinning for HIV/AIDS Organizations:* a formal, substantive collaboration between two similar organizations. ''Formal'' means there is an agreement or contract, verbal or written. ''Substantive'' means the interaction between the twinning partners is significant and lasts for a period of time. ''Collaboration'' means that the partner organizations work together on a specific project or exchange information and skills.

Additionally, the European ESTHER program (Ensemble pour une Solidarité Thérapeutique Hospitalière en Réseau) is a source of a hospital-to-hospital twinning model. ESTHER is a twinning initiative among hospitals in Western Europe and developing countries, created in 2002 to encourage the use of anti-retroviral therapy for people with HIV infection through developing the capacity of African and Latin American countries to provide treatment for people living with HIV/AIDS. The basis for this model is an exchange of expertise and experience in treating HIV/AIDS consisting of promoting partnerships between hospitals in France, Spain, Italy, Luxembourg, Belgium and health care facilities in developing countries with the close involvement of teams among those countries. The winner of the TC award will be expected to coordinate closely with ESTHER projects in Côte d'Ivoire, Haiti, Mozambique, Tanzania and Rwanda. Information on the ESTHER program may be found on ''*http://www.esther.fr*''.

A centrally-funded TC will broker and facilitate relationships between twinning partners, plan and fund logistics for the VHC, and fund in-country twinning partners. The twinning plan will build upon existing relationships between U.S. and target country institutions as well as initiate new twinning partnerships.

Eligible Applicants: Public or non-profit private entities, including schools of medicine, nursing, public health, management and public administration and academic health sciences centers, community-based organizations, and faith-based organizations, are eligible to apply for the TC. All applicants must have substantive experience (for at least five years) in establishing and monitoring an official twinning relationship anywhere in the world and providing or facilitating technical assistance and support on issues related to the prevention and treatment of HIV, including community outreach, social support programs, and the prevention of mother-to-child transmission, and must have substantiated experience with twinning of programs and institutions in the United States with counterparts overseas. Applicants must also demonstrate the ability to collect and analyze data for program monitoring and conduct program evaluation.

Authorizing Legislation: Department of Health and Human Services: Section 307 of the Public Health Service (PHS) Act, 42 U.S.C. 242l.

Availability of Funds: Funds are available under the appropriation included in Pub. L. 108–7 for International HIV/AIDS activities. Additional funds may be available from funds appropriated to support the President's Emergency Plan. It is estimated that up to $150,000,000 for up to 5 years may be available to support the TC and twinning activities in the focus countries. Initially, the TC will receive an award of up to $1,786,000, of which $893,000 will be for TC operational activities and $893,000 will be for focus country twinning activities. The TC will be funded for a six month budget period and a five year project period. Funding will be made toward the end of September 2004 to cover the six month period through March 2005. During March 2005, an additional award will be made of up to $4 million for an additional budget period of one year. This funding will also be for TC operations activities and focus country twinning activities. Continuation awards for the TC after the first budget award will be made based upon satisfactory performance and the availability of Federal funds. Funding for in-country twinning activities will occur on a specific project basis, with funding for up to six months and a project period of up to five years. Continuation funding for specific twinning activities will be based upon satisfactory performance of existing twinning partnerships, initiation of new twinning partnerships, and availability of Federal funds.

Application Deadline: Applications for this cooperative agreement must be received in the HRSA Grants Application Center (GAC) by close of business August 12, 2004. Applications shall be considered as meeting the deadline if they are RECEIVED on or before the deadline date. One original and two copies of an application will be required. 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. Mailed or handcarried applications received after 5:30 p.m. on the closing date will be classified as late. Grant applications received after the deadline will be returned.

Late applications: Applications which do not meet the criteria above are considered late applications. Health Resources and Services Administration (HRSA) shall notify each late applicant that its application will not be considered in the current competition.

The Chief Grants Management Officer (CGMO) or a higher level designee may authorize an extension of published deadlines when justified by circumstances such as acts of God (*e.g.* floods or hurricanes), widespread disruptions of mail service, or other disruptions of services, such as a prolonged blackout. The authorizing official will determine the affected geographical area(s).

Electronic Submission: HRSA encourages applicants to submit applications on-line. To register and/or log-in to prepare your application, go to *https://grants.hrsa.gov/webexternal/login.asp*. For assistance in using the on-line application system, call 877–GO4–HRSA (877–464–4772) between 8:30 am to 5:30 pm ET or e-mail *callcenter@hrsa.gov*.

Application narratives and spreadsheets will need to be created separately and submitted as attachments to the application. You will be prompted to ''upload'' your attachments

at strategic points within the application interface. The following document types will be accepted as attachments: WordPerfect (.wpd), Microsoft Word (.doc), Microsoft Excel (.xls), Rich Text Format (.rtf), Portable Document Format (.pdf).

To look for funding opportunities, go to *http://www.hrsa.gov/grants* and follow the links.

DUNS Number: All applicants are now required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. To obtain a DUNS number, access www.dunandbradstreet.com or call 1–866–705–5711. Please include the DUNS number next to OMB Approval Number on the application face page. Applications will not be reviewed without a DUNS number.

Additionally, the applicant organization will be required to register with the Federal Government's Central Contractor Registry (CCR) in order to do business with the Federal Government, including electronic. Information about registering with the CCR can be found at *http://www.hrsa.gov/grants.htm*.

Where to Request and Send an Application: To prepare and submit an application, organizations must obtain: (1) the CATC Program Guidance and (2) the official Federal grant application kit required for these cooperative agreements, PHS Form 5161–1. The Program Guidance is available on the HIV/AIDS Bureau Web site at the following Internet address: *http://www.hab.hrsa.gov/grant.htm*. The PHS Form 5161–1 is available at the following Internet address: *http://www.hrsa.gov/grants/forms.htm*. The SF 424 is available at the following Internet addresses: *http://forms99.psc.gov/Forms/sf-424_2.htm*. For those organizations who do not have access to the Internet, hard copies of the Program Guidance, PHS Form 5161–1 and SF 424 may be obtained from the HRSA GAC. You can reach the HRSA GAC toll-free at (877) 477–2123, fax (877) 477–2345, or email: *hrsagac@hrsa.gov*. Please request the Office of Management and Budget Catalogue of Federal Domestic Assistance Number 93.145, HRSA 04–076 and Program Code CATC.

Notification of Letter of Intent: Letters of intent to apply are not required.

ADDRESSES: All Cooperative Agreement applications should be mailed or delivered to: HRSA Grant Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879. Applications sent to any other address will be returned.

FOR FURTHER INFORMATION CONTACT: Additional information on the TC and the HRSA/DHHS technical assistance portion of the Cooperative Agreement may be obtained from Thurma Goldman, MD, MPH, HIV/AIDS Bureau, at (301) 443–1993; fax (301) 443–9645; e-mail: *tgoldman@hrsa.gov*; mail HIV/AIDS Bureau, HRSA 5600 Fishers Lane, Parklawn Building, Room 7–13, Rockville, Maryland 20857 or Mr. Robert Soliz, (301) 443–0349, at the same address.

Pre-Application Technical Assistance Conference Call: There will be a pre-application technical assistance conference call with potential applicants approximately 10 days after publication of the Notice of Availability of Funds (NOAF) for the CATC. The conference call will be with HRSA and USAID officials familiar with the NOAF requirements. The purpose of the call will be to answer questions which potential applicants may have about the application guidance or questions about completing the application. All questions to be discussed at the conference call must be submitted in advance of the call to HRSA, by fax, e-mail, or regular mail. Questions should be submitted to: Thurma Goldman, M.D., M.P.H., Program Director, Global HIV/AIDS, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Room 7–13, Rockville, MD 20857, at (301–443–1993; fax: 301–443–9645; e-mail: *TGoldman@hrsa.gov*. To find out the exact date and time of the technical assistance conference call, and timeframe for submission of questions, please call the HRSA's HIV/AIDS Bureau main office on (301) 443–1993.

Technical Oversight of the Cooperative Agreement: The HHS/HRSA Project Officer, with assistance from the U.S. Government country teams, including USAID missions and HHS/CDC field staff, will provide technical oversight of this cooperative agreement. This will include (1) oversight and management of the cooperative agreement activities associated with the operation and management of the TC and VHC and (2) oversight of the activities associated with the award and monitoring of funds for in-country twinning partners and volunteer activities. HHS/HRSA will receive strategic direction for this cooperative agreement from the Office of the Global AIDS Coordinator. This guidance will provide overall direction for the TC's goals and objectives in the development and implementation of partnerships.

SUPPLEMENTARY INFORMATION: Cooperative Agreements are a type of Federal assistance that involves a substantial level of government participation in funded activities. Under the cooperative agreement, HRSA requires that certain activities be planned jointly and include approval from HRSA. HRSA responsibilities will be in the following areas:

a. Provide consultation and technical assistance in planning, operation, and evaluation activities, including the identification and selection of in-country partners;

b. Facilitate the coordination and collaboration among program partners, such as USAID, HHS and U.S. Government country teams;

c. Facilitate efforts in the provision of technical assistance and training in twinning to specified individuals and organizations;

d. Participate, as appropriate, in the planning and implementation of any meetings, training activities, or workgroups conducted during the period of the cooperative agreement;

e. Provide technical assistance to the TC to increase its capacity to succeed in this international collaboration;

f. Maintain an ongoing dialogue with the TC concerning program plans, policies, and other issues which have major implications for any activities undertaken by the applicants under the cooperative agreement;

g. Review, provide comments, recommendations, and approvals for documents, curricula, program plans, budgets, work to be contracted out, key personnel (including consultants and contractors), workplan revisions, etc., prior to printing, dissemination or implementation; and

h. Provide feedback to the TC on quarterly and other reports; and

i. Serve as the official interface between the Federal Agencies involved in the Twinning Center activities.

Detailed information on grantee responsibilities is provided in the application guidance.

The applicant receiving the award will be required to submit quarterly reports, a mid-term report during the 30th month of the project, and a final report at the end of the project. Additionally, the TC must provide information to the country U.S. Government focus country teams, including the HHS field offices and USAID missions, to enable them to provide six month reports on the President's Emergency Plan indicators.

The applicant receiving the award will not be required to match or share in project costs. Any matching or cost sharing will not be considered as part of the selection decision.

This program is subject to the provisions of Executive Order 12372, as implemented by 45 CFR 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Application packages made available under this Guidance will contain a listing of States which have chosen to set up such a review system and will provide a Single Point of Contact (SPOC) for the State's review. Information on states affected by this program and State Points of Contact may also be obtained from the Grants Management Specialist cited in the application guidance, as well as at *http://www.whitehouse.gov/omb/grants/spoc.html*. All applicants other than federally recognized American Indian tribes should contact their SPOCs as early as possible to alert them to prospective applications and receive any necessary instruction on the State process used under this Executive Order.

The activities proposed to be implemented through this award are not considered to be research activities.

Non-Federal reviewers will participate in the review of submitted applications. Applicants have the option of omitting from the application copies (but not from 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.

Review Process: Applications submitted in response to this NOAF will be reviewed for threshold criteria and technical merit by an Objective Review Committee. Each application must address and apply for both aspects of the TC: (a) Brokering, facilitation, and management of twinning partners; and (b) funding of in-country twinning and volunteer activity. The threshold criteria are: (1) Need (10 points); (2) Response (30 points); (3) Evaluative Measures (10 points); (4) Impact (10 points); (5) Resources/Capabilities (30 points); and (6) Support Requested (10 points). Technical Merit criteria are more completely defined in the Application Kit.

Paperwork Reduction Act: Should there be any data collection activities associated with this Cooperative Agreement that fall under the purview of the Paperwork Reduction Act of 1995, then OMB clearance will be sought.

Dated: June 25, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–15758 Filed 7–12–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Proposed Project: 2005 National Survey on Drug Use and Health—(OMB No. 0930–0110, Revision)—The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA), is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2005 NSDUH, questions on mental health and utilization of mental health services will be included. Questions on mental health, in conjunction with questions on substance use, treatment for substance use, and mental health services, will greatly enhance the ability to characterize and understand the co-occurrence and treatment of mental illness and substance use problems in the U.S. The remaining modular components of the questionnaire will remain essentially unchanged except for minor modifications to wording.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2005 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is shown below:

	Number of responses	Responses/respondent	Average burden/response (hr.)	Total burden (hrs.)
Electronic Screening	182,250	1	.083	15,127
Questionnaire & Verification	67,500	1	1.0	67,500
Screening Verification	5,494	1	0.067	372
Interview Verification	10,125	1	0.067	678
Total	249,750			183,673

Written comments and recommendations concerning the proposed information collection should be sent by August 12, 2004 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: (202) 395–6974.

Dated: July 2, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–15794 Filed 7–12–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–16]

Notice of Proposed Information Collection for Public Comment; Housing Agency (HA) Calculation of Occupancy Percentage for Requested Budget Year (RBY), PHA-Owned Rental Housing Performance Funding System (PFS)

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 13, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Sherry Fobear McCown, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry Fobear McCown, (202) 708–0713, extension 7651, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Agency (HA) Calculation of Occupancy Percentage for a Requested Budget Year (RPY), PHA-Owned Rental Housing, Performance Funding System.

OMB Control Number: 2577–0066.

Description of the need for the information and proposed use: HUD uses a formula approach called the Performance Funding System (PFS) to distribute operating subsidies to housing agencies (HAs). This form provides structured format for HAs to use in developing an appropriate and justifiable projection of occupancy and to report various types of vacant units and, in particular, units that are vacant for circumstances and reasons beyond the control of the HA. The projected occupancy percentage that is developed and reported on this form is then used as one element in the Department's calculation of the HA's operating subsidy under the PFS. This information also is included in the HA's PFS operating subsidy submissions that are reviewed and approved by HUD and serve as the basis for obligating operating subsidies.

Agency form number: HUD–52728.

Members of affected public: Public Housing Agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 3100 respondents annually, 2 hours average response, 6,200 hours total reporting burden hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 1, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–15852 Filed 7–12–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Nottawaseppi Huron Band of Potawatomi Indians' Proposed 79 Acre Fee-to-Trust Transfer and Casino Project in Emmett Township, Calhoun County, MI

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the National Indian Gaming Commission (NIGC) as cooperating agency, intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for a proposed 79 acre fee-to-trust land transfer and casino project in Calhoun County, Michigan. The purpose of the proposed action is to help meet the economic development needs of the Tribe. This notice also announces a public scoping meeting to identify potential issues and alternatives for analysis in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by August 12, 2004. The public scoping meeting will be held July 28, 2004, starting at 7 p.m. We estimate that the EIS will be ready for a Record of Decision by June 2005. This estimate includes public comment periods of 30 days for this notice, 45 days for the Draft EIS and 30 days for the Final EIS, plus time for scoping, notice issuance, a public hearing, response to comments, document revision and legal review.

ADDRESSES: You may mail or hand carry written comments to Mr. Terrance L. Virden, Director, Midwest Region, Bureau of Indian Affairs, Bishop Henry Whipple Federal Building, One Federal Drive, Room 550, Ft. Snelling, Minnesota 55111. The public scoping meeting, to be hosted by the BIA, will be held at the McCamly Plaza Hotel, 50 Capitol Avenue, SW., Battle Creek, Michigan 49017.

FOR FURTHER INFORMATION CONTACT: Herb Nelson (612) 713–4400, ext. 1143.

SUPPLEMENTARY INFORMATION: The BIA proposes to take 79 acres of land into trust on behalf of the Tribe, on which the Tribe proposes to build a casino. The property is located along the south side of Interstate 94 (I–94) in Emmett Township, Calhoun County, Michigan, at the Eleven Mile Road exit. The project design includes a 170,000 to 210,000 square foot casino, support area, restaurants, gift shop and parking for 3400 patrons and employees and 20 busses, to be located on the 79-acre parcel. Possible alternatives to the proposed action include no action, alternative locations for the fee-to-trust transfer, and modifications to the project design.

This project was originally addressed in an Environmental Assessment (EA) prepared under the direction of the BIA and the Tribe by EDAW, Inc., with a Finding of No Significant Impact (FONSI). As a result of a legal challenge, based on the EA and FONSI, to the decision by the Assistant Secretary—Indian Affairs to take the land into trust for the Tribe, the BIA has withdrawn the EA and FONSI and now intends to prepare an EIS for the proposed project. The following provides a brief background to this decision.

On January 27, 2000, after the Tribe submitted its application to have the land in question taken into trust, Calhoun County and Emmett Charter Township sponsored a community public forum/hearing to receive comments on the Tribe's application. The record of this meeting was submitted as part of the comments on the Tribe's application and on the EA. On July 18, 2001, the BIA issued a draft of the EA for public review and comment. It received over a thousand pages of comments from local governments, citizen organizations and individuals. The BIA reviewed and responded to each of these comments accordingly. In February 2002, the BIA completed the final EA, which included the comments and responses to those comments as an appendix. The FONSI was issued on July 31, 2002.

On August 9, 2002, the Assistant Secretary—Indian Affairs published his decision to accept the 79 acres into trust for the Tribe in the **Federal Register** (67 FR 51867), to be effective thirty days after this date of publication. The legal challenge to the decision led to an April 23, 2004 order in *CETAC* v. *Norton,* Civ. Action No. 02–1754 (TPJ), remanding the EA to the Department of Interior for revision or for the preparation of an EIS. The BIA subsequently concluded that the potential environmental impact of the proposed action was significant enough to warrant an EIS.

Issues identified to date to be addressed in the EIS include the following:

- Traffic (how the traffic generated by the casino development may effect the existing transportation system);
- Socio-economics (how the project may affect employment and income, housing, schools, and infrastructure);
- Cumulative effects (environmental impacts which result from the incremental impact of the project when added to other past, present, and reasonably foreseeable future actions regardless of what agency, Federal or other, or person undertakes such other actions);
- Indirect effects (environmental impacts of the project which are caused by the action and are later in time or farther removed in distance from the direct effects, but are still reasonably foreseeable, including growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems); and
- Impacts including geology, soils, hydrology, water quality, and noise (analysis would include direct, indirect and cumulative impacts).

The issues listed above are based on the previous EA and comments received on that EA. The issues and the alternatives to be addressed in the EIS remain open to expansion based on comments submitted in response to this notice and at the public scoping meeting.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 1, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–15821 Filed 7–12–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Lytton Rancheria of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 9.53 acres, more or less, as an addition to the reservation of the Lytton Rancheria of California on June 29, 2004. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Office of the Deputy Bureau Director—Trust Services, MS–4512/MIB/Code 220, 1849 C Street, NW., Washington, DC 20240, telephone (202) 219–1195.

SUPPLEMENTARY INFORMATION: A proclamation was issued by virtue of the authority contained in Section 819 of the Omnibus Indian Advancement Act, Public Law 106–568, and pursuant to the authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs under 209 DM 8.1, to the following described trust lands:

The trust lands described in that certain Grant Deed, dated October 8, 2003, by and between Sonoma Entertainment Investors, L.P., a Pennsylvania limited partnership, and United States of America, in trust for the benefit of the Lytton Rancheria of

California, a federally recognized Indian tribe, which Grant Deed was approved by the United States of America on October 9, 2003, and recorded on October 9, 2003, in the official records of Contra Costa County Recorder Office, Contra Costa, California, as Document No. 2003–0506433–00 (Trust Lands).

The Trust Lands are proclaimed to be an addition to and part of the reservation of the Lytton Rancheria of California under sections 5 and 7 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. § 467). The Trust Lands are further proclaimed to be held in trust and part of the reservation of the Lytton Rancheria of California before October 17, 1988.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: June 29, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–15820 Filed 7–12–04; 8:45 am]

BILLING CODE 4310–W7–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–04–005]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

ORIGINAL DATE: July 13, 2004.

ORIGINAL TIME: 11 a.m.

NEW DATE: July 15, 2004.

NEW TIME: 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

In accordance with 19 CFR 201.35(d)(1), the Commission has determined to change the day and time for the meeting of 11 a.m., July 13, 2004 to 11 a.m., July 15, 2004.

Issued: July 9, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15976 Filed 7–9–04; 2:36 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: application to register as an importer of U.S. Munitions Import List articles.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, volume 69, number 24, on page 5578 on February 5, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 12, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection.

(2) *Title of the Form/Collection:* Application to Register as an Importer of U.S. Munitions Import List Articles.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Justice Sponsoring the Collection: Form Number:* ATF F 4587 (5330.4). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected Public Who Will be Asked or Required to Respond, as Well as a Brief Abstract: Primary:* Business or other for-profit. *Other:* None. The purpose of this information collection is to allow ATF to determine if the registrant qualifies to engage in the business of importing a firearm or firearms, ammunition, and the implements of war, and to facilitate the collection of registration fees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 300 respondents, who will complete the form within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 150 total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 8, 2004.

Brenda E. Dyer,

Clearance Officer, United States Department of Justice.

[FR Doc. 04–15834 Filed 7–12–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 29, 2004, Cedarburg Pharmaceuticals, Inc.,

870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Hydromorphone (9150)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than September 13, 2004.

Dated: June 28, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–15771 Filed 7–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 29, 2004, Eli-Elsohly Laboratories, Inc., Mahmoud A. Elsohly Ph.D., 5 Industrial Park Drive, Oxford, Mississippi 38655, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II

The firm plans to manufacture the controlled substances for use in analysis and drug test standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than September 13, 2004.

Dated: June 28, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–15772 Filed 7–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 22 and 28, 2004, Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601–1645, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine-N-Oxide (9053)	I
Morphine-N-Oxide (9307)	I
Hydromorphone-N-Oxide (9150)	II

The firm plans to manufacture small quantities of the Schedule I products for internal testing; the Schedule II product will be manufactured for distribution to a customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than September 13, 2004.

Dated: June 28, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–15773 Filed 7–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Records of Results of Examinations of Self-Rescuers

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before September 13, 2004.

ADDRESSES: Send comments to Melissa Stoehr, Acting Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via e-mail to *stoehr.melissa@dol.gov*. Ms. Stoehr can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

The Self-Rescue devices are subjected to harsh in-mine conditions that may result in damage to the device which could cause the device to malfunction or provide less than adequate protection. The 90-day examination of the device is necessary in order to provide for early detection of potential

problems that would otherwise go undetected. Requiring the mine operator to certify the examination was made and to record any identified defects gives credibility to the program and decreases the likelihood of a person being required to use a device that may not function as designed. In addition, this information is useful in determining how durable a device may be when subjected to the harsh conditions that are encountered during in-mine use. This allows for early detection of design problems that may require the manufacturer to make changes to a device in order to assure the device will continue to function as designed and provide adequate protection in the event of an emergency.

II. Desired Focus

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act Submissions (*http://www.msha.gov/regspwork.htm*)'', or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to examination and certification of self-rescue devices. In 1997, a large number of problems were identified with SCSR devices that indicated either the 90-day examinations were not being conducted, or defective devices were not being removed from service. As a result of these problems, MSHA issued a Program Information Bulletin reminding the industry of the standard requiring the 90-day examination and certification of the self-rescue devices, and requiring devices that fail the 90-day examination to be removed from service. In addition, MSHA increased the inspection effort to include quarterly evaluation of the mine operators records as well as a physical examination of a representative number of self-rescue devices. However, due to the large number of devices in use in the mining industry (approximately 50,000 devices), it is essential that mine operators continue to certify that the 90-day examination was conducted on each device, and record the results for devices that failed the 90-day examination. Although MSHA has increased the enforcement effort, the large number of devices in use in the mining industry make it impractical for MSHA to be able to examine each of the devices quarterly.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Records of Results of Examinations of Self-Rescuers.

OMB Number: 1219–0044.

Recordkeeping: One year.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 75.1714–3.

Total Respondents: 773.

Frequency: Quarterly.

Total Responses: 143,492.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 71,748 hours.

Estimated Total Burden Cost: $0.

Total Burden Cost (Capital/Startup): 0.

Total Burden Cost (Operating/Maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated in Arlington, Virginia, this 6th day of July, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–15767 Filed 7–12–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Escape and Evacuation Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Escape and Evacuation Plans. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before September 13, 2004.

ADDRESSES: Send comments to Melissa Stoehr, Acting Chief, Records

Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via e-mail to *stoehr.melissa@dol.gov.* Ms. Stoehr can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Title 30, CFR § 57.11053 requires the development of an escape and evacuation plan specifically addressing the unique conditions of each underground metal and nonmetal mine. Section 57.11053 also requires that revisions be made as mining progresses. The plan must be available for review by MSHA inspectors and conspicuously posted at locations convenient to all persons on the surface and underground. The plan is required to be reviewed jointly by the mine operator and MSHA at least once every six months.

II. Current Actions

An accurate, up-to-date plan is vital to the safety of the miners and rescue personnel in the event of an underground mine emergency. The plans are periodically reviewed by MSHA personnel to ensure that plans are accurate and updated as mining progresses and that the escape routes are still effective.

Type of Review: Extension of Currently Approved Collection.

Agency: Mine Safety and Health Administration.

Title: Escape and Evacuation Plans.

OMB Number: 1219–0046.

Affected Public: Business or other for-profit institutions.

Frequency: On occasion.

Number of Respondents: 243.

Number of Responses: 486.

Estimated Time per Response: 8.5 hours.

Total Burden Hours: 4,131.

Total Burden Cost (capital/startup): $0.

Total Annual Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 6th day of July, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–15768 Filed 7–12–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

This notice amends a petition for modification of application of an existing standard to add information to a notice published in the **Federal Register** on November 12, 2003 (68 FR 64129), pertaining to the Consol Pennsylvania Coal Company. On October 17, 2003, Consol Pennsylvania Coal Company filed a petition for modification for existing safety standard 30 CFR 75.507 (Power connection points) for the Enlow Fork Mine, to permit non-permissible submersible pumps to be installed in bleeder and return entries and sealed areas of the Mine. On December 2, 2003, the petitioner filed an amendment requesting that the above-referenced petition for modification also apply to the Bailey Mine. Publication of this document provides notice that the petition for modification applies to the Enlow Fork Mine and the Bailey Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Dated in Arlington, Virginia this 8th day of July 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–15845 Filed 7–12–04; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Search Committee for LSC Inspector General

TIME AND DATE: The Board of Directors Search Committee for LSC Inspector General of the Legal Services Corporation will meet July 19, 2004 from 9 a.m., until conclusion of the Committee's agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

STATUS OF MEETING: Closed. The meeting will be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Committee will interview candidates for the position of Inspector General of the Legal Services Corporation and consider the qualifications of these individuals. The Committee will also consider and act on options related to compensating the Inspector General as well as further steps to be taken in connection with the selection and retention of a finalist for the position, and may also consider and act on additional applications submitted for the position of Inspector General. The closing is authorized by 5 U.S.C. 552b(c)(6) and LSC's corresponding regulation 45 CFR 1622.5(e). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

CLOSED SESSION:

1. Approval of agenda.
2. Consider and act on options available to compensate the LSC Inspector General.
3. Interviews of select candidates for the position of LSC Inspector General.
4. Review and discussion regarding qualifications of interviewed and other viable candidates.
5. Consider and act on further steps to be taken in connection with the selection and retention of a finalist for the office of Inspector General.
6. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Patricia Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie, at (202) 295–1500.

Dated: July 9, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–15944 Filed 7–9–04; 1:26 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice (04–083)]

Return to Flight Task Group; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub.

L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting by teleconference of the Return to Flight Task Group (RTF TG).

DATES: Thursday, July 22, 2004, from 11 a.m. until 12:30 p.m. Central Daylight Time.

ADDRESSES: The teleconference will originate from the Apollo Annex, Suite 101, 1740 NASA Parkway, Houston, TX 77598.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent D. Watkins at (281) 792–7523.

SUPPLEMENTARY INFORMATION: The public may monitor the teleconference audio from the Apollo Annex Room 175 up to the seating capacity of the facility. Attendees will be requested to sign a register.

The agenda for the meeting is as follows:

—Welcome remarks from Co-Chair
—Discussion of status of NASA's implementation of selected Columbia Accident Investigation Board return to flight recommendations
—Action item summary from Executive Secretary
—Closing remarks from Co-Chair

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–15838 Filed 7–12–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–084)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Setra Systems, Inc., of Massachusetts has applied for an exclusive patent license to practice the invention described and claimed in U.S. Patent No. 5,693,871 entitled ''Low Differential Pressure Generator,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to John F. Kennedy Space Center.

DATES: Responses to this Notice must be received by July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: June 30, 2004.

Keith T. Sefton,

Chief of Staff, Office of the General Counsel.

[FR Doc. 04–15839 Filed 7–12–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ENDOWMENT FOR THE ARTS

Submission for OMB Review; Comment Request

July 8, 2004.

The National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Indemnity Administrator, Alice Whelihan (202) 682–5574.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–4718, within 30 days of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
—Enhance the quality, utility and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: National Endowment for the Arts.

Title: Application for Indemnification.

OMB Number: 3135–0094.

Frequency: renewed every three years.

Affected Public: Non-profit, tax exempt organizations, individuals and governments.

Number of Respondents: 40 per year.

Estimated Time per Respondent: 45 hours.

Total Burden Hours: 1800.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $100,000.

Description: This application form is used by non-profit, tax-exempt organizations (primarily museums), individuals and governmental units to apply to the Federal Council on the Arts and the Humanities (through the National Endowment for the Arts) for indemnification of eligible works of art and artifacts, borrowed from aboard for exhibition in the United States, or sent from the United States for exhibition abroad. The indemnity agreement is backed by the full faith and credit of the United States. In the event of loss of damage to an indemnified object, the Federal Council certifies the validity of the claim and requests payment from Congress. 20 U.S.C. 973 *et seq.* requires such an application and specifies information which must be supplied. This statutory requirement is implemented by regulation at 45 CFR 1160.4.

Murray Welsh,

Director, Administrative Services.

[FR Doc. 04–15813 Filed 7–12–04; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos: (Redacted), License Nos: (Redacted), EA (Redacted)]

In the Matter of All Power Reactor Licensees and Research Reactor Licensees Who Transport Spent Nuclear Fuel; Order Modifying License (Effective Immediately)

I

The licensees identified in Attachment 1 to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the

transportation of spent nuclear fuel (in a transportation package approved by the Commission) in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 50 and 71. This Order is being issued to all such licensees who transport spent nuclear fuel. Commission regulations for the shipment of spent nuclear fuel at 10 CFR 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 CFR 73.37(b), (c), (d), and (e).

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on all licensees identified in Attachment 1 of this Order.[1] These compensatory requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, and in light of the common defense and security matters identified above which warrant the issuance of this Order, the Commission finds that the public health, safety, and interest require that this Order be immediately effective.

III

Accordingly, pursuant to sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50 and 71, *it is hereby ordered*, effective immediately, that all licenses identified in Attachment 1 to this order are modified as follows:

A. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the Licensee's security plan. The Licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by August 1, 2004, unless otherwise specified in Attachment 2, or before the first shipment after July 2, 2004, whichever is earlier.

B.1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent fuel must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C.1. All Licensees shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2. All Licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation under 10 CFR 50.4. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and

[1] Attachments 1 and 2 contain Safeguards Information and will not be released to the public.

may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, attn: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov*, and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the requirements set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated in Rockville, Maryland, this 2nd day of July, 2004.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 04–15789 Filed 7–12–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. PAPO–00]

Commissioners: Nils J. Diaz, Chairman, Edward McGaffigan, Jr., Jeffrey S. Merrifield; In the Matter of U.S. Department of Energy (High Level Waste Repository: Pre-Application Matters); CLI–04–20; Order

The Commission has promulgated regulations, found in 10 CFR part 2, subpart J, which, among other things, provide for the use of an electronic information management system to make documents available to the participants in any eventual licensing proceeding on a high-level radioactive waste repository. Requiring participants to place pertinent documents into the Licensing Support Network (LSN) for use by the other participants obviates the need for the traditional means of document discovery and will allow potential parties to use some part of the pre-application period to review documentary information and prepare contentions for filing in petitions to intervene. In promulgating its regulations, the Commission recognized that there is a potential for disputes among the participants regarding document withholding from the LSN.

Section 2.1010 of subpart J requires that the Commission designate an official to rule on those disputes, a Pre-License Application Presiding Officer (PAPO). Subpart J defines the PAPO as ''one or more members of the Commission, or an atomic safety and licensing board (ASLB), or a named officer who has been delegated final authority in the pre-license application phase with jurisdiction specified at the time of designation.'' 10 CFR 2.1010(a)(1). That official is to be designated no later than fifteen days after the Department of Energy (DOE)—the potential applicant for a license authorizing construction of a high-level radioactive waste repository—provides a written certification to the NRC pursuant to 10 CFR 2.1009(b) that DOE has identified the pertinent documentary information and made it electronically available.[1] DOE provided that certification to NRC on June 30, 2004. The purpose of this order is to designate a PAPO and set forth the jurisdiction of that official.

Designation of the PAPO

The Commission hereby designates the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, G. Paul Bollwerk, III, as the PAPO. As set forth below, he is authorized to delegate that authority.

PAPO's Powers and Jurisdiction

The Commission authorizes the PAPO to delegate his authority in whole or in part to any member or members of the Atomic Safety and Licensing Board Panel to serve singly or jointly on one or more boards.

Pursuant to 10 CFR 2.1010(e), the PAPO possesses all the general powers specified in § 2.319 and § 2.321(c) that the PAPO requires to carry out its responsibilities. As provided by 10 CFR 2.1010(a)(1) and (b), the PAPO is granted this authority *solely* for the purpose of ruling on disputes over the electronic availability of documents, including disputes relating to claims of privilege and those relating to the implementation of recommendations of the Advisory Review Panel established under § 2.1011(d). Pursuant to § 2.1010(b), the PAPO shall rule on any claim of document withholding except as otherwise provided in this order or subsequent order of the Commission. In 10 CFR 2.1005, the Commission has delineated classes of documents that are to be excluded from the LSN. The Commission calls attention to recent changes to that section of the regulations. *See* 69 FR 32836 (June 14,

[1] We note receipt of a June 2, 2004, letter from counsel for the State of Nevada requesting the Commission ''to appoint a Pre-Application Presiding Officer immediately.'' This Order addresses that request.

2004). No issue lacking a direct relation to the LSN is to be entertained by the PAPO.

The Commission's interest is in assuring the availability of information and not in dissipating resources on meaningless disputes. The PAPO possesses authority under 10 CFR 2.1010(e) and 2.319 to restrict irrelevant, unreliable, duplicative or cumulative arguments and to regulate the course of the proceedings and the conduct of the participants. The Commission expects the PAPO to use this authority to ensure a fair and impartial process.

Clarification Regarding Appeals of PAPO Actions

Although 10 CFR 2.1010(a)(1) refers to ''a named officer who has been delegated *final* authority on the matter to serve as the [PAPO]'' (underlining added), a right of appeal from a PAPO order issued under 10 CFR 2.1010 is recognized under § 2.1015(b). A notice of appeal, accompanied by a supporting brief, must be filed with the Commission no later than ten days after service of the order in accordance with 10 CFR 2.1015.

Termination of Jurisdiction

The jurisdiction of the PAPO shall terminate at the time that an Atomic Safety and Licensing Board has been appointed to preside over the high-level waste repository licensing proceeding,[2] the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel or the Commission rules otherwise, the PAPO shall retain jurisdiction over those disputes pending before it at the time a Licensing Board has been appointed for the high level waste repository licensing proceeding.

Application of Ex Parte and Separation of Functions Rules

The ex parte and separation of function rules (10 CFR 2.347 and 2.348 respectively) shall apply to those limited matters falling within the PAPO's jurisdiction and to appeals to the Commission of PAPO rulings.

Technical Requirements for Legal Filings

An addendum to the order discusses and displays how the participants shall caption any filing seeking a ruling or other action from the PAPO. The caption includes, as will be noted, both the identification of the originator of the request and the number of the request by that particular originator. Subsequent responses and any other related papers should carry the same caption. This will aid electronic retrieval of the documents and facilitate identification of filings and rulings on any specified dispute.

Other requirements governing submissions shall be as the part 2 rules provide unless the PAPO or the Commission provides otherwise.

It is so ordered.

Dated in Rockville, Maryland, this 7th day of July, 2004.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Addendum to CLI–O4–20

The caption used on the above Order appointing a PAPO should be used for all filings with the PAPO.

Beneath the caption, the participant shall number each of its requests for action by the PAPO. Thus, for example, a participant's first request should be numbered [name of participant]–01. Its second request will be numbered [name of participant]–02. By requiring each of the participants to number its requests, it will make it easy for the PAPO and the participants to refer to the various requests.

Thus were a participant to file a request, its first filing would read as follows:

U.S. Dept of Energy: High Level Waste Repository Pre-Application Matters
Docket No. PAPO–00
Name of Participant–01

[FR Doc. 04–15788 Filed 7–12–04; 8:45 am]

BILLING CODE 7590–01–P

[2] The Commission expects that none of the one or more Atomic Safety and Licensing Boards that may be needed for such proceeding will be appointed until after DOE files an application, the application has been docketed by the NRC staff, a Notice of Opportunity for Hearing has been published by the NRC, and at least one person has filed a petition to intervene and request a hearing.

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of July 12, 19, 26; August 2, 9, 16, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 12, 2004

Tuesday, July 13, 2004

2:15 p.m.—Discussion of Security Issues (closed—ex. 1).

Wednesday, July 14, 2004

1:15 p.m.—Affirmation Session (Public Meeting). (If needed.)

Thursday, July 15, 2004

11:30 a.m.—Discussion of Security Issues (closed—ex. 1).

Week of July 19, 2004—Tentative

Wednesday, July 21, 2004

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting). (Contact: John Larkins (301) 415–7360.)

This meeting will be webcast live at the Web address *www.nrc.gov*.

Week of July 26, 2004—Tentative

There are no meetings scheduled for the Week of July 26, 2004.

Week of August 2, 2004—Tentative

There are no meetings scheduled for the Week of August 2, 2004.

Week of August 9, 2004—Tentative

There are no meetings scheduled for the Week of August 9, 2004.

Week of August 16, 2004—Tentative

Wednesday, August 18, 2004

9:30 a.m.—Discussion of Security Issued (closed—ex. 1).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By a vote of 3–0 on July 6, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that ''Affirmation of (1) Pacific Gas & Electric Co. (Diablo Canyon Power Plant, Units 1 and 2); Applicant's motion to terminate proceeding and Intervenor's motion to vacate, (2) Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2), Order on the Board's certified questions on admissibility of a security contention, and (3) Appointment of a Pre-License Application Presiding Officer (PAPO) for High Level Waste Repository Pre-License Application Phase'' be held July 7, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator,

August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: July 8, 2004.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 04–15893 Filed 7–9–04; 9:37 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17a–7; SEC File No. 270–147; OMB Control No. 3235–0131.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–7 (17 CFR 240.17a–7) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) requires non-resident brokers or dealers registered or applying for registration pursuant to Section 15 of the Exchange Act to maintain—in the United States—complete and current copies of books and records required to be maintained under any rule adopted under the Securities Exchange Act of 1934. Alternatively, Rule 17a–7 provides that the non-resident broker or dealer may sign a written undertaking to furnish the requisite books and records to the Commission upon demand.

There are approximately 65 non-resident brokers and dealers. Based on the Commission's experience in this area, it is estimated that the average amount of time necessary to preserve the books and records required by Rule 17a–7 is one hour per year. Accordingly, the total burden is 65 hours per year. With an average cost per hour of approximately $55.00, the total cost of compliance for the respondents is $3,575 per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 6, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15783 Filed 7–12–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 8c–1; SEC File No. 270–455; OMB Control No. 3235–0514.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 8c–1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, the rule states three main principles: First, that a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and third, that a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer. *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to Rule 8c–1, respondents must collect information necessary to prevent the hypothecation of customer accounts in contravention of the rule, issue and retain copies of notices to the pledgee of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 163 respondents per year (*i.e.*, broker-dealers that conducted business with the public, filed Part II of the FOCUS Report, did not claim an exemption from the Reserve Formula computation, and reported that they had a bank loan during at least one quarter of the current year) that require an aggregate total of 3,668 hours to comply with the rule. Each of these approximately 163 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 7,335 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 3,668 burden hours. The approximate cost per hour is $22, resulting in a total cost of compliance for the respondents of $80,696 (3,668 hours @ $22 per hour).

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 6, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15784 Filed 7–12–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Regulation A (Forms 1–A and 2–A); OMB Control No. 3235–0286; SEC File No. 270–110.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation A (OMB Control No. 3235–0286; SEC File No. 270–110) provides an exemption from registration under the Securities Act for certain limited securities offerings by issuers who do not otherwise file reports with the Commission. Form 1–A is an offering statement filed under Regulation A. Form 2–A is used to report sales and used of proceeds in Regulation A offerings. Approximately 165 issuers file Forms 1–A and 2–A. It is estimated that Form 1–A takes 608 hours to prepare, Form 2–A takes 12 hours to prepare and Regulation A takes one administrative hour to review for a total of 621 hours per response. The total annual burden hours are 102,465. It is estimated that 75% of the 102,465 total burden hours (76,849 burden hours) would be prepared by the company.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 6, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15785 Filed 7–12–04; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of meeting time change.

DATES: July 22, 2004, 2 p.m.–*5:45 p.m.; July 23, 2004, 9:45 a.m.–4 p.m. Committee meetings will be from 3:45 p.m. to 5:45 p.m.

ADDRESSES: Renaissance Washington, DC Hotel, 999 9th Street, NW., Washington, DC 20001. Phone: (202) 898–9000.

SUPPLEMENTARY INFORMATION:

Type of Meeting: This is a meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will not be taken during this meeting. The public may submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a) (2) of the Federal Advisory Committee Act, SSA announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress and the Commissioner of Social Security on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive updates and conduct full Panel deliberations on the implementation of TWWIIA.

The Panel will meet in person commencing on Thursday, July 22, 2004, from 2 p.m. to *5:45 p.m.; Friday, July 23, 2004, from 9:45 a.m. to 4 p.m.

* Committee Meetings will be held from 3:45 p.m. to 5:45 p.m.

Agenda: The Panel will hold a meeting to hear updates and to have full Panel discussions and deliberations on Thursday and Friday, July 22 and 23, 2004.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* approximately one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.
- Telephone contact with Monique Fisher at (202) 358–6435.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: July 6, 2004.

Carol Brenner,

Designated Federal Official.

[FR Doc. 04–15770 Filed 7–12–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4758]

Foreign Terrorist Organization; Designation

In the Matter of the Designation of Continuity Irish Republican Army (CIRA), also known as Continuity Army Council, also known as Republican Sinn Fein, as a Foreign Terrorist Organization pursuant to section 219 of the Immigration and Nationality Act.

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State has concluded that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189, hereinafter ''INA''), exist with respect to Continuity Irish Republican Army.

Therefore, effective July 13, 2004, the Secretary of State hereby designates that organization as a foreign terrorist organization pursuant to section 219(a) of the INA.

Cofer Black,

Coordinator for Counterterrorism, Department of State.

[FR Doc. 04–15827 Filed 7–12–04; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4759]

FY 2005 Refugee Admissions Program; Notice of Meeting

The Department of State will host a meeting on the President's FY 2005 Refugee Admissions Program on Wednesday, July 28, 2004, from approximately 1 p.m. to 3 p.m. The meeting will be held at the Refugee Processing Center, 1401 Wilson Boulevard, Suite 700, Arlington, Virginia. The meeting's purpose is to hear the views of attendees on the appropriate size and scope of the FY 2005 Refugee Admissions Program.

Seating is limited. Persons wishing to attend this meeting must notify the Bureau of Population, Refugees, and Migration at (202) 663–1006 by 5 p.m. (e.d.t.), Wednesday, July 21, 2004, to register attendance. Persons wishing to present oral comments at the open portion of the meeting, or to submit written comments must provide them in writing by 5 p.m. (e.d.t.), Wednesday, July 21, 2004. Those who are unable to attend but wish to submit comments should also provide them by 5 p.m. (e.d.t.), Wednesday, July 21, 2004. All comments may be faxed to (202) 663–1364.

Information about the Refugee Admissions Program may be found at *http://www.state.gov/g/prm/.*

J. Kelly Ryan,

Deputy Assistant Secretary of State, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 04–15828 Filed 7–12–04; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Section 182 is commonly referred to as the ''Special 301'' provision in the Trade Act. In addition, USTR is required to determine which of those countries should be identified as Priority Foreign Countries. On May 3, 2004, USTR announced the results of the 2004 Special 301 review and stated that an Out-of-Cycle Review (OCR) would be conducted in the summer for Israel. USTR requests written comments from the public concerning the acts, policies, and practices relevant for this review under section 182 of the Trade Act.

DATES: Submissions must be received on or before 12 noon on Friday, August 6, 2004.

ADDRESSES: All comments should be sent to Sybia Harrison, Special Assistant to the Section 301 Committee, at the following e-mail address: *FR0436@ustr.gov,* with ''Special 301 Out-of-Cycle Review'' in the subject line. Please note, only electronic submissions will be accepted.

FOR FURTHER INFORMATION CONTACT: Brian Peck, Senior Director for Intellectual Property, (202) 395–6864; or Stanford McCoy, Assistant General Counsel, (202) 395–3581, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to section 182 of the Trade Act, USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products may be identified as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the section 301 provisions of the Trade Act.

On May 3, 2004, USTR announced the results of the 2004 Special 301 review, including an announcement that an Out-of-Cycle Review (OCR) would be conducted in the summer for Israel. Additional countries may also be reviewed as warranted by events.

Requirements for Comments: Comments should include a description of the problems experienced and the effect of the acts, policies, and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies, and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

Comments must be in English and sent electronically. No submissions will be accepted via postal service mail. Documents should be submitted as either WordPerfect, MS Word, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files. A submitter requesting that information contained in a comment be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. A non-confidential version of the comment must also be provided. For any document containing business confidential information, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P'' or ''BC'' should be followed by the name of the submitter. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

All comments should be sent to Sybia Harrison, Special Assistant to the Section 301 Committee, at the following e-mail address: *FR0436@ustr.gov,* with ''Special 301 Out-of-Cycle Review'' in the subject line. Please note, only electronic submissions will be accepted.

Public Inspection of Submissions: Within one business day of receipt, non-confidential submissions will be placed in a public file, open for inspection at the USTR reading room, Office of the

United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Jacqueline Caldwell at (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Brian Peck,

Senior Director for Intellectual Property.

[FR Doc. 04–15831 Filed 7–12–04; 8:45 am]

BILLING CODE 3190–W4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Four Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on four currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before September 13, 2004.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith D. Street at the above address, on (202) 267–9895, or by e-mail at: *Judy.Street@faa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information. Comments should evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

1. 2120–0034, Medical Standards and Certification. The Secretary of Transportation collects model certification information under the authority of 49 U.S.C. 40113, 44510, 44701, 44702, 44703, 44709, 45303, and 80111. The certification program is implemented by Title 14 CFR parts 61 and 67. Part 67 prescribes minimum airman medical standards, and § 61.23 prescribes standards for the duration of a medical certificate. Information collected substantiates the applicant's eligibility. The current estimated annual reporting burden is 707,253 hours.

2. 2120–0040, Aviation Maintenance Technical Schools. Section 44707 (49 U.S.C.) authorizes certification of civil aviation mechanic schools; 14 CFR 147 prescribes requirements for certification and operation of aviation mechanic schools. The information collected is needed to determine applicant eligibility and compliance. The current estimated annual reporting burden is 66,134 hours.

3. 2120–0593, Commuter Operations and General Certification and Operations Requirements. The respondents to this information collection are FAR Part 135 and 121 operators. The FAA will use the information collected to ensure compliance and adherence to regulations. The respondents are aircraft owners and operators. The current estimated annual reporting burden is 8,855 hours.

4. 2120–0672, Criteria for Internet Communications of Aviation Weather, Notam, and Aeronautical Data. An Advisory Circular (AC) establishes criteria for Qualified Internet Communications Providers (QICP), who provide access to aviation weather, Notice to Airmen (NOTAM), and aeronautical data via the Public Internet. The AC describes procedures for a provider to become and remain an FAA approved QICP, and the information collected is used to determine the provider's eligibility. The current estimated annual reporting burden is 5,680 hours.

Issued in Washington, DC, on July 7, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 04–15848 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Establishment of an Aeronautical Research Center

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of meeting.

SUMMARY: The FAA is seeking expressions of interest from law schools, universities, aerospace associations, and other interested parties in establishing an aeronautical research center. The center would be an educational and research facility that would provide the public access to the FAA's collection of papers and publications documenting the history of aerospace in the United States. The center would also maintain a collection of technical and legal aerospace resources and would serve as the FAA's main library facility.

DATES: Request to attend meeting is due by July 27, 2004.

Meeting will be held on July 29, 2004, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, in Room 900 East at 2 p.m. People planning to attend should email *patricia.abdullah@faa.gov.* Please include your name, institution, address, telephone number, and e-mail address.

ADDRESSES: Please mail requests for Information/Sources Sought Notice to: Patricia Abdullah, TITLE, AGC–500, Room 919, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591; or e-mail requests to *patricia.abdullah@faa.gov.* Please include the following Solicitation Number on all requests: Reference Number: 3718.

FOR FURTHER INFORMATION CONTACT: Patricia Abdullah, Federal Aviation, Federal Aviation Administration, 800 Independence Avenue, Room 919, AGC–500, Washington, DC 20591, Telephone: 202–267–7090. E-mail: *patricia.abdullah@faa.gov.*

Conference for Interested Parties

The FAA will host a conference for interested parties to respond to questions and identify other services and contributions that could benefit the participating parties. The FAA is seeking expressions of interest from law schools, universities, aerospace associations, and other interested parties in establishing an aeronautical research center. The center would be an educational and research facility that would provide the public access to the FAA's collection of papers and publications documenting the history of aerospace in the United States. The center would also maintain a collection of technical and legal aerospace resources and would serve as the FAA's main library facility.

To establish the center, the FAA would contribute: (1) Access to its

historical collection as well as its current technical and legal collection; (2) space for the collection; (3) office equipment; and (4) experienced aviation librarians. Other FAA contributions such as internship opportunities for students could be developed depending on the needs of the participating party. Contributions from the participating party would include: (1) The purchase of on-line and paper subscriptions, maintenance and binding of legislative and historical documents, and other miscellaneous expenses to maintain the collection; (2) maintenance of office equipment, supplies, and library software packages; and (3) space design and architectural costs for the center.

Issued in Washington, DC, on July 2, 2004.

Patricia A. Abdullah,

Acting Deputy Assistant Chief Counsel for Procurement.

[FR Doc. 04–15556 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (04–05–C–00–ASE) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Aspen/Pitkin County Airport, Submitted by the County of Pitkin, Aspen/Pitkin County Airport, Aspen, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at the Aspen/Pitkin County Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before August 12, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Craig A. Sparks, Manager, Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 East 68th Avenue, Suite 224; Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James P. Elwood, Director of Aviation, at the following address: 0233 East Airport Road, Aspen, Colorado 81611.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Aspen/Pitkin County Airport, under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258 Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 East 68th Avenue, Suite 224; Denver, Colorado 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (04–05–C–00–ASE) to impose and use PFC revenue at the Aspen/Pitkin County Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 6, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Pitkin, Aspen/Pitkin County Airport, Aspen Colorado, was substantially complete within the requirements of section 158.25 of Part 158. This FAA will approve or disapprove the application, in whole or in part, no later than October 2, 2004. The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: January 1, 2005.

Proposed charge expiration date: February 1, 2008.

Total requested for use approval: $2,274,164.

Brief description of proposed projects: Aircraft rescue and fire fighting (ARFF)/snow removal equipment (SRE) building design, north general aviation apron, Taxiway A relocation, acquire snow removal equipment, land purchase, and acquisition of a localizer.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: All air traffic/commercial operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice or other documents germane to the application in person at the Aspen/Pitkin County Airport.

Issued in Renton, Washington, on July 6, 2004.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 04–15849 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements, Agency Information Collection Activity Under OMB Review

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

ACTION: Federal Register notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice, with a 60-day comment period, was published on March 3, 2004 [69 FR 10097].

DATES: OMB approval has been requested by August 12, 2004.

FOR FURTHER INFORMATION CONTACT: Henrietta L. Spinner at the National Highway Traffic Safety Administration (NHTSA), Office of International Policy, Fuel Economy and Consumer Program (NVS–130), (202) 366–4802, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Agency: National Highway Traffic Safety Administration.

Title: 49 CFR 537, Automotive Fuel Economy Reports.

OMB Control Number: 2127–0019.

Type of Request: Extension of a currently approved collection.

Abstract: Section 32907 of Chapter 329 of Title 49 of the United States Code requires each automobile manufacturer (other than those low volume manufacturers which were granted an alternative fuel economy standard under section 32902 (d)) to submit semi-annual reports to the agency relating to that manufacturers' efforts to comply with average fuel economy standards. One report is due during the 30-day period preceding the beginning of each model year (the ''pre-model year report'') and the other is due during the 30-day period beginning on the 180th

day of the model year (the ''mid-model year report'').

Section 32907 (a)(1) of Chapter 329 provides that each report must contain a statement as to whether the manufacturer will comply with average fuel economy standards for that year, a plan describing the steps the manufacturer took or will take to comply with the standards, and any other information the agency may require. Whenever a manufacturer determines that a plan it has submitted in one of its reports is no longer adequate to assure compliance, it must submit a revised plan.

Affected Public: Business or other for profit organizations.

Estimated Total Annual Burden: 1, 957 hours.

Estimated Number of Respondents: 18.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective, if OMB receives it prior to August 12, 2004.

Issued on: July 2, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–15850 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement Program To Support Project To Increase Hispanic Safety Belt Use

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

ACTION: Notice; Announcement of a discretionary cooperative agreement(s) to support an occupant protection campaign to increase Hispanic safety belt use.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement opportunity to solicit support from organizations that serve the Hispanic community to implement a demonstration program to increase safety belt use and reduce fatalities and injuries among the Hispanic population. NHTSA anticipates funding an organization for a period of two years to administer a demonstration project in approximately two sites in a county or metropolitan area with a large concentration of Hispanic or Spanish-speaking new immigrants. The sites will be determined jointly by NHTSA and the successful applicant. This Notice solicits applicable State agencies (*e.g.*, highway safety offices, motor vehicle administrations, law enforcement agencies, and others) non-profit, for-profit or not-for-profit organizations, or a consortium of agencies/organizations for funds to be available in fiscal year (FY) 2004. Interested applicants must submit an application package meeting the requirements set forth in the application section of this Notice. NHTSA will evaluate the applications to determine which proposal will receive funding under this announcement.

DATES: Applications must be received no later than August 12, 2004, at 1 p.m. Eastern Standard Time.

ADDRESSES: Application must be submitted to the U.S. Department of Transportation, National Highway Traffic Safety Administration, Office of Contracts and Procurements (NPO–220), ATTN: April L. Jennings, 400 7th Street SW., Room 5301, Washington, DC 20590. All applicants must include reference to NHTSA Cooperative Agreement Number DTNH22–04–H–05137.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Ms. April L. Jennings, Office of Contracts and Procurement, NPO–220, 400 Seventh Street, SW., 20590 by e-mail (preferred method) at *April.Jennings@NHTSA.DOT.GOV* or by phone at (202) 366–9571 no later than August 9, 2004. Interested parties are advised that no separate application packages exist beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The National Highway Traffic Safety Administration (NHTSA) is the Federal agency assigned to implement the National Initiative for Increasing Seat Belt Use Nationwide, being carried out under the Buckle Up America Campaign. Safety belts have proven to be the most effective occupant protection device in saving lives and preventing injuries in motor vehicle crashes.

The use of safety belts in motor vehicles is less common in minority and low-income populations than in the general population. Motor vehicle crashes are the leading cause of death for Hispanics from ages 1–34 years old. A recent medical study showed that Hispanic drivers have a lower safety belt use than non-Hispanic whites, with correspondingly higher fatality rates in traffic crashes. These factors necessitate programs to increase safety belt use in this group.

Hispanics currently make up 13 percent of the U.S. population and are projected to make up 24 percent by the year 2050. As the percentage of Hispanics increases, it is anticipated that a greater proportion of future crash injuries and fatalities will come from the Hispanic community.

NHTSA's mission is to ensure that everyone is buckled up, and to develop and implement national activities that will generate positive change in safety belt and child safety seat use. NHTSA programs are tailored to meet the unique needs of communities, are evidence-based and use proven strategies, and rely on close collaborations and partnerships with community-based service providers.

As part of this on-going effort to define strategies that work best to increase safety belt use in Hispanics communities, NHTSA announces this demonstration program to explore ways to reduce injuries and fatalities among this group. Through this Cooperative Agreement, NHTSA anticipates increasing safety belt use in communities with large Hispanic populations and identifying effective strategies that can be replicated in other Hispanic communities across the Nation.

Objective

The objective of this demonstration program is to increase safety belt use among Hispanics. This will be accomplished through the selection of an organization to develop, oversee and evaluate new, culturally appropriate, occupant protection programs to raise safety belt and child restraint use within Hispanic communities. The program will be based in communities with large concentrations of Hispanics and will be developed to affect long-term behavioral changes. At the conclusion of this demonstration program, a detailed report outlining the strategies, successes, and challenges of the program will be compiled. The report

will describe model strategies and provide guidance on how to raise safety belt and child restraint use in Hispanic communities.

Strategies

To assist the demonstration sites in determining the most appropriate and effective strategies to increase safety belt use in Hispanic populations, the successful applicant will have the ability to assess a variety of education and enforcement models. The proposed strategies must include peer-to-peer (immigrant to immigrant) education and high-visibility enforcement. Other approaches might include media messages, faith-based programs, or other programs proposed by the successful applicant. The applicant may consider a variety of program designs, however, the high visibility enforcement and the peer-to-peer education component must constitute part of the applicant's planned activities at the majority of sites funded under this Cooperative Agreement.

Program Oversight

Under this Cooperative Agreement, the successful applicant will be responsible for managing the demonstration projects in cities with a large Hispanic population. NHTSA will work closely with the successful applicant to provide necessary technical assistance.

Evaluation of Programs

The successful applicant will be responsible for collecting information about program activities, resources, and outcomes. At a minimum, the successful applicant will conduct a process evaluation to document activities, materials, education activity, enforcement activity, and media activities accomplished under the program. The ultimate goal is to increase safety belt use among the Hispanic population. To determine success of this goal, outcome measures must include pre and post safety belt observation surveys to measure changes in safety belt usage rates as a result of the program. NHTSA also will require public perception surveys to assess public knowledge and awareness of the program.

NHTSA will select an independent evaluator to coordinate an impact evaluation that will document changes in safety belt use among Hispanics resulting from program activity. The successful applicant must be willing to work with NHTSA evaluators, who will work with the State to identify the most appropriate and effective data collection sources and evaluation methods. Measuring public awareness will track the extent to which the successful applicant used education and media and other activities to increase awareness of the intended audience.

Availability of Funds and Period of Support

Contingent on the availability of funds, the Cooperative Agreement awarded under this notice will be for a performance period not to exceed 24 months (two-years), with 20 months of planning and implementation, and four months for evaluation and preparation of the final report. A total of $600,000 is currently available to support this demonstration effort. Applicants should submit projects and associated budgets for the two-year performance period. To effectively implement the model programs, the grantee should allocate at least 85% of the available funds for the selected community projects and should also allocate 15% of the available funds for evaluation. The award for this initiative is estimated to occur no later than September 2004.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the Cooperative Agreement and to coordinate activities between the Grantee(s) and NHTSA during the period of performance, and to serve as a liaison between NHTSA Headquarters, NHTSA Regional offices and the Grantee.

2. Provide information and technical assistance from other government sources and available resources as determined appropriate by the COTR.

Successful Applicant Responsibilities

NHTSA intends to replicate successful strategies and activities conducted pursuant to this Cooperative Agreement elsewhere throughout the Nation. Therefore, this project will be closely monitored and its results shared with other programs and constituencies. NHTSA will work with the successful applicant to assure that the necessary components of the project are in place to fulfill this goal. Successful applicant responsibilities include:

1. Briefing

Participate with key NHTSA resource staff in the initial briefing meeting, which will take place after the Cooperative Agreement is awarded. The purpose of the meeting will be to review the project's objectives, planned course of action, successful applicant responsibilities, milestones and deliverables, and to resolve any differences between the Government's technical approach and the successful applicant's approach. The successful applicant shall first conduct a short briefing (20 to 30 minutes) describing the organization's planned approach. The successful applicant shall provide attendees with appropriate briefing materials. After the prepared briefing, the successful applicant and NHTSA personnel will discuss specific details of the project.

2. Personnel and Equipment

Provide necessary skilled personnel and equipment needed for performing the work under this agreement. Assign a principal manager as the point of contact for NHTSA's Contracting Officer's Technical Representative (COTR) for the purpose of ongoing coordination and review of work under this agreement.

3. Site Selection

Identify, jointly with NHTSA, the two to four communities/sites where the successful applicant will administer demonstration projects, based on NHTSA's preliminary identification of locations with large Hispanic populations. The Hispanic population shall reside in a county or metropolitan area that has a high percentage of Hispanics.

4. Strategy Identification

Identify the behavior change strategies, including high-visibility enforcement, peer-to-peer education, and other strategies, to be implemented in the various sites as approved by NHTSA.

5. Program Oversight

The successful applicant will provide ongoing oversight and coordination over demonstration project personnel at the site(s) to ensure the quality of the programs.

6. Team Approach

Establish and maintain a highly credible internal and external team approach to prepare for any potential challenges presented by this demonstration project.

7. Evaluation

Work closely with an independent evaluator, selected by NHTSA, to coordinate the design and implementation of the project. The successful applicant will be responsible for collecting information about project

activities, resources and outcomes. In partnership with NHTSA, the successful applicant will carryout a data collection and evaluation plan, as well as conduct a process evaluation to document the materials, the marketing, media and education activities, as well as applicable enforcement activities expanded on the project.

8. Report and Written Deliverables

Provide quarterly reports, annual summary reports, and a final report to the NHTSA COTR. Maintain accurate records of all internal and management discussions on planning, performance/implementation and evaluation activities related to this project. Accurate project records will assist in the replication of the successful approaches and processes identified as a result of this Cooperative Agreement.

Allowable Uses of Federal Funds

Allowable uses of Federal funds shall be governed by the relevant allowable cost section and cost principles referenced in 49 CFR Part 18—Department of Transportation Uniform Administrative Requirements for Grants and Cooperative Agreements to Community and Local Governments. Funds provided under this grant program shall be used to carry out the activities described in the project plan for which the grant is awarded.

Application Procedures

Each applicant must submit one original and three copies of the application package to: National Highway Traffic Safety Administration, Office of Contracts and Procurement (NPO–220), Attn: April L. Jennings, 400 Seventh Street, SW., Room 5301, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required. The application may be single spaced, must be typed on one side of the page only, and must include a reference to NHTSA Cooperative Agreement Number DTNH22–04–H–05137. Unnecessarily elaborate applications beyond what is sufficient to present a complete and effective response to this invitation are not desired.

Only complete application packages received no later than July 30, 2004 at 1 pm Eastern Standard Time will be considered.

Application Contents

1. Cost Information

The application package must be submitted with OMB Standard Form 424, (Rev 9–2003, including SF 424–A and 424–B). (See Appendix A.) Application for Federal Assistance, with the required information filled in and the certifications required by 49 CFR Part 20 and by 49 CFR Part 29 and assurances signed. OMB forms are available for downloading and printing on the Internet at: *http://www.whitehouse.gov/OMB/grants/index.html* site. While the SF 424–A addresses budget information, and Section B identifies budget categories, the available space does not permit a level of detail that is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental budget sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs, which the applicant indicates will be contributed locally as matching funds. The total project effort including evaluation and reporting, (direct labor, including labor categories, level of effort, and rate; direct materials, including itemized equipment; travel and transportation, including projected trips and number of people traveling; and overhead) and any cost that the applicant proposes to contribute or obtain from any other sources in support of this effort.

2. Technical Proposal. In addition to the documents listed above, the applicant must include a project narrative statement, which provides the following information in separately labeled section with its submission:

- A technical proposal not to exceed 20 pages providing:
- A brief general description of the proposed demonstration sites' geographic and demographic population distribution, including the population estimates for Hispanics in these sites, any unique characteristics relevant to the State's Highway Safety Plan to increase safety belt use and any available information on Hispanics motor vehicle injuries and fatalities in the State, as well as Hispanics safety belt use rates and, awareness and attitudes toward safety belt use;
- A brief description of the principal goals and objectives of the proposed plan that articulates the potential to increase safety belt use rates within the population, with supporting rationale. This section must identify any proposed partnerships and include letters of support or intent to partner from the organization. Documentation of existing public and/or political support must also be included (*e.g.* endorsement of the Mayor, Community Police or Patrol, Association of Chief of Police, Community Medical Society, etc.);
- A detailed description of the activities to be implemented in the plan, including: the key strategies to be employed, the key features (*e.g.* participants, design, methodology); and a project plan that includes a listing of milestones in chronological order, to show the schedule of expected accomplishments and their target dates.
- Timeline/schedule of activities that demonstrates that the successful applicant will comply with NHTSA requests and Cooperative Agreement requirements in a timely manner;
- Documentation of the applicant's record keeping strategy, specifically, how information from the organization and demonstration sites will be organized, maintained and disseminated. This section shall describe how the project will be evaluated and what measures will be used to determine the outcomes of the activities in the project plan.
- A brief biography of each proposed staff person and sub-contractor, if known, and their respective responsibilities on the Demonstration Project and/or projects at individual sites; and;
- Work samples that demonstrate the required knowledge and skills necessary to implement this Demonstration Project. The applicant should provide example of experience working with the Hispanic community. The applicant should also provide evidence of experience with peer-to-peer education.
- Coordination/support letter from applicable state Highway Safety Office(s). All primary applicants and/or sub-grantees that will be conducting activity within a given State or Tribal community must include a letter of support from the applicable State Highway Safety Office with their application. In addition to the State Governor's Highway Safety Representative, Tribal applicants must also provide a letter from Indian Nation Governor's Highway Safety Representative, Bureau of Indian Affairs, Indian Highway Safety Program.

3. Past Performance and Financial Responsibility. To evaluate this information adequately, the Applicant shall provide the following information:

(i). Identify at least three references who can attest to the past performance history and quality of work provided by the Applicant on previous assistance agreements and/or contracts. In doing so, the Applicant shall provide the following information for each reference:

(a) Assistance Agreement/Contract Number;

(b) Title and brief description of Assistance Agreement/Contract;

(c) Name of organization, name of point of contact, telephone number, and E-mail address of point of contact at the organization with which the Applicant

entered into an Assistance Agreement/Contract;

(d) Dollar value of Assistance Agreement/Contract;

(e) Any additional information, which the Applicant may provide to address the issue of past performance and financial responsibility.

(ii). The Applicant shall indicate if it has ever filed for bankruptcy, or has had any financial problems, which may affect, negatively, its ability to perform under this Assistance Agreement.

Review Procedures, Criteria and Evaluation Factors

Upon receipt of the application package, each package will be reviewed initially to ensure eligibility and that the applicant contains all of the items specified in the Application Contents Section of this announcement. An Evaluation Committee using the following evaluation criteria will then review applications (listed in descending order of importance).

Factor 1. Past Performance and Financial Responsibility (25 Percent)

The extent to which the proposed Grantee has fulfilled its performance and financial obligations on previous Assistance Agreements and/or Contracts will be evaluated. This evaluation will include:

(1) The proposed Grantee's record of complying with milestone and performance schedules applicable to previous Assistance Agreements and/or Contracts;

(2) The proposed Grantee's record of cooperation with the awarding agency under previous Assistance Agreements and/or Contracts;

(3) The degree to which the proposed Grantee efficiently and effectively utilized Assistance Agreement and/or Contract funding;

(4) The degree to which the proposed Grantee complied with the terms and conditions of previous Assistance Agreements and/or Contracts;

(5) The degree to which the proposed Grantee complied with applicable Office of Management and Budget (OMB) Circulars and/or the Federal Acquisition Regulation, on previous Assistance Agreements and/or Contracts;

(6) The level of financial stability possessed by the proposed Grantee.

Factor 2. Technical Plan (25 Percent)

The reasonableness, completeness, clarity, and feasibility of the offeror's approach to achieving the objectives of the project.

(1) The applicant must demonstrate an understanding of key issues and potential problems related to successful completion of the project, and have a plan for addressing potential problems.

(2)The applicant must demonstrate an understanding of information collection and evaluation techniques appropriate to this project, and specify how proposed information and data gathering techniques will be applied to attain quality results that meet the objectives of this project and how well the proposal incorporates work with NHTSA's evaluation team.

(3) The applicant must demonstrate the ability to organize, manage and or have contacts in the selected sites on the Hispanic community.

(4) The applicant must demonstrate ability to generate resources from the community to apply to the program.

(5) The applicant must create supporting rationale for the proposed budget demonstrating a reasonable use of resources.

Factor 3. Experience Implementing and Developing Safety Programs Directed to the Hispanic Community (25 Percent)

(1) The applicant must be part of, or have knowledge of, the Hispanic culture.

(2) The applicant must be able to provide peer-to-peer (immigrant to immigrant) education.

(3) The applicant must have and demonstrate extensive knowledge and experience working with the Hispanic community, or Hispanic organizations that can provide services to the Spanish-speaking community, taking into consideration variations in the Spanish language (familiarity with different Spanish dialects and regional slang), cultural differences, level of education and economic differences among Hispanics groups and other factors to successfully administer up to four community demonstration projects to raise safety belt use within the Hispanic community.

(4) The applicant must include working with communities where the Hispanic population is expanding rapidly or already has large new Hispanic immigrant population.

Factor 4. Project Staff Qualifications (15 Percent)

(1) The applicant shall provide the educational level, experience and availability of key project personal and the qualification of proposed staff.

(2) The applicant's staffing plan should be adequate to manage and implement the project.

(3) The applicant must demonstrate that they have the appropriate staff and the resources to implement an effective program.

Factor 5. Law Enforcement and Other Groups (10 Percent)

(1) The applicant must demonstrate the capability of working with law enforcement groups to promote safety belt use within the Hispanic community. This capability must include strategies on developing trust between law enforcement and Hispanic communities.

(2) The applicant must describe the degree to which they will engage and coordinate activities with the law enforcement community and how they will achieve law enforcement support and participation.

(3) The applicant should demonstrate wide-ranging support for its technical proposal from other state and community groups.

Terms and Conditions of the Award

1. Prior to award, each Grantee must comply with the certification requirements of 49 CFR Part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR Part 29, Department of Transportation Government-wide Debarment and Suspension (Non procurement) and Government wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirements and Deliverables:

a. *Quarterly Progress Reports:* Should include a summary of the previous quarter's activities and accomplishments, significant problems encountered or anticipated, an itemization of expenditures made during the quarter, and proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report. The Grantee(s) shall provide a progress report to the Contracting Officer's Technical Representative (COTR) every ninety (90) days following date of award, except when a final report is due.

b. *Annual Summary Report:* At the completion of each year of the Cooperative Agreement, the successful applicant will submit an annual summary report. The reports shall include a list of partners, materials developed and disseminated, and feedback from the field, as well as document and review the notable accomplishments of the year, evaluation results and recommendations for the future years' efforts.

c. *Draft Final Report:* The Grantee(s) shall prepare a Draft Final Report that includes a description of the projects conducted, including partners, overall program implementation, evaluation methodology and findings from the

program evaluation. In terms of information transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The Grantee(s) shall submit the Draft Final Report to the COTR 90 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the Grantee(s) within 30 days of receipt of the document.

d. *Final Report:* The Grantee(s) shall revise the Draft Final Report to reflect the COTR's comments. The revised Draft Final Report shall be delivered to the COTR one (1) month before the end of the performance period. The comprehensive report shall detail the major activities, events, data collection, methodology, and best practices/strategies that can be replicated in other Hispanic communities. The successful applicant shall supply the COTR with:

—Four hard copies of the final document;

—A disk (or CD–ROM) of the report in Microsoft Word Format; and

—A redlined version of the Final Report reflecting changes made in response to the COTR's comments.

e. *Briefings and Presentations:* The Grantee(s) shall conduct a briefing with NHTSA officials and other invited parties in Washington, DC upon the completion of the project. An initial briefing and an interim briefing, approximately midway through the period of performance, may be required. The Grantee(s) shall prepare an article and submit it for publication in a professional journal. All articles and briefings will be submitted to NHTSA initially in draft format for review and comment. The Grantee(s) shall submit drafts to the COTR 30 days before the event date or publication submission date.

3. During the effective performance period of cooperative agreements awarded as a result of this announcement, the agreement shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements dated July 1995.

Marilena Amoni,

Associate Administrator, Program Development and Delivery.

[FR Doc. 04–15764 Filed 7–12–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–355 (Sub–No. 30X)]

Springfield Terminal Railway Company—Abandonment Exemption—in Hampden County, MA

Springfield Terminal Railway Company (ST) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 4.8-mile line of railroad known as the Westover Industrial Track extending from milepost 0.0 to milepost 4.8 in Chicopee, Hampden County, MA. The line traverses United States Postal Service Zip Code 01022.[1]

ST has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 12, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 23, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 2, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to ST's representative: Katherine E. Potter, Esq., Springfield Terminal Railway Company, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

ST has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 16, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), ST shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by ST's filing of a notice of consummation by July 13, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: July 2, 2004.

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The applicant initially indicated a proposed consummation date of August 11, 2004, but because the verified notice was filed on June 23, 2004, consummation may not take place prior to August 12, 2004. By letter filed on June 30, 2004, applicant's representative confirmed that the consummation date will be on or after August 12, 2004.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–15610 Filed 7–12–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986). Bahrain, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen, Republic of.

Dated: July 3, 2004.

Barbara Angus,

International Tax Counsel (Tax Policy).

[FR Doc. 04–15816 Filed 7–12–04; 8:45 am]

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LIST OF PUBLIC LAWS

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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. 884/P.L. 108–270
Western Shoshone Claims Distribution Act (July 7, 2004; 118 Stat. 805)

H.R. 2751/P.L. 108–271
GAO Human Capital Reform Act of 2004 (July 7, 2004; 118 Stat. 811)

H.J. Res. 97/P.L. 108–272
Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003. (July 7, 2004; 118 Stat. 818)

S. 2017/P.L. 108–273
To designate the United States courthouse and post office building located at 93 Atocha Street in Ponce, Puerto Rico, as the "Luis A. Ferre United States Courthouse and Post Office Building". (July 7, 2004; 118 Stat. 819)

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