AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

12–16–04 Thursday
Vol. 69 No. 241 Dec. 16, 2004

Pages 75223–75450

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 69 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

What's NEW!

Regulations.gov, the award-winning Federal eRulemaking Portal

Regulations.gov is the one-stop U.S. Government web site that makes it easy to participate in the regulatory process.

Try this fast and reliable resource to find all rules published in the *Federal Register* that are currently open for public comment. Submit comments to agencies by filling out a simple web form, or use available e-mail addresses and web sites.

The Regulations.gov e-democracy initiative is brought to you by NARA, GPO, EPA and their eRulemaking partners.

Visit the web site at: **http://www.regulations.gov**

Printed on recycled paper.

Contents

Federal Register

Vol. 69, No. 241

Thursday, December 16, 2004

Agriculture Department
See Forest Service

Antitrust Division
NOTICES
National cooperative research notifications:
Alliance for Telecommunications Industry Solutions, 75344–75345
ANSI Accredited Standards Committee C119, 75345
ANSI Accredited Standards Committee C18, 75345
ANSI Accredited Standards Committee Z535, 75345
Data Interchange Standards Association, 75345–75346
Information Technology Industry Council, Inc. / InterNational Committee for Information Technology Standards, 75346
International 2-Up ATV Manufacturers' Association, 75346
International Electrotechnical Commission Technical Committee Subcommittee 15C, 75346
Mortgage Industry Standards Maintenance Organization, 75347
Optical Internetworking Forum, 75347
Secure Identity Services Accreditation Corp., 75347

Army Department
See Engineers Corps
RULES
Law enforcement and criminal investigations:
Law enforcement reporting, 75245–75256
PROPOSED RULES
Law enforcement and criminal investigations:
Military police investigations, 75287–75291
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Moving target indication algorithm for video surveillance applications, 75308

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 75316
Reports and guidance documents; availability, etc.:
National Center for Health Statistics; Research Data Center use; operational procedures and costs; correction, 75316

Centers for Medicare & Medicaid Services
NOTICES
Privacy Act:
Systems of records, 75316–75329

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 75293

Commission of Fine Arts
NOTICES
Grants and cooperative agreements; availability, etc.:
National Capital Arts and Cultural Affairs Program, 75308

Defense Department
See Army Department
See Engineers Corps

Employment Standards Administration
See Wage and Hour Division
RULES
Child labor; interpretation orders and statements; civil money penalties, 75381–75406

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Lower Snake and Clearwater Rivers, WA and ID reservoirs navigation maintenance, 75308–75309
Meetings:
Coastal Engineering Research Board, 75309

Environmental Protection Agency
RULES
Water pollution control:
Ocean dumping; site designations—Rhode Island Sound, RI, 75256–75266
NOTICES
Committees; establishment, renewal, termination, etc.:
Environmental Policy and Technology National Advisory Council, 75309–75310
Superfund; response and remedial actions, proposed settlements, etc.:
MichCon Mercury Regulators Site, MI, 75310
Whitehouse Oil Pits Site, FL, 75310–75311

Federal Aviation Administration
RULES
Airworthiness directives:
Cessna; correction, 75236
Great Lakes Aircraft Co., LLC, 75236–75243
Kelly Aerospace Power Systems, 75228–75231
Letecke Zavody, 75225–75228
McDonnell Douglas, 75231–75233
Raytheon, 75223–75225
Short Brothers, 75233–75236
PROPOSED RULES
Airworthiness directives:
Airbus, 75273–75275
BAE Systems (Operations) Ltd., 75275–75277
Boeing, 75267–75273, 75280–75282
Lockheed, 75282–75287
McDonnell Douglas, 75277–75280
NOTICES
Reports and guidance documents; availability, etc.:
National Environmental Policy Act implementing instructions for airport actions, 75374–75379

Federal Communications Commission
NOTICES
Common carrier services:
Numbering resource optimization; reconsideration decision for 500 and 900 number plan areas; record refresh request, 75311–75312
Debarment notices; schools and libraries universal service support mechanism:
Dotson, John, 75312–75314

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 75347

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 75314
Formations, acquisitions, and mergers, 75314–75315

Financial Management Service
See Fiscal Service

Fine Arts Commission
See Commission of Fine Arts

Fiscal Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 75380

Fish and Wildlife Service
NOTICES
Comprehensive conservation plans; availability, etc.:
Rocky Flats National Wildlife Refuge, CO, 75334–75335

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Puerto Rico
Ortho Biologics, LLC; pharmaceutical intermediate manufacturing facilities; correction, 75293–75294

Forest Service
NOTICES
Environmental statements; notice of intent:
Wallowa-Whitman National Forest, OR, 75292–75293

Government Accountability Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Citizens' Health Care Working Group, 75315

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See National Institutes of Health
NOTICES
Meetings:
Human Research Protections, Secretary's Advisory Committee, 75315–75316

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Multifamily Housing Projects—
Emergency Capital Repair for Occupancy by Elderly Tenants, 75417–75434

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau
NOTICES
Meetings:
Blackstone River Valley National Heritage Corridor Commission, 75334

International Trade Administration
NOTICES
Antidumping:
Carbon and alloy steel wire rod from—
Brazil, 75294
Chlorinated Isocyanurates from—
China, 75294–75302
Petroleum wax candles from—
China, 75302–75303
Sebacic acid from—
China, 75303–75305
Stainless steel butt-weld pipe fittings from—
Taiwan, 75305
Countervailing duties:
Softwood lumber products from—
Canada, 75305–75306

International Trade Commission
NOTICES
Import investigations:
Ink markers and packaging, 75342
Insect traps, 75342–75343

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
Cabot Corp. et al., 75343
Knoxville Utilities Board, 75344
Marzone, Inc., et al., 75344

Labor Department
See Employment Standards Administration
See Occupational Safety and Health Administration
See Wage and Hour Division

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Golden Sunlight Mine, MT, 75335
Las Vegas Valley Disposal Area, NV, 75335–75336
Environmental statements; notice of intent:
Buffalo Field Office, WY; oil and gas leasing, 75336–75339
Meetings:
Resource Advisory Councils—
Southwest Colorado, 75339
Oil shale research and development, CO, UT and WY; potential, 75339–75340
Survey plat filings:
Missouri, 75340

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
NOTICES
Meetings:
United States Study Group 7, 75348

Privacy Act:
Systems of records; correction, 75348

National Archives and Records Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 75348
Agency records schedules; availability, 75349–75350

National Crime Prevention and Privacy Compact Council
RULES
Noncriminal justice administrative functions; outsourcing procedures, 75243–75245
NOTICES
Outsourcing standards; security and management control, 75350–75357

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 75329–75330
National Institute of Allergy and Infectious Diseases, 75330–75331
National Institute of Biomedical Imaging and Bioengineering, 75332–75333
National Institute of Dental and Craniofacial Research, 75331–75332
National Institute of General Medical Sciences, 75333
Scientific Review Center, 75333–75334

National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 75306
Meetings:
Pacific Fishery Management Council, 75307–75308

National Women's Business Council
NOTICES
Meetings; Sunshine Act, 75357

Nuclear Regulatory Commission
NOTICES
Regulatory guides; issuance, availability, and withdrawal, 75359–75360
Applications, hearings, determinations, etc.:
SCA Services, 75357–75359

Occupational Safety and Health Administration
PROPOSED RULES
State plans:
Oregon, 75435–75445
NOTICES
State plans; standards approval, etc.:
Oregon, 75445–75450

Panama Canal Commission
RULES
Acquisition regulations:
Commission termination and CFR Chapter removed; notification, 75266

Public Debt Bureau
See Fiscal Service

Reclamation Bureau
NOTICES
Closure orders:
Keswick Lake, CA, 75340–75341
Environmental statements; availability, etc.:
Sacramento River, CA; settlement contracts, 75341–75342

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 75360

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
Horizon Ventures Fund II, L.P., 75360–75361
Rembrandt Venture Partners II, L.P., 75361

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Arts Exchanges on International Issues Program, 75361–75368
U.S. Studies Institute for South Asian Undergraduate Student Leaders Program, 75368–75374

Surface Transportation Board
NOTICES
Railroad services abandonment:
Union Pacific Railroad Co., 75379–75380

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service

Wage and Hour Division
RULES
Child labor; interpretation orders and statements; civil money penalties, 75381–75406
PROPOSED RULES
Practice and procedure:
Service Contract Act wage determinations; publication through Internet website; title and statutory citations changes and regional offices list update, 75407–75416

Separate Parts In This Issue

Part II
Labor Department, Employment Standards Administration; Labor Department, Wage and Hour Division, 75381–75406

Part III
Labor Department, Wage and Hour Division, 75407–75416

Part IV
Housing and Urban Development Department, 75417–75434

Part V
Labor Department, Occupational Safety and Health Administration, 75435–75450

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

14 CFR
39 (7 documents) 75223, 75225, 75228, 75231, 75233, 75236

Proposed Rules:
39 (7 documents) 75267, 75270, 75273, 75275, 75277, 75280, 75282

28 CFR
906.....75243

29 CFR
570.....75382
579.....75382
580.....75382

Proposed Rules:
1.....75408
4.....75408
1952.....75436

32 CFR
635.....75245

Proposed Rules:
637.....75287

40 CFR
228.....75256

48 CFR
Ch. 35.....75266

Rules and Regulations

Federal Register

Vol. 69, No. 241

Thursday, December 16, 2004

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA 2004–19119; Directorate Identifier 2004–CE–26–AD; Amendment 39–13903; AD 2004–25–15]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company, Model 390, Premier 1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Raytheon Aircraft Company, Model 390, Premier 1 airplanes. This AD requires you to inspect the routing and security of the left and right main landing gear (MLG) squat switch wire harness installations for damage, repair any damage or replace components, and reinstall the squat switch wire harness. We are issuing this AD to prevent damage to the wire harnesses, which could result in loss of pressurization, loss of transponder responses to interrogations, and failure of other systems utilizing air/ground status signals. This failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on January 18, 2005.

As of January 18, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043.To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19119.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, ACE–119W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4139; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? FAA received reports of damage to the left and/or right MLG wire harness assemblies on Raytheon Model 390 airplanes. This resulted in various system failures/anomalies due to erroneous air/ground status signals. Improper installation of Kit 390–8103–0001 may have resulted in the damage to the squat switch wire harness assemblies during normal extension and retraction operations. A damaged wire harness and/or squat switch installation may affect multiple systems on the airplane.

What is the potential impact if FAA took no action? Damage to the wire harnesses could result in loss of pressurization, loss of transponder responses to interrogations, and failure of other systems utilizing air/ground status signals. This failure could lead to loss of control of the airplane.

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 Raytheon Aircraft Company, Model 390, Premier 1 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 7, 2004 (69 FR 60104). The NPRM proposed to require you to inspect the routing and security of the left and right main landing gear (MLG) squat switch wire harness installations for damage, repair any damage or replace components, and reinstall the squat switch wire harness.

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 98 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? Raytheon Aircraft Company will provide warranty credit as specified in the service information.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. We are

issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19119; Directorate Identifier 2004–CE–26–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:

2004–25–15 Raytheon Aircraft Company: Amendment 39–13903; Docket No. FAA–2004–19119; Directorate Identifier 2004–E–26–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on January 18, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane model and serial numbers that are certificated in any category: Model 390 Premier I, Serials RB–1, RB–4 through RB–84, RB–87 through RB–90, RB–92 through RB–96, RB–99 through RB–101, and RB–103 through RB–106.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of damage to the left and/or right main landing gear (MLG) wire harness assemblies, which resulted in various system failures/anomalies due to erroneous air/ground status signals. The actions specified in this AD are intended to prevent damage to the wire harnesses, which could result in loss of pressurization, loss of transponder responses to interrogations, and failure of other systems utilizing air/ground status signals. This failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) For airplanes prior to serial number RB–100 with Kit 390–8103–0001 installed, and for airplanes with production installation of the plunger-style squat switch, serial numbers RB–100, RB–101, and RB–103 through RB–106, perform the following actions: (i) Visually inspect the squat switch bracket for corrosion or cracking (damage). (ii) If damage is found, replace the switch bracket with part number 390–810008–0003/–0004.	Inspect within 30 days after the effective date of this AD, January 18, 2005. If damage is found, replace the switch bracket prior to further flight after the inspection.	Follow Raytheon Aircraft Company Service Bulletin SB 32–3678, dated June 2004.
(2) All airplanes affected by this AD perform the following actions: (i) Inspect MLG wiring harness service loop for excessive length in air mode (strut extended). The radius of the wire harness service loop should not exceed that of the brake hose service loop. The radius of the brake hose loop should not exceed the radius of the tire. If the length is excessive in air mode, correct in accordance with Raytheon Aircraft Company Service Bulletin SB 32–3678, dated June 2004. (ii) Remove and relocate tie straps and M85052/1–8 mounting clamp. (iii) Perform the landing gear operational test.	Within 30 days after the effective date of this AD, January 18, 2005.	Follow Raytheon Aircraft Company Service Bulletin SB 32–3678, dated June 2004.

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. For information on any already approved alternative methods of compliance, contact Philip Petty, Aerospace Engineer, ACE–119W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4139; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Raytheon Aircraft Company Mandatory Service Bulletin SB 32–3678, dated June 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19119.

Issued in Kansas City, Missouri, on December 6, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27195 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18034; Directorate Identifier 2004–CE–18–AD; Amendment 39–13905; AD 2004–25–17]

RIN 2120–AA64

Airworthiness Directives; LETECKÉ ZÁVODY Model L 23 SUPER—BLANIK Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain LETECKÉ ZÁVODY Model L 23 SUPER—BLANIK sailplanes. This AD requires you to do a repetitive, non-destructive magnetic test (NDMT) inspection on the elevator rocker lever (part number A 730 201 N) for cracks. If cracks are found, this AD also requires you to return the part to the manufacturer. The manufacturer will send you a replacement part for installation. Installing the improved replacement part terminates the need for the repetitive inspections. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. We are issuing this AD to prevent failure of the elevator rocker lever caused by cracks that resulted from a defect in prior manufacturing procedures. Such failure could lead to loss of control of the sailplane.

DATES: This AD becomes effective on January 28, 2005.

As of January 28, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact LETECKÉ ZÁVODY a.s., 686 04 Kunovice 1177, Czech Republic. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–18034.

FOR FURTHER INFORMATION CONTACT: Gregory A. Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 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 Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, recently notified FAA that an unsafe condition may exist on certain LETECKÉ ZÁVODY Model L 23 SUPER—BLANIK sailplanes. The CAA reports that, during an accident investigation, cracks were found on the elevator rocker lever.

The manufacturer has identified a problem with its quality control inspection procedures during the production of the original elevator rocker lever part prior to January 2004. Micro-cracks or voids were not detected when the parts left production and were installed on the affected sailplanes. These discrepancies may cause fatigue failure of the elevator rocker lever.

In January 2004, the manufacturer changed its manufacturing process and is currently replacing any existing defective elevator rocker levers within the specified affected sailplanes.

What is the potential impact if FAA took no action? If not detected and corrected, cracks in the elevator rocker lever could cause the lever to fail. Such failure could result in 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 certain LETECKÉ ZÁVODY Model L 23 SUPER—BLANIK sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 2, 2004 (69 FR 53655). The NPRM proposed to require you to do a repetitive, non-destructive magnetic test (NDMT) inspection on the elevator rocker lever (part number A 730 201 N) for cracks. If cracks are found, the NPRM also proposed to require you to return the part to the manufacturer. The manufacturer will send you a replacement part for installation. Installing the improved replacement part would terminate the need for the repetitive inspections.

What is the difference between this AD and the CAA AD? The CAA AD requires doing the initial inspection prior to further flight after the effective date of this AD. We are requiring that you do the initial inspection within the next 25 hours time-in-service (TIS) after the effective date of this AD.

We do not have justification to require this action prior to further flight. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 25 hours TIS will give the owners or operators of the affected sailplanes enough time to have the actions required by this AD done without compromising the safety of the sailplanes.

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 103 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 accomplish the inspections:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	Not applicable	$130	$130 × 103 = $13,390.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspections. We have no way of determining the number of sailplanes that may need this replacement:

Labor cost	Parts cost	Total cost per sailplane
2 workhours × $65 = $130	Parts provided by the manufacturer at no cost	$130 × 103 = $13,390.

Authority for this Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–18034; Directorate Identifier 2004–CE–18–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:

2004–25–17 LETECKÉ ZÁVODY: Amendment 39–13905; Docket No. FAA–2004–18034; Directorate Identifier 2004–CE–18–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on January 28, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects Model L 23 SUPER—BLANIK sailplanes, all serial numbers up to and including 039019, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. We are issuing this AD to prevent fatigue failure of the elevator rocker lever. 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) Do a non-destructive magnetic test (NDMT) inspection on the elevator rocker lever (part number A 730 201 A) for cracks and deficiencies.	Initially inspect within the next 25 hours time-in-service (TIS) after January 28, 2005 (the effective date) of this AD. If no cracks or deficiencies are found, reinstall and repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the replacement in paragraph (e)(2) of this AD is done. The replacement in paragraph (e)(2) of this AD is the terminating action for the repetitive inspection requirements in this AD.	Follow the work procedures in LETECKÉ ZÁVODY Mandatory Bulletin MB No.: L23/48a, not dated.
(2) If cracks are found during any inspection required in paragraph (e)(1) of this AD, send the cracked part and a report of the inspection that contains the information about the position and size of cracks, the serial number of the sailplane, and the total number of hours TIS since new to LETECHKÉ ZÁVODY at the address specified in paragraph (h) of this AD. (i) The manufacturer will send you a replacement part for installation. (ii) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056	Return the cracked elevator rocker lever to the manufacturer and install the replacement part prior to further flight after the inspection in which cracks are found. Prior to installing the new part, place a permanent (paint) blue dot approximately 0.25 inches in diameter in an open location on the elevator rocker lever. Installing the replacement part received from the manufacturer is the terminating action for the repetitive inspection requirements in paragraph (e)(1) of this AD.	Follow the work procedures in LETECHKÉ ZÁVODY Mandatory Bulletin MB No.: L23/48a, not dated.
(3) You may terminate the repetitive inspections required in paragraph (e)(1) of this AD by: (i) Replacing the elevator rocker lever with one obtained from the manufacturer at the address specified in paragraph (h) of this AD; and (ii) Prior to installing the new part, place a permanent (paint) blue dot approximately 0.25 inches in diameter in an open location on the elevator rocker lever	At any time after the initial inspection required in paragraph (e)(1) of this AD.	Not applicable.
(4) If you have already replaced the defective elevator rocker lever with a manufacturer-approved lever that was produced in January 2004 or later following LETECHKÉ ZÁVODY Mandatory Bulletin MB No.: L23/48a, not dated, you may take credit for compliance with this AD by having an appropriately-rated mechanic do the following: (i) Make a log book entry showing compliance with this AD; and (ii) Place a permanent (paint) blue dot approximately 0.25 inches in diameter in an open location on the newly installed elevator rocker lever.	As of January 28, 2005 (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, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Gregory A. Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) Czech Republic AD Number CAA–AD–T–005/2004, dated January 16, 2004, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in LETECKÉ ZÁVODY Mandatory Bulletin MB No.: L23/48a (referenced in Czech Republic AD Number CAA–AD–T–005/2004, dated January 16, 2004). The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact LETECKÉ ZÁVODY a.s., 686 04 Kunovice 1177, Czech Republic. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–18034.

Issued in Kansas City, Missouri, on December 6, 2004.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27284 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19693; Directorate Identifier 2004–CE–40–AD; Amendment 39–13904; AD 2004–25–16]

RIN 2120–AA64

Airworthiness Directives; Kelly Aerospace Power Systems Part Number (P/N) 14D11, A14D11, B14D11, C14D11, 23D04, A23D04, B23D04, C23D04, or P23D04 Fuel Regulator Shutoff Valves (Formerly Owned by ElectroSystems, JanAero Devices, Janitrol, C&D, FL Aerospace, and Midland-Ross Corporation)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 2001–17–13, which applies to aircraft equipped with a Kelly Aerospace Power Systems (Kelly Aerospace) part number (P/N) 14D11, A14D11, B14D11, C14D11, 23D04, A23D04, B23D04, C23D04, or P23D04 fuel regulator shutoff valve used with Kelly Aerospace B1500, B2030, B2500, B3040, B3500, B4050, or B4500 B-Series combustion heaters. AD 2001–17–13 requires you to visually inspect or pressure test the fuel regulator shutoff valves for leaks and replace the fuel regulator shutoff valve if leaks are found. This AD is the result of continued reports of fuel regulator shutoff valve problems and the manufacturer revising the service information to modify the pressure test procedures and to specify installing improved design replacement parts. This AD retains the actions required in AD 2001–17–13, makes the inspection repetitive, and requires installing improved design replacement parts. We are issuing this AD to prevent failure of the fuel regulator shutoff valve, which could result in fuel leakage in aircraft with these combustion heaters. This failure could result in an aircraft fire.

DATES: This AD becomes effective on January 5, 2005.

As of January 5, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by February 11, 2005.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *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.

To get the service information identified in this proposed AD, contact Kelly Aerospace Power Systems, P.O. Box 273, Fort Deposit, Alabama 36032; telephone: (334) 227–8306; facsimile: (334) 227–8596; Internet: *http://www.kellyaerospace.com.*

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2004–19618.

FOR FURTHER INFORMATION CONTACT: Kevin L. Brane, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6063; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION: *Has FAA taken any action to this point?* Reports of JanAero fuel regulator shutoff valves leaking caused FAA to issue AD 2001–08–01, Amendment 39–12178 (66 FR 19718, April 17, 2001). AD 2001–08–1 required you to do the following on certain JanAero Devices (JanAero) 14D11 and 23D04 series fuel regulator shutoff valves used with certain JanAero combustion heaters that are installed on aircraft:

—Visually inspect and pressure test the fuel regulator shutoff valves for leaks; and

—If leaks are found, replace the fuel regulator shutoff valve.

The affected fuel regulator shutoff valves are part of the JanAero B1500, B2030, B2500, B3040, B3500, B4050, or B4500 combustion heater configuration.

Operators of aircraft with the affected fuel regulator shutoff valves installed and mechanics who did the actions of AD 2001–08–01 provided suggestions for improvement to the AD. Based on that feedback, FAA superseded AD 2001–08–01 with AD 2001–17–13, Amendment 39–12404 (66 FR 44027, August 22, 2001).

AD 2001–17–13 retained the actions of AD 2001–08–01, except it requires only the visual inspection or the pressure test of the fuel regulator shutoff valves (not both) and lists the affected fuel regulator shutoff valves by part number instead of series. AD 2001–17–13 also includes a provision for disabling the heater as an alternative method of compliance.

Accomplishment of AD 2001–17–13 is required following JanAero Service Bulletin No. A–107, dated January 8, 2001.

What has happened since AD 2001–17–13 to initiate this AD action? The FAA continues to receive reports of problems with these fuel regulator shutoff valves. This service history reflects that the inspections should be repetitive instead of one-time.

Kelly Aerospace has revised the service information to modify the pressure test procedures, to specify installing improved design replacement parts with a manufacture date code of 02/02 or later, and to make the inspection repetitive.

The New Piper Aircraft, Inc. has also issued new service information that specifies replacing part number (P/N) A23D04–7.5 with an improved design replacement part P/N P23D04–7.5.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in fuel leakage in aircraft with these combustion heaters, which could result in an aircraft fire with consequent damage or destruction.

FAA's Determination and Requirements of the AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on type design aircraft equipped with a Kelly Aerospace B1500, B2030, B2500, B3040, B3500, B4050, or B4500 combustion heater, we are issuing this AD to prevent failure of the fuel regulator shutoff valve, which could result in fuel leakage in aircraft with these combustion heaters. This failure could result in an aircraft fire.

What does this AD require? This AD supersedes AD 2001–17–13 with a new AD that requires you to:

—Repetitively inspect the fuel regulator shutoff valve (visually or by pressure test) for fuel leakage;
—If fuel leakage is found, replace the fuel regulator shutoff valve with an improved design replacement part with a manufacture date code of 02/02 or later.

This AD also allows you to disable the heater as an alternative method of compliance.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We have included a discussion of information that may have influenced this action in the rulemaking docket.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs 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.

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19693; Directorate Identifier 2004–CE–40–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

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 FAA–2004–19693; Directorate Identifier 2004–CE–40–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) 2001–17–13, Amendment 39–12404 (66 FR 44027, August 22, 2001), and by adding a new AD to read as follows:

2004–25–16 Kelly Aerospace Power Systems (formerly owned by ElectroSystems, JanAero Devices, Janitrol, C&D, FL Aerospace, and Midland-Ross Corporation): Amendment 39–13904; Docket No. FAA–2004–19693; Directorate Identifier 2004–CE–40–AD; Supersedes AD 2001–17–13; Amendment 39–12404.

When Does This AD Become Effective?

(a) This AD becomes effective on January 5, 2005.

Are Any Other ADs Affected by This Action?

(b) Yes. This AD supersedes AD 2001–17–13, Amendment 39–12404.

What Airplanes Are Affected by This AD?

(c) *What aircraft are affected by this AD?* This AD applies to aircraft equipped with a Kelly Aerospace part number (P/N) 14D11, A14D11, B14D11, C14D11, 23D04, A23D04, B23D04, C23D04 or P23D04 fuel regulator shutoff valve used with Kelly Aerospace B1500, B2030, B2500, B3040, B3500, B4050, or B4500 B-Series combustion heaters. The following is a list of aircraft where the B-Series combustion heater could be installed. This is not a comprehensive list and aircraft not on this list that have the heater installed through field approval or other methods are still affected by this AD:

Manufacturer	Aircraft models/series
(1) Bombardier Inc.	CL–215, CL–215T, and CLT–415.
(2) Cessna Aircraft Company	208, T303, 310F, 310G, 310H, 310I, 310J, 310K, 310L, 310N, 310P, 310Q, 320C, 320D, 320E, 320F, 337 Series, 340, 340A, 414, 414A, 421, 421A, 421B, and 421C.
(3) The New Piper Aircraft, Inc	PA–23 Series, PA–30, PA–31 Series, PA–34 Series, PA–39, and PA–44 Series.
(4) Raytheon Aircraft Corporation	95–B55 Series, 58, 58TC, 58P, 60, A60, and 76.

Note 1: The B1500, B2030, B2500, B3040, B3500, B4050, or B4500 B-Series combustion heaters were previously manufactured by Janitrol, C&D Airmotive, FL Aerospace, and Midland-Ross Corporation.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of numerous reports of fuel regulator shutoff valves leaking fuel. We are issuing this AD to prevent failure of the fuel regulator shutoff valve, which could result in fuel leakage in aircraft with these combustion heaters. This failure could result in an aircraft fire.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Visually inspect or pressure test the fuel regulator shutoff valve for any signs of fuel leaks.	Within the next 25 hours aircraft time-in-service (TIS) after January 5, 2005 (the effective date of this AD), unless already done within the last 75 hours aircraft TIS (*e.g.*, compliance with AD 2001–08–01 or 2001–17–13). Repetitively inspect thereafter at intervals not to exceed 100 hours aircraft TIS or 12 months, whichever occurs first. This is established to coincide with 100-hour and annual inspections.	Locate the pressure regulator shutoff valve in the installation using the applicable maintenance manual for valve location, removal, and installation instructions. Follow the procedures in Kelly Aerospace Power Systems Service Bulletin No. A–107A, Issue Date: September 6, 2002, for the visual inspection or the pressure test.
(2) If no fuel leaks or no signs of fuel stains are found during each inspection required by paragraph (e)(1) of this AD, mark the valve cover with date of inspection (month/year) using permanent ink and letters .12–.25″ high next to or below the date of manufacture and make a log book entry with the date of inspection (month/year).	Prior to further flight after each inspection required in paragraph (e)(1) of this AD.	Follow the procedures in Kelly Aerospace Power Systems Service Bulletin No. A–107A, Issue Date: September 6, 2002.
(3) If any signs of fuel leaks or any signs of fuel stains are found during any inspection required in paragraph (e)(1) of this AD, replace the valve with a new valve of appropriate part number (P/N) that has a manufacturer's date code of 02/02 or later. For Piper PA–31–350 model aircraft, replace P/N A23D04–7.5 valve with P/N P23D04–7.5Ensure there are no fuel leaks in the replacement valve by following the inspection and identification requirements in paragraphs (e)(1) and (e)(2) of this AD.	Before further flight after the inspection where any fuel leak was found.	Follow Kelly Aerospace Power Systems Service Bulletin No. A–107A, Issue Date: September 6, 2002; Piper Vendor Service Publication VSP–150, dated January 31, 2003; and the applicable maintenance manual.
(4) As an alternative method of compliance to this AD, you may disable the heater provided you immediately comply with the inspection, identification, and replacement requirements of this AD when you bring the heater back into service. Do the following actions when disabling: (i) Cap the fuel supply line upstream of the fuel regulator and shutoff valve; (ii) Disconnect the electrical power and ensure that the connections are properly secured to reduce the possibility of electrical spark or structural damage; (iii) Inspect and test to ensure that the cabin heater system is disabled; (iv) Ensure that no other aircraft system is affected by this action; (v) Ensure there are no fuel leaks; and (vi) Fabricate a placard with the words: "System Inoperative". Install this placard at the heater control valve within the pilot's clear view.	If you choose this option, you must do it before the next required inspection specified in paragraph (e)(1) of this AD. To bring the heater back into service, you must do the actions of paragraphs (e)(1), (e)(2), and (e)(3) of this AD (inspection, identification, and replacement, as necessary).	Not Applicable.
(5) Only install a fuel regulator shutoff valve with a manufacture date code of 02/02 or later.	As of January 5, 2005 (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, Atlanta ACO, FAA. For information on any already approved alternative methods of compliance, contact Kevin L. Brane, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6063; facsimile: (770) 703–6097.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Kelly Aerospace Power Systems Service Bulletin No. A–107A, Issue Date: September 6, 2002; and Piper Vendor Service Publication VSP–150, dated January 31, 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. To get a copy of this service information, contact Kelly Aerospace Power Systems, P.O. Box 273, Fort Deposit, Alabama 36032; telephone: (334) 227–8306; facsimile: (334) 227–8596; Internet: *http://www.kellyaerospace.com*. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19693.

Issued in Kansas City, Missouri, on December 6, 2004.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27283 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–333–AD; Amendment 39–13902; AD 2004–25–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; DC–9–20, DC–9–30, DC–9–40, DC–9–50 Series Airplanes; DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas airplane models, that requires an inspection of the retract cylinder support fitting and the cylinder bore of the support fitting of both main landing gear (MLG) for corrosion, and corrective action if necessary. This action also requires replacing cadmium-plated retract cylinder support bushings and bearings of both MLG. This action is necessary to detect and correct corrosion to the retract cylinder support fitting of the MLG and the cylinder bore in the support fitting, which could result in compromised integrity of the retract cylinder support fitting of the MLG and possible damage to the hydraulic system. This action is intended to address the identified unsafe condition.

DATES: Effective January 20, 2005.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of January 20, 2005.

ADDRESSES: The service information referenced in this AD 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; 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: Mike Lee, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5325; fax (562) 627–5210.

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 McDonnell Douglas airplane models was published in the **Federal Register** on May 11, 2004 (69 FR 26052). That action proposed to require an inspection of the retract cylinder support fitting and the cylinder bore of the support fitting of both main landing gear (MLG) for corrosion, and corrective action if necessary. That action also proposed to require replacing cadmium-plated retract cylinder support bushings and bearings of both MLG.

Comments

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

Clarification of the Cost Estimate

One commenter estimates it will cost more than $30,000 per airplane for its fleet of 362 airplanes to accomplish the inspection and replacement; for a total cost of over $11,000,000.

We infer that the commenter wants further clarification of the cost estimate specified in the proposed AD. The estimate for both the inspection and replacement in the Cost Impact section of the final rule is between $20,617 and $29,861 per airplane, which is lower than the commenter's cost estimate of more than $30,000 per airplane. However, the cost estimate in the proposed AD describes only the direct costs of those specific actions required by the proposed AD. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. As explained in the proposed AD, the cost analysis in AD rulemaking actions typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. Therefore, we have not changed the cost estimate in this final rule.

Conclusion

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

Clarification of Service Information Reference

Where paragraph (b) of the proposed AD specifies, ''in accordance with the service bulletin,'' this final rule specifies, ''in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–57–222, dated September 18, 2002.''

Cost Impact

There are approximately 1,904 airplanes of the affected design in the worldwide fleet. We estimate that 1,188 airplanes of U.S. registry will be affected by this AD.

We estimate that it will take approximately 1 work hour per airplane to accomplish the required inspection on both MLG, and that the average labor

rate is $65 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $77,220, or $65 per airplane.

We estimate that it will take approximately between 28 and 42 work hours per airplane to accomplish the required replacement on both MLG, and that the average labor rate is $65 per work hour. Required parts will cost between approximately $18,732 per airplane and $27,066 per airplane. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be between $24,415,776 and $35,397,648, or between $20,552 and $29,796 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.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

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:

2004–25–14 McDonnell Douglas: Amendment 39–13902. Docket 2002–NM–333–AD.

Applicability: Model DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes; as listed in Boeing Service Bulletin DC9–57–222, dated September 18, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion to the retract cylinder support fitting of the main landing gear (MLG) and the cylinder bore in the support fitting, which could result in compromised integrity of the retract cylinder support fitting of the MLG and possible damage to the hydraulic system, accomplish the following:

Inspection and Replacement

(a) Prior to the accumulation of 30,000 total flight hours, or within 15,000 flight hours after the effective date of the AD, whichever is later, do the actions in paragraphs (a)(1) and (a)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–57–222, dated September 18, 2002.

(1) Do the inspection specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable. Before further flight following the inspection, accomplish all applicable corrective actions specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–57–222, dated September 18, 2002. Do the actions in accordance with the service bulletin.

(i) For Group 1 airplanes specified in paragraph 1.A.1. of the service bulletin, do a general visual inspection of the retract cylinder support fitting and the cylinder bore of the support fitting of both MLG for corrosion.

(ii) For Group 2 airplanes specified in paragraph 1.A.1. of the service bulletin, do a general visual inspection of the retract cylinder support fitting of both MLG for corrosion.

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.''

(2) Replace cadmium-plated retract cylinder support bushings and bearings of the MLG with bushings and bearings that do not have cadmium plating in the bore.

Parts Installation

(b) As of the effective date of this AD, no person shall install a retract cylinder support fitting for the MLG, part number (P/N) 3935860–1, 3912891–1, or 3912891–501 on any airplane, unless it has been found to have no corrosion during the inspection required by paragraph (a) of this AD, or unless it has been modified in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–57–222, dated September 18, 2002.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin DC9–57–222, dated September 18, 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 Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach,

California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected 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; 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 January 20, 2005.

Issued in Renton, Washington, on December 1, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27332 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18661; Directorate Identifier 2003–NM–273–AD; Amendment 39–13901; AD 2004–25–13]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60, SD3–SHERPA, and SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Short Brothers Model SD3–60 and SD3–SHERPA series airplanes. That AD currently requires a one-time inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the main landing gear (MLG), and follow-on actions. That AD also requires repair or replacement of any cracked/corroded gland nut with a new nut. This new AD adds airplanes to the applicability; adds repetitive inspections and corrective actions; and provides an optional action that ends the repetitive inspections. This AD is prompted by reports of cracked aluminum alloy gland nuts that had been inspected previously using the existing AD. We are issuing this AD to prevent failure of the aluminum alloy gland nut on the MLG shock absorber, which could cause the MLG to collapse.

DATES: This AD becomes effective January 20, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the **Federal Register** as of January 20, 2005.

On December 11, 1996 (61 FR 57311, November 6, 1996), the Director of the **Federal Register** approved the incorporation by reference of certain other publications, as listed in the regulations.

ADDRESSES: For service information identified in this AD, contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland.

You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

FOR FURTHER INFORMATION CONTACT:

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

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

Examining the Docket

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

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 96–22–09, amendment 39–9797 (61 FR 57311, November 6, 1996). The existing AD applies to certain Short Brothers Model SD3–60 and SD3–SHERPA series airplanes. The proposed AD was published in the **Federal Register** on July 22, 2004 (69 FR 43779). The proposed AD continued to require a one-time inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the main landing gear (MLG), and follow-on actions. The proposed AD also continued to require repair or replacement of any cracked/corroded gland nut with a new nut. The proposed AD added airplanes to the applicability; added repetitive inspections and corrective actions; and provided an optional action that would end the repetitive inspections.

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.

Editorial Changes to AD

Minor editorial changes have been incorporated into this AD. These include changes in the following areas:

- Summary section, accurately identifying the airplanes affected by the AD being superseded.
- Note 2 of the body, updating text for the definition of a detailed inspection.
- Table 3, correcting the dates of certain service bulletins and correcting the service bulletin reference for certain other service bulletins.
- Changing all service bulletin references from ''Short Brothers'' service bulletin(s) to ''Shorts'' service bulletin(s). This change was made to comply with the Office of the Federal Register's guidelines for material incorporated by reference.
- Paragraph (l), correcting the document number of the British airworthiness directive.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections required by AD 96–22–09	5	$65	N/A	$325	58	$18,850
Proposed inspections (per inspection cycle)	5	65	N/A	325	85	26,625

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–9797 (61 FR 57311, November 6, 1996) and adding the following new airworthiness directive (AD):

2004–25–13 Short Brothers PLC: Amendment 39–13901. Docket No. FAA–2004–18661; Directorate Identifier 2003–NM–273–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 20, 2005.

Affected ADs

(b) This AD supersedes AD 96–22–09, amendment 39–9797.

Applicability

(c) This AD applies to Short Brothers Model SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes; certificated in any category; that are equipped with aluminum alloy gland nuts, part number (P/N) 200920604, on the main landing gear (MLG) shock absorber.

Unsafe Condition

(d) This AD was prompted by reports of cracked aluminum alloy gland nuts on the MLG shock absorber that had been previously inspected using AD 96–22–09. We are issuing this AD to prevent failure of the aluminum alloy gland nut on the MLG shock absorber, which could cause the MLG to collapse.

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 Reference

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

(1) For the requirements specified in paragraphs (g) and (h) of this AD, which are restated from AD 96–22–09, use the applicable service bulletins in Table 1 of this AD.

TABLE 1.—SHORTS SERVICE BULLETINS FOR RESTATED REQUIREMENTS

Model	Service bulletin	Revision	Date
SD3–SHERPA series airplanes	SD3 SHERPA–32–2	Original	September 22, 1995.
SD3–SHERPA series airplanes	SD3 SHERPA–32–2	1	June 30, 2003.
SD3–60 series airplanes	SD360–32–34	Original	September 22, 1995.
SD3–60 series airplanes	SD360–32–34	1	June 30, 2003.

(2) For the new requirements specified in paragraphs (i) and (j) of this AD, use the applicable service bulletin in Table 2 of this AD.

TABLE 2.—SHORTS SERVICE BULLETINS FOR NEW REQUIREMENTS

Model	Service bulletin	Revision	Date
SD3–SHERPA series airplanes	SD3 SHERPA–32–2	1	June 30, 2003.
SD3–60 SHERPA series airplanes	SD360 SHERPA–32–1	Original	June 30, 2003.

TABLE 2.—SHORTS SERVICE BULLETINS FOR NEW REQUIREMENTS—Continued

Model	Service bulletin	Revision	Date
SD3–60 series airplanes	SD360–32–34	1	June 30, 2003.

Note 1: The Messier-Dowty service bulletins listed in Table 3 of this AD are additional sources of service information for certain actions in the Shorts service bulletins.

TABLE 3.—ADDITIONAL SOURCES OF SERVICE INFORMATION

This Messier-Dowty service bulletin—	Is an additional source of service information for these shorts service bulletins—
32–78SD, dated July 19, 1995	SD3 SHERPA–32–2, dated September 22, 1995; and SD360–32–34, dated September 22, 1995.
32–78SD, Revision 1, dated December 9, 2002	SD360 SHERPA–32–1, dated June 30, 2003; and SD360–32–34, Revision 1, dated June 30, 2003.
32–80SD, dated August 31, 2000	SD360 SHERPA–32–1, dated June 30, 2003; SD3 SHERPA–32–2, Revision 1, dated June 30, 2003; and SD360–32–34, Revision 1, dated June 30, 2003.

Restatement of the Requirements of AD 96–22–09

(g) For Model SD3–60 series airplanes and Model SD3–SHERPA series airplanes: Within 90 days after December 11, 1996 (the effective date AD 96–22–09), perform a one-time visual and fluorescent dye penetrant inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the MLG, in accordance with the applicable service bulletin.

(1) If no crack and/or corrosion is detected, no further action is required by paragraph (g) of this AD.

(2) If no crack is detected, but corrosion is detected that is within the limits specified in the service bulletin, prior to further flight, repair the gland nut in accordance with the applicable service bulletin.

(3) If any crack is detected, or if any corrosion is detected that is outside the limits specified in the applicable service bulletin, prior to further flight, replace the gland nut with a new gland nut, in accordance with the applicable service bulletin.

(h) Following accomplishment of paragraph (g) of this AD, prior to further flight, apply grease to the threads of the cylinder, and apply sealant to the inner radius of the gland nut, in accordance with the applicable service bulletin.

New Requirements of This AD

Detailed Inspection and Corrective Action

(i) For all airplanes: Within 4 months after the effective date of this AD, do a detailed inspection of the P/N 200920604 gland nut on the MLG shock absorber for corrosion and/or cracking, and do any applicable corrective action before further flight, in accordance with the applicable service bulletin. Repeat the inspection at intervals not to exceed 12 months.

Note 2: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Optional Terminating Action

(j) Replacing the aluminum alloy gland nut, P/N 200920604, with a new steel gland nut, P/N 200920639, in accordance with the applicable service bulletin, terminates the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(l) British airworthiness directive 008–06–2003 also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use the service information that is specified in Table 4 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. For copies of the service information, contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC.

TABLE 4.—MATERIAL INCORPORATED BY REFERENCE

Shorts service bulletin	Revision level	Date
SD3 SHERPA–32–2	Original	September 22, 1995.
SD3 SHERPA–32–2	1	June 30, 2003.
SD360 SHERPA–32–1	Original	June 30, 2003.
SD360–32–34	Original	September 22, 1995.
SD360–32–34	1	June 30, 2003.

(1) The incorporation by reference of the service information listed in Table 5 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 5.—MATERIAL NEWLY INCORPORATED BY REFERENCE

Shorts service bulletin	Revision level	Date
SD3 SHERPA–32–2	1	June 30, 2003.
SD360 SHERPA–32–1	Original	June 30, 2003.
SD360–32–34	1	June 30, 2003.

(2) The incorporation by reference of the service information listed in Table 6 of this AD was approved previously by the Director of the Federal Register as of December 11, 1996 (61 FR 57311, November 6, 1996).

TABLE 6.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Shorts service bulletin	Revision level	Date
SD3 SHERPA–32–2	Original	September 22, 1995.
SD360–32–34	Original	September 22, 1995.

Issued in Renton, Washington, on December 1, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27331 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–40–AD; Amendment 39–13795; AD 2004–19–01]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2004–19–01, which was published in the **Federal Register** on September 17, 2004 (69 FR 55943), and applies to certain Cessna Aircraft Company (Cessna) 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes. We incorrectly referenced a serial number for the affected Model T337B airplanes in the applicability section as 37–0570. The correct serial number is 337–0570. This action corrects the applicability section of AD 2004–19–01, Amendment 39–13795.

DATES: The effective date of this AD remains November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On September 8, 2004, FAA issued AD 2004–19–01, Amendment 39–13795 (69 FR 55943, September 17, 2004) (as corrected in the publication of October 7, 2004 (69 FR 60081), which applies to certain Cessna 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes. This AD supersedes AD 86–26–04 with a new AD that requires you to inspect and, if necessary, modify the pilot/co-pilot upper shoulder harness adjusters that have certain Cessna accessory kits incorporated.

Need for the Correction

The FAA incorrectly referenced a serial number for Model T337B airplanes in the applicability section of AD 2004–19–01. The correct serial number range for the affected Model T337B airplanes is 337–0001, 337–0470, 337–0526 through 337–0568, and 337–0570 through 337–0755. This correction is needed to prevent confusion in the field regarding the FAA's intent of the AD applicability.

Correction of Publication

Accordingly, the publication of September 17, 2004 (69 FR 55943), of AD 2004–19–01; Amendment 39–13795; which was the subject of FR Doc. 04–20774 (as corrected in the publication of October 7, 2004 (69 FR 60081), which was the subject of FR Doc. 04–21814), is corrected as follows:

§ 39.13 [Corrected]

■ On page 55946, in § 39.13 [Amended], 2., replace paragraph (c)(129) with the following text:

''(129) T337B 337–0001, 337–0470, 337–0526 through 337–0568, and 337–0570 through 337–0755''.

Action is taken herein to correct this reference in AD 2004–19–01 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains November 1, 2004.

Issued in Kansas City, Missouri, on December 7, 2004.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27513 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18744; Directorate Identifier 2004–CE–24–AD; Amendment 39–13910; AD 2004–25–22]

RIN 2120–AA64

Airworthiness Directives; Great Lakes Aircraft Company, LLC, Models 2T–1A–1 and 2T–1A–2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA supersedes Airworthiness Directive (AD) 79–20–08, which applies to all Great Lakes Aircraft Company, LLC, (Great Lakes) Models 2T–1A–1 and 2T–1A–2 airplanes with a Lycoming IO–360–B1F6 or AIO–360–B1G6 engine installed. AD 79–20–08 currently requires you to inspect the engine induction system and the alternate air door for any signs of damage and repairing or replacing any damaged components. AD 79–20–08 also requires you to inspect the induction system for the presence of a drain fitting. If the drain fitting is blocked, restricted, or does not exist, AD 79–20–08 requires you to clear the fitting or drill a hole in the elbow at the fitting location. This AD is the result of the FAA inadvertently omitting Lycoming engine AEIO–360–B1G6 from the applicability section of AD 79–20–08. Consequently, this AD retains the actions required in AD 79–20–08 and adds Lycoming engine AEIO–360–B1G6 to the applicability section. We are issuing this AD to prevent the aircraft induction system from becoming blocked or restricted, which could result

in engine failure. This failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on January 28, 2005.

ADDRESSES: To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–18744.

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Aerospace Engineer, Denver Aircraft Certification Office (ACO), Federal Aviation Administration (FAA), 26805 E. 68th Ave., Rm 214 Denver, CO 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The alternate air source door on the original aircraft configuration of Great Lakes Models 2T–1A–1 and 2T–1A–2 airplanes was operated by push-pull cable in the cockpit and had an induction system drain provision. Later modifications changed the configuration of the alternate air source door to automatic operation.

All fuel-injected engines are required to have an alternate air source. If the primary induction air source becomes blocked or restricted, the lower pressure differential in the induction system would overcome a spring tension on the alternate air door and provide a secondary airflow path for the engine.

Inspections of Lycoming engines IO–360–B1F6 and AIO–360–B1G6 revealed instances of heat distortion, damage, and cracks in the alternate air door. Extensive damage to the alternate air door could cause pieces to break off and get sucked into the induction system blocking the airflow to the engine.

Additional inspections revealed that some of the affected engines did not have an induction system drain to remove fluid and/or moisture away from the engine.

These conditions caused us to issue AD 79–20–08. AD 79–20–08 currently requires the following on all Great Lakes Models 2T–1A–1 and 2T–1A–2 airplanes that have a Lycoming engine IO–360–B1F6 or AIO–360–B1G6 installed:

—Visually inspecting the aircraft induction system drain fitting located in the induction elbow below the fuel injector for blockage or restriction;
—Clearing the blocked drain hole or drilling a hole in the elbow at the fitting location if the drain hole is restricted in the weld area or not drilled through the elbow;
—Visually inspecting the alternate air door for damage and repairing or replacing any damaged alternate air door; and
—Visually inspecting the aircraft induction system (including the filter) for cleanliness, security, and damage and repairing or replacing any dirty or damaged components.

What has happened since AD 79–20–08 to initiate this action? During a recent inspection, it was discovered that the Lycoming engine AEIO–360–B1G6 has the same configuration as Lycoming engines IO–360–B1F6 and AIO–360–B1G6.

What is the potential impact if FAA took no action? If not detected and corrected, blockage or restriction of the aircraft induction system could cause engine failure. This failure could result in loss of control of the airplane.

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 Great Lakes Models 2T–1A–1 and 2T–1A–2 airplanes with a Lycoming IO–360–B1F6, AIO–360–B1G6, or AEIO–360–B1G6 engine installed. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 20, 2004 (69 FR 56175). The NPRM proposed to supersede AD 79–20–08 with a new AD that would retain the actions required in AD 79–20–08 and would add Lycoming engine AEIO–360–B1G6 to the applicability section.

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 130 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 inspections of the aircraft induction system, the induction system drain fitting, and the alternate air door:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $65 = $195	Not applicable	$195	$195 × 130 = $25,350

We estimate the following costs to accomplish any necessary repairs and/or replacements that will be required based on the results of the inspections. We have no way of determining the number of airplanes that may need these repairs and/or replacements:

Labor cost	Parts cost	Total cost per component
3 workhours per component × $65 = $195	Approximately $113 per component	$195 + 113 = $308

What is the difference between the cost impact of this AD and the cost impact of AD 79–20–08? The only difference between this AD and AD 79–20–08 is the correction to the applicability. No additional actions are being required. The FAA has determined that this AD action does not increase the cost impact over that already required by AD 79–20–08.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–18744; Directorate Identifier 2004–CE–24–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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) 79–20–08, Amendment 39–3580, and by adding a new AD to read as follows:

2004–25–22 Great Lakes Aircraft Company, LLC: Amendment 39–13910; Docket No. FAA–2004–18744; Directorate Identifier 2004–CE–24–AD; Supersedes AD 79–20–08; Amendment 39–3580.

When Does This AD Become Effective?

(a) This AD becomes effective on January 28, 2005.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 79–20–08, Amendment 39–3580.

What Airplanes Are Affected by This AD?

(c) This AD affects all Model 2T–1A–1 and 2T–1A–2 airplanes that have a Lycoming IO–360–B1F6, AIO–360–B1G6, or AEIO–360–B1G6 engine installed and are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of heat distortion, damage, and cracks found in the aircraft induction system on Lycoming IO–360–B1F6, AIO–360–B1G6, and AEIO–360–B1G6 engines. The actions specified in this AD are intended to prevent the aircraft induction system from becoming blocked or restricted, which could result in engine failure. This failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Perform the following: (i) Visually inspect the aircraft induction system drain fitting located in the induction elbow below the fuel injector for blockage or restriction. (ii) If the hole is blocked or restricted in the weld area or not drilled through the elbow, open up the restricted hole or drill a hole in the elbow at the fitting location using a No. 10 (.193) drill.	*For all affected airplanes:* Inspect within the next 25 hours time-in-service (TIS) after January 28, 2005 (the effective date of this AD). Before further flight, modify the blocked or restricted aircraft induction system drain fitting.	Not applicable.

Actions	Compliance	Procedures
(2) Visually inspect the alternate air door for distortion, heat damage, and cracks. If any damage is found, repair or fabricate a new door following Figure 1, Figure 2, and Figure 3 in this AD.	*For airplanes previously affected by AD 79–20–08:* Initially inspect at the next scheduled inspection required by AD 79–20–08 or within the next 25 hours TIS after January 28, 2005 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. *For airplanes not previously affected by AD 79–20–08:* Inspect within the next 25 hours TIS after January 28, 2005 (the effective date of this AD). Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. *For all affected airplanes:* After each inspection, if damage is found during any inspection, before further flight, repair, replace the damaged alternate air door.	Not applicable.
(3) Visually inspect the aircraft induction system for cleanliness of the air filter, distortion, security, and damage from backfire or induction system fire. If the air filter is dirty, if any distortion, damage, or lack of security is found, repair, replace or modify all affected components.	*For airplanes previously affected by AD 79–20–08:* Initially inspect at the next scheduled inspection required by AD 79–20–08 or within the next 25 hours TIS after January 28, 2005 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. *For airplanes not previously affected by AD 79–20–08:* Inspect within the next 25 hours TIS after January 28, 2005 (the effective date of this AD). Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. *For all affected airplanes:* After each inspection, if damage is found during any inspection, before further flight, repair, replace or modify any damaged components.	Not applicabale.

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, Denver Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Roger Caldwell, Aerospace Engineer, Denver ACO, FAA, 26805 E. 68th Ave., Rm 214 Denver, CO 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

May I Get Copies of the Documents Referenced in This AD?

(g) You may view the AD docket at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–18744.

BILLING CODE 4910–13–P

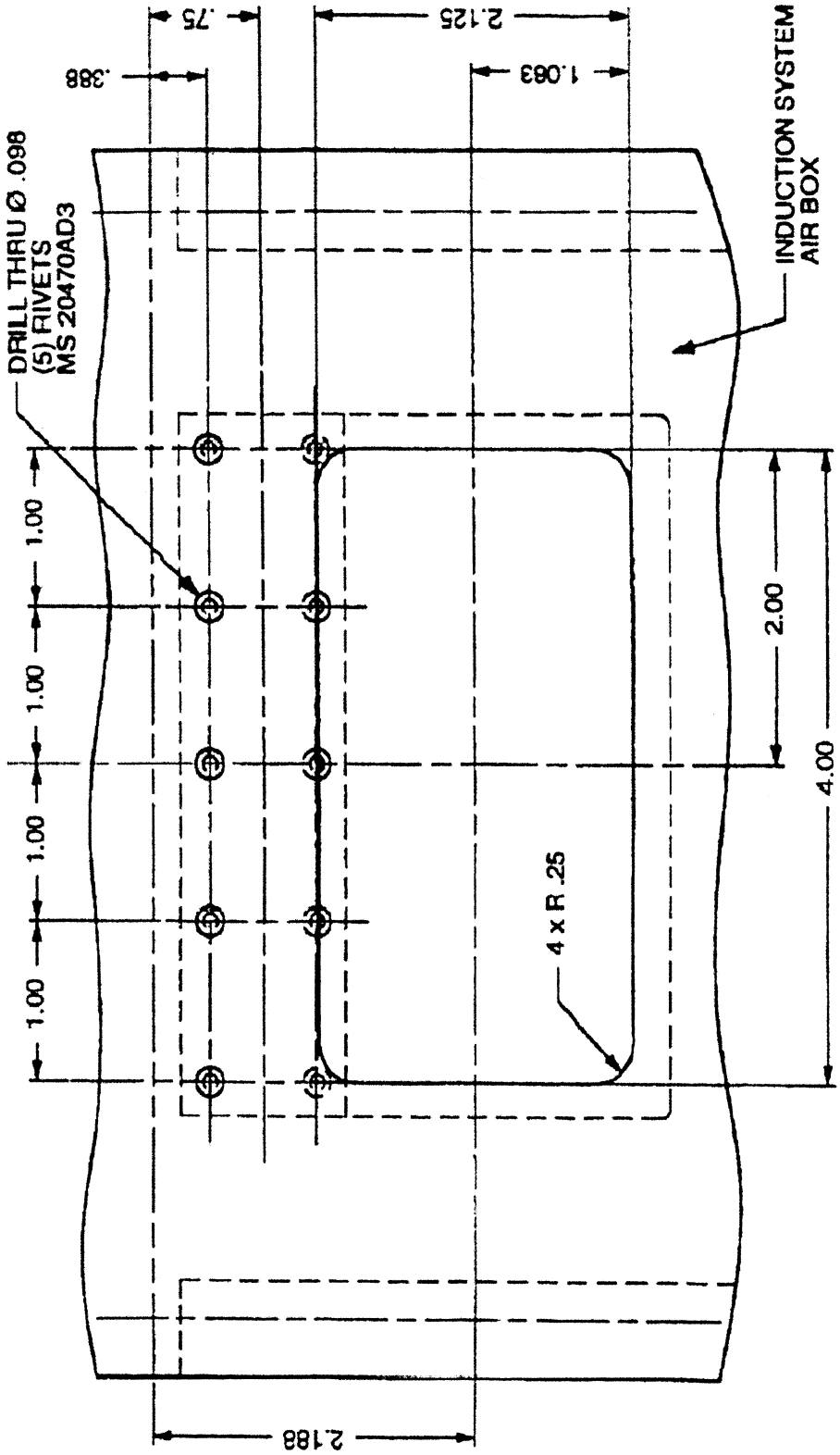

Fig. 1

GREAT LAKES AIRCRAFT, TYPES 2T-1A-1 AND 2T-1A-2
ENGINE INDUCTION SYSTEM AD 79-20-08
ALTERNATE AIR DOOR INSTALLATION
FULL SCALE

Figure 1

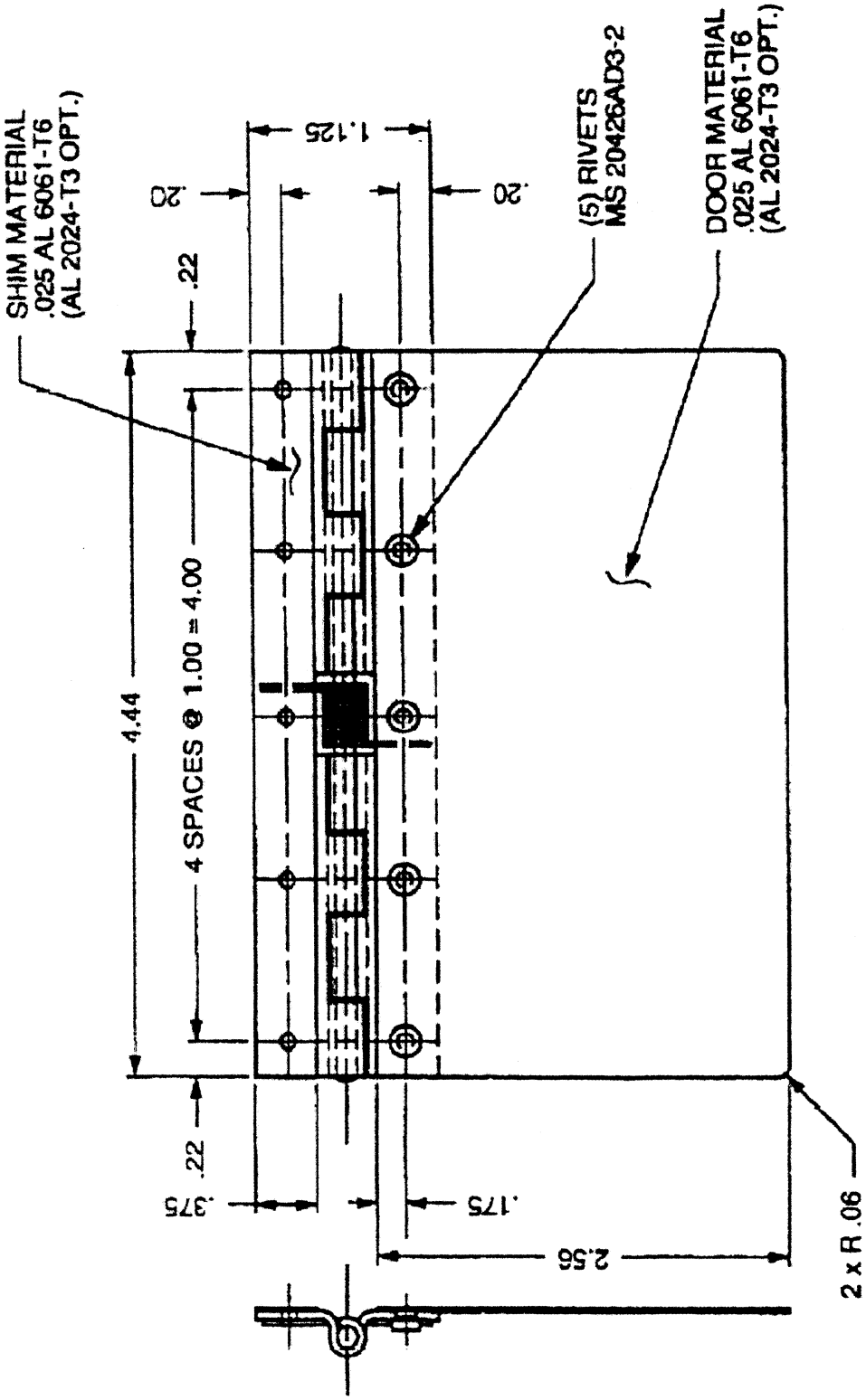

Fig. 2

GREAT LAKES AIRCRAFT, TYPES 2T-1A-1 AND 2T-1A-2
ENGINE INDUCTION SYSTEM AD 79-20-08
ALTERNATE AIR DOOR FABRICATION DETAIL
FULL SCALE

Figure 2

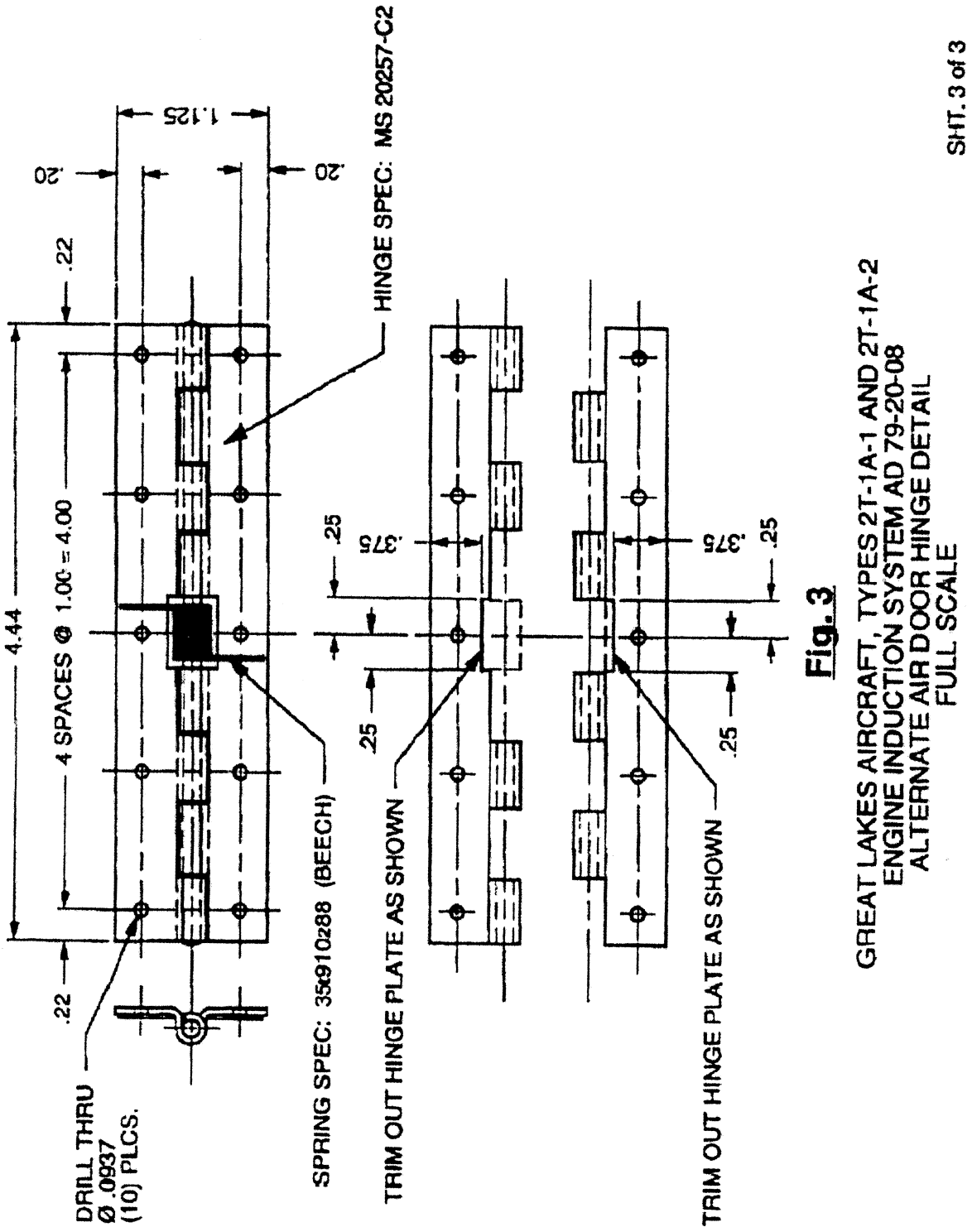
HINGE SPEC: MS 20257-C2
1.125
.20
.20
.22
4.44
4 SPACES @ 1.00 = 4.00
.22
DRILL THRU
Ø .0937
(10) PLCS.
SPRING SPEC: 35x910x88 (BEECH)
.25
.375
.25
TRIM OUT HINGE PLATE AS SHOWN
.375
.25
.25
TRIM OUT HINGE PLATE AS SHOWN
SHT. 3 of 3
Fig. 3
GREAT LAKES AIRCRAFT, TYPES 2T-1A-1 AND 2T-1A-2
ENGINE INDUCTION SYSTEM AD 79-20-08
ALTERNATE AIR DOOR HINGE DETAIL
FULL SCALE

Figure 3

Issued in Kansas City, Missouri, on December 7, 2004.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27521 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–C

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 906

[NCPPC 107]

Outsourcing of Noncriminal Justice Administrative Functions

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Interim final rule; request for comments.

SUMMARY: The Compact Council, established pursuant to the National Crime Prevention and Privacy Compact (Compact), is publishing an Interim Final Rule (''interim rule'') to permit the outsourcing of noncriminal justice administrative functions involving access to criminal history record information (CHRI). Procedures established to permit outsourcing are required to conform with the Compact Council's interpretation of Articles IV and V of the Compact.

DATES: This rule is effective December 31, 2004. Comments must be received on or before February 14, 2005.

ADDRESSES: Send all written comments concerning this interim rule to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Todd C. Commodore. Comments may also be submitted by fax at (304) 625–5388. To ensure proper handling, please reference ''Noncriminal Justice Outsourcing Docket No. 107'' on your correspondence. You may view an electronic version of this interim rule at *www.regulations.gov*. You may also comment via electronic mail at *tcommodo@leo.gov* or by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include NCPPC Docket No. 107 in the subject box.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Uzzell, Compact Council Chairman, Florida Department of Law Enforcement, 2331 Philips Road, Tallahassee, Florida 32308–5333, telephone number (850) 410–7100.

SUPPLEMENTARY INFORMATION:

Comments Invited

This interim rule is being adopted without prior notice and prior public comment. However, to the maximum extent possible, the Compact Council provides an opportunity for public comment on regulations issued without prior notice. Accordingly, the Compact Council invites interested persons to participate in this rulemaking by submitting written comments, data, or views. See addresses above for information on where to submit comments.

The Compact Council will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The Compact Council may change this rulemaking in light of the comments received.

Background

The National Crime Prevention and Privacy Compact (Compact), 42 U.S.C. 14616, establishes uniform standards and processes for the interstate and Federal-State exchange of criminal history records for noncriminal justice purposes. The Compact was approved by the Congress on October 9, 1998, (Pub. L. 105–251) and became effective on April 28, 1999, when ratified by the second state. Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes. This interim rule will permit a third party to perform noncriminal justice administrative functions relating to the processing of CHRI maintained in the III System, subject to appropriate controls, when acting as an agent for a governmental agency or other authorized recipient of CHRI.

In recent years, government and other statutorily authorized entities seeking improved efficiency and economy have become increasingly interested in permitting third party support services for noncriminal justice administrative functions. This is due in large part to the escalating demand for fingerprint-based risk assessments for authorized licensing, employment, and national security purposes over the last several years. The escalating numbers of noncriminal justice fingerprint submissions has resulted in increased workloads for local, state, and federal government entities. In addition, under OMB Circular No. A–76, the federal government is encouraged wherever feasible to use private sector services.

The Compact requires the FBI and each Party State to comply with III System rules, procedures, and standards duly established by the Compact Council concerning record dissemination and use, system security, and privacy protection. In that regard, the Compact specifies that any record obtained may be used only for the official purposes for which the record was requested. The Compact Council believes that, under the Compact, private contractors may be used to perform noncriminal justice administrative functions requiring access to CHRI provided there are appropriate controls expressly preserving the sole official purpose of the record request. With appropriate standards and requirements, the benefits of outsourcing may be attained without degradation to the security of the national III System of criminal records. For example, under this interim rule, subject to some exceptions, contracting agencies or organizations will not be permitted to have direct access to the III System by computer terminal or other automated means which would enable them to initiate record requests. Further, the interim rule provides that tasks necessary to perform noncriminal justice administrative functions will be monitored to assure the integrity and security of such records. Under the interim rule, safeguards will be required to ensure that private contractors may not access, modify, use, or disseminate such data in any manner not expressly authorized by a government agency or a statutorily authorized recipient of CHRI. Such procedures will establish conditions on the use of the CHRI and will limit dissemination of the CHRI to ensure that such CHRI is used only for authorized purposes. Such procedures also will provide for accurate and current data distribution and require proper maintenance and handling, including the removal and destruction of obsolete or erroneous information that has been brought to its attention. These conditions are necessary to ensure the confidentiality of such information.

Further, this interim rule permits the outsourcing of noncriminal justice administrative functions authorized under Articles IV and V of the Compact. Article IV provides generally for authorized record disclosure; Article V provides record request procedures as related to noncriminal justice criminal history record checks pursuant to the Compact. This interim rule outlines the basic structured framework for minimum standards to ensure that outsourced contracts satisfy the security and privacy required by the Compact Council when criminal history record

checks of the III are conducted for noncriminal justice purposes. The contracting parties are not at liberty to supercede these minimum standards with lesser standards; however, contracting parties are free to adopt more stringent standards than required by this regulation.

To ensure such minimum standards are followed, the interim rule provides that contracts and agreements providing for the outsourcing authorized by the interim rule ''shall incorporate by reference a security and management control outsourcing standard approved by the Compact Council after consultation with the United States Attorney General.'' See 28 CFR 906.2(c). Therefore, in conjunction with the interim rule, the Compact Council established Security and Management Control Outsourcing Standards (Outsourcing Standards), published in a notice elsewhere in today's edition of the **Federal Register**, specifying the standards that must be followed under the interim rule. The Compact Council developed two Outsourcing Standards—one for Contractors having access to CHRI on behalf of an authorized recipient for noncriminal justice purposes and one for Contractors serving as channelers of noncriminal justice criminal history record check requests and results. The first Outsourcing Standard (''Security and Management Control Outsourcing Standard for Contractors Having Access to CHRI on Behalf of an Authorized Recipient for Noncriminal Justice Purposes'') will be used by Contractors authorized to perform noncriminal justice administrative functions requiring access to CHRI without a direct connection to the FBI's Criminal Justice Information Services (CJIS) Wide Area Network (WAN). The second Outsourcing Standard (''Security and Management Control Outsourcing Standard for Channelers Only'') will be used by Contractors authorized access to CHRI through a direct connection to the FBI's CJIS WAN. The Outsourcing Standards were developed by the Compact Council in coordination with the FBI's CJIS Division and relevant subcommittees of the CJIS Advisory Policy Board (APB). The APB is an advisory committee with representatives of state, local, and federal contributors and users of the FBI's National Crime Information Center information systems, including the III. The Compact Council has also invited comments on the Outsourcing Standards, in addition to inviting comments on this interim rule.

Administrative Procedures and Executive Orders

Administrative Procedure Act

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate and Federal-State compact which was approved and enacted into law by Congress pursuant to Pub. L. 105–251. The Compact Council is composed of 15 members (with 11 state and local governmental representatives). The Compact specifically provides that the Compact Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Compact Council be published in the **Federal Register**. *See* 42 U.S.C. 14616, Articles II(4), VI(a)(1) and VI(e). This publication complies with those requirements.

Although not subject to the notice and comment requirements of the Administrative Procedure Act, the Compact Council generally provides an opportunity for notice and comment before issuing regulations. This rulemaking, however, is being issued as an interim rule because of imminent plans by the Transportation Security Administration (TSA) to implement a program to conduct criminal history record information (CHRI) checks of certain commercial drivers. Pursuant to section 1012 of the USA PATRIOT Act (Pub. L. 107–56), a state ''may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless [TSA] * * * has first determined * * * that the individual does not pose a security risk warranting denial of the license.'' TSA has informed the Compact Council that it plans to publish new regulations that implement procedures to be used when conducting required security risk assessments for hazmat drivers that will be effective January 31, 2005. Any delays in conducting the required background checks will pose a risk to the public and national security and be contrary to the public interest. According to TSA, it will need to perform as many as 2.7 million background checks as part of its hazmat program. As a result, TSA has informed the Compact Council that it will need to utilize private contractors to handle this large volume of CHRI checks. Therefore, because of the short time available before the TSA hazmat program is implemented, and because the Compact Council will not reconvene until after the TSA's implementation of the program, the Compact Council finds there is good cause to publish this interim rule that will permit TSA and other authorized agencies/entities to outsource noncriminal justice administrative functions pursuant to the provisions of this interim rule. The Compact Council welcomes any relevant comments concerning this interim rule and will consider such comments before issuing the final rule.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. No actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801–804) is not applicable to the Compact Council's rule because the Compact Council is not a ''Federal agency'' as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. *See* 5 U.S.C. 804.

List of Subjects in 28 CFR Part 906

Administrative practice and procedure, Intergovernmental relations, Law Enforcement, Privacy.

■ Accordingly, chapter IX of title 28 Code of Federal Regulations is amended by adding part 906 to read as follows:

PART 906—OUTSOURCING OF NONCRIMINAL JUSTICE ADMINISTRATIVE FUNCTIONS

Sec.
906.1 Purpose and authority.
906.2 Third party handling of criminal history record information.

Authority: 42 U.S.C. 14616.

§ 906.1 Purpose and authority.

The purpose of this part 906 is to establish rules and procedures for third parties to perform noncriminal justice administrative functions involving access to Interstate Identification Index (III) information. The Compact Council is establishing this rule pursuant to the National Crime Prevention and Privacy Compact (Compact), title 42, U.S.C., chapter 140, subchapter II, section 14616. The scope of this rule is limited to noncriminal justice background checks in so far as they are governed by the provisions of the Compact as set forth in 42 U.S.C. 14614 and 14616.

§ 906.2 Third party handling of criminal history record information.

(a) Except as prohibited in paragraph (b) of this section, criminal history record information obtained from the III System for noncriminal justice purposes may be made available:

(1) To a governmental agency pursuant to a contract or agreement under which the agency performs activities or functions for another governmental agency that is authorized to obtain criminal history record information by a federal statute, federal executive order or a state statute that has been approved by the United States Attorney General; and

(2) To a private contractor, or other nongovernmental entity or organization, pursuant to a contractual agreement under which the entity or organization performs activities or functions for a governmental agency authorized to obtain criminal history record information as identified in paragraph (a)(1) of this section or for a nongovernmental entity authorized to obtain such information by federal statute or executive order.

(b) Criminal history record information provided in response to fingerprint-based III System record requests initiated by authorized governmental agencies or nongovernmental entities for noncriminal justice purposes may be made available to contracting agencies or organizations manually or electronically for such authorized purposes. Such contractors, agencies, or organizations shall not be permitted to have direct access to the III System by computer terminal or other automated means which would enable them to initiate record requests, provided however, the foregoing restriction shall not apply with respect to: (1) Persons, agencies, or organizations that may enter into contracts with the FBI or State criminal history record repositories for the performance of authorized functions requiring direct access to criminal history record information; and (2) any direct access to records covered by 42 U.S.C. 14614(b).

(c) The contracts or agreements authorized by paragraphs (a)(1) and (a)(2) of this section shall specifically describe the purposes for which criminal history record information may be made available to the contractor and shall incorporate by reference a security and management control outsourcing standard approved by the Compact Council after consultation with the United States Attorney General. The security and management control outsourcing standard shall specifically authorize access to criminal history record information; limit the use of the information to the purposes for which it is provided; prohibit retention and/or dissemination of the information except as specifically authorized in the security and management control outsourcing standard; ensure the security and confidentiality of the information; provide for audits and sanctions; provide conditions for termination of the contractual agreement; and contain such other provisions as the Compact Council, after consultation with the United States Attorney General, may require.

(d) The exchange of criminal history record information with an authorized governmental or nongovernmental entity or contractor pursuant to this part is subject to cancellation for use, retention or dissemination of the information in violation of federal statute, regulation or executive order, or rule, procedure or standard established by the Compact Council in consultation with the United States Attorney General.

Dated: November 29, 2004.

Donna M. Uzzell,

Compact Council Chairman.

[FR Doc. 04–27488 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 635

RIN 0702–AA42–U

Law Enforcement Reporting

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is publishing our rule concerning law enforcement reporting. The regulation prescribes policies and procedures on preparing, reporting, using, retaining, and disposing of Military Police Reports. The regulation prescribes policies and procedures for offense reporting and the release of law enforcement information.

DATES: Effective Date: January 18, 2005.

ADDRESSES: Headquarters, Department of the Army, Office of the Provost Marshal General, ATTN: DAPM–MPD–LE, 2800 Army Pentagon, Washington, DC 20310–2800.

FOR FURTHER INFORMATION CONTACT: Nathan Evans, Policy Analyst, Arlington, VA at (703) 693–2126.

SUPPLEMENTARY INFORMATION:

A. Background

In the July 16, 2004 issue of the **Federal Register** (69 FR 42626) the Department of the Army issued a proposed rule to publish 32 CFR part 635. This final rule prescribes procedures and responsibilities for law enforcement reporting. The Department of the Army received responses from two commentors. No substantive changes were requested or made. The Department of the Army has added two sections since the publication of this part as a proposed rule. Section 635.29 was added to support Department of Defense guidance and the recommendations from the Army G–1 Domestic Violence Task Force. This section encourages provost marshals to enter into memoranda of understanding with local civilian law enforcement agencies to improve sharing of information. Section 635.30 was added to provide guidance on the handling and disposition of lost, unclaimed or abandoned property. The subsequent sections have been re-numbered.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the rule does 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. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the rule does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the rule does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this rule does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this rule does not apply because it will not have a substantial 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.

Jeffery B. Porter,

Chief, Law Enforcement Policy and Oversight Section.

List of Subjects in 32 CFR Part 635

Crime, Law, Law enforcement, Law enforcement officers, Military law.

■ For reasons stated in the preamble the Department of the Army adds 32 CFR part 635 to read as follows:

PART 635—LAW ENFORCEMENT REPORTING

Subpart A—Records Administration

Sec.
635.1 General.
635.2 Safeguarding official information.
635.3 Special requirements of the Privacy Act of 1974.
635.4 Administration of expelled or barred persons file.
635.5 Police intelligence/criminal information.
635.6 Name checks.
635.7 Registration of sex offenders.

Subpart B—Release of Information

635.8 General.
635.9 Guidelines for disclosure within DOD.
635.10 Release of information.
635.11 Release of information under the Freedom of Information Act (FOIA).
635.12 Release of information under the Privacy Act of 1974.
635.13 Amendment of records.
635.14 Accounting for military police record disclosure.
635.15 Release of law enforcement information furnished by foreign governments or international organizations.

Subpart C—Offense Reporting

635.16 General.
635.17 Military Police Report.
635.18 Identifying criminal incidents and subjects of investigation.
635.19 Offense codes.
635.20 Military Police Codes (MPC).
635.21 USACRC control numbers.
635.22 Reserve component, U.S. Army Reserve, and Army National Guard personnel.
635.23 DA Form 4833 (Commander's Report of Disciplinary or Administrative Action).
635.24 Updating the COPS MPRS.
635.25 Submission of criminal history data to the CJIS.
635.26 Procedures for reporting absence without leave (AWOL) and desertion offenses.
635.27 Vehicle Registration System.
635.28 Domestic Violence and Protection Orders.
635.29 Establishing Domestic Violence Memoranda of Understanding.
635.30 Lost, abandoned, or unclaimed property.

Subpart D—Army Quarterly Trends and Analysis Report

635.31 General.
635.32 Crime rate reporting.

Subpart E—Victim and Witness Assistance Procedures

635.33 General.
635.34 Procedures.
635.35 Notification.
635.36 Statistical reporting requirements.

Authority: 28 U.S.C. 534 note, 42 U.S.C. 10601, 18 U.S.C. 922, 42 U.S.C. 14071, 10 U.S.C. 1562, 10 U.S.C. Chap. 47.

Subpart A—Records Administration

§ 635.1 General.

(a) Military police records and files created under provisions of this part will be maintained and disposed of in accordance with instructions and standards prescribed by Army Regulation (AR) 25–400–2, AR 25–55, AR 340–21, and other applicable HQDA directives.

(b) Each provost marshal will appoint in writing two staff members, one primary and one alternate, to account for and safeguard all records containing personal information protected by law. Action will be taken to ensure that protected personal information is used and stored only where facilities and conditions will preclude unauthorized or unintentional disclosure.

(c) Personal information includes information that is intimate or private to an individual, as distinguished from that which concerns a person's official function or public life. Examples include the social security number (SSN) medical history, home address, and home telephone number.

(d) Access to areas in which military police records are prepared, processed and stored will be restricted to those personnel whose duties require their presence or to other personnel on official business. Military police records containing personal information will be stored in a locked room or locked filing cabinet when not under the personal control of authorized personnel. Alternate storage systems providing equal or greater protection may be used in accordance with AR 25–55.

(e) Areas in which remote computer terminals or authorized personal computers used for government business and activities are used, stored, process, or retrieve military police records will be restricted to personnel on official business. When processing military police information, computer video display monitors will be positioned so that protected information cannot be viewed by unauthorized persons. Computer output from automated military police systems will

be controlled as specified in paragraph (d) of this section.

(f) Output from any locally prepared data or automated systems containing personal information subject to the Privacy Act will be controlled per AR 340–21. All locally created or MACOM unique automated systems of records containing law enforcement information must be reported to and approved by HQDA, Office of the Provost Marshal General prior to use. The request must clearly document why the COPS MPRS system cannot meet the requirements or objectives of the organization. After review and approval by HQDA, the installation and MACOM will complete and process the systems notice for publication in the **Federal Register** per AR 340–21 and the Privacy Act.

(g) Security of automated systems is governed by AR 380–19. Provost marshals using automated systems will appoint, in writing, an Information Assurance Security Officer (IASO) who will ensure implementation of automation security requirements within the organization. Passwords used to control systems access will be generated, issued, and controlled by the IASO.

(h) Supervisors at all levels will ensure that personnel whose duties involve preparation, processing, filing, and release of military police records are knowledgeable of and comply with policies and procedures contained in this part, AR 25–55, AR 340–21, and other applicable HQDA directives. Particular attention will be directed to provisions on the release of information and protection of privacy.

(i) Military police records identifying juveniles as offenders will be clearly marked as juvenile records and will be kept secure from unauthorized access by individuals. Juvenile records may be stored with adult records but clearly designated as juvenile records even after the individual becomes of legal age. In distributing information on juveniles, provost marshals will ensure that only individuals with a clear reason to know the identity of a juvenile are provided the identifying information on the juvenile. For example, a community commander is authorized to receive pertinent information on juveniles. When a MPR identifying juvenile offenders must be provided to multiple commanders or supervisors, the provost marshal must sanitize each report to withhold juvenile information not pertaining to that commander's area of responsibility.

(j) Military police records in the custody of USACRC will be processed, stored and maintained in accordance with policy established by the Director, USACRC.

§ 635.2 Safeguarding official information.

(a) Military police records are unclassified except when they contain national security information as defined in AR 380–5.

(b) When military police records containing personal information transmitted outside the installation law enforcement community to other departments and agencies within DOD, such records will be marked ''For Official Use Only.'' Records marked ''For Official Use Only'' will be transmitted as prescribed by AR 25–55. Use of an expanded marking is required for certain records transmitted outside DOD per AR 25–55.

(c) Military police records may also be released to Federal, state, local or foreign law enforcement agencies as prescribed by AR 340–21. Expanded markings will be applied to these records.

§ 635.3 Special requirements of the Privacy Act of 1974.

(a) Certain personal information is protected under the Privacy Act and AR 340–21.

(b) Individuals requested to furnish personal information must normally be advised of the purpose for which the information is routinely used.

(c) Army law enforcement personnel performing official duties often require an individual's SSN for identification purposes. Personal information may be obtained from identification documents without violating an individual's privacy and without providing a Privacy Act Statement. This personal information can be used to complete military police reports and records. The following procedures may be used to obtain SSNs:

(1) Active Army, U.S. Army Reserve (USAR), Army National Guard (ARNG) and retired military personnel are required to produce their DD Form 2A (Act), DD Form 2 (Act), DD Form 2 (Res), or DD Form 2 (Ret) (U.S. Armed Forces of the United States General Convention Identification Card), or other government issued identification, as appropriate.

(2) Family members of sponsors may be requested to produce their DD Form 1173 (Uniformed Services Identification and Privilege Card). Information contained thereon (for example, the sponsor's SSN) may be used to verify and complete applicable sections of MPRs and related forms.

(3) DOD civilian personnel may be requested to produce their appropriate service identification. DA Form 1602 (Civilian Identification) may be requested from DA civilian employees. If unable to produce such identification, DOD civilians may be requested to provide other verifying documentation.

(4) Non-DOD civilians, including family members and those whose status is unknown, will be advised of the provisions of the Privacy Act Statement when requested to disclose their SSN.

(d) Requests for new systems of military police records, changes to existing systems, and continuation systems, not addressed in existing public notices will be processed as prescribed in AR 340–21, after approval is granted by HQDA, OPMG (DAPM–MPD–LE).

§ 635.4 Administration of expelled or barred persons file.

(a) When action is completed by an installation commander to bar an individual from the installation under 18 U.S.C. 1382 the installation provost marshal will be provided—

(1) A copy of the letter or order barring the individual.

(2) Reasons for the bar.

(3) Effective date of the bar and period covered.

(b) The provost marshal will maintain a list of barred or expelled persons. When the bar or expulsion action is predicated on information contained in military police investigative records, the bar or expulsion document will reference the appropriate military police record or MPR. When a MPR results in the issuance of a bar letter the provost marshal will forward a copy of the bar letter to Director, USACRC to be filed with the original MPR. The record of the bar will also be entered into COPS, in the Vehicle Registration module, under Barrings.

§ 635.5 Police intelligence/criminal information.

(a) The purpose of gathering police intelligence is to identify individuals or groups of individuals in an effort to anticipate, prevent, or monitor possible criminal activity. If police intelligence is developed to the point where it factually establishes a criminal offense, an investigation by the military police, U.S. Army Criminal Investigation Command (USACIDC) or other investigative agency will be initiated.

(b) Information on persons and organizations not affiliated with DOD may not normally be acquired, reported, processed or stored. Situations justifying acquisition of this information include, but are not limited to—

(1) Theft, destruction, or sabotage of weapons, ammunition, equipment facilities, or records belonging to DOD units or installations.

(2) Possible compromise of classified defense information by unauthorized disclosure or espionage.

(3) Subversion of loyalty, discipline, or morale of DA military or civilian personnel by actively encouraging violation of laws, disobedience of lawful orders and regulations, or disruption of military activities.

(4) Protection of Army installations and activities from potential threat.

(5) Information received from the FBI, state, local, or international law enforcement agencies which directly pertain to the law enforcement mission and activity of the installation provost marshal office, MACOM provost marshal office, or that has a clearly identifiable military purpose and connection. A determination that specific information may not be collected, retained or disseminated by intelligence activities does not indicate that the information is automatically eligible for collection, retention, or dissemination under the provisions of this part. The policies in this section are not intended and will not be used to circumvent any federal law that restricts gathering, retaining or dissemination of information on private individuals or organizations.

(c) Retention and disposition of information on non-DOD affiliated individuals and organizations are subject to the provisions of AR 380–13 and AR 25–400–2.

(d) Police intelligence will be actively exchanged between DOD law enforcement agencies, military police, USACIDC, local, state, federal, and international law enforcement agencies. One tool developed by DOD for sharing police intelligence is the Joint Protection Enterprise Network (JPEN). JPEN provides users with the ability to post, retrieve, filter, and analyze real-world events. There are seven reporting criteria for JPEN:

(1) Non-specific threats;

(2) Surveillance;

(3) Elicitation;

(4) Tests of Security;

(5) Repetitive Activities;

(6) Bomb Threats/Incidents; and

(7) Suspicious Activities/Incidents.

(e) If a written extract from local police intelligence files is provided to an authorized investigative agency, the following will be included on the transmittal documents: ''THIS DOCUMENT IS PROVIDED FOR INFORMATION AND USE. COPIES OF THIS DOCUMENT, ENCLOSURES THERETO, AND INFORMATION THEREFROM, WILL NOT BE FURTHER RELEASED WITHOUT THE PRIOR APPROVAL OF THE INSTALLATION PROVOST MARSHAL.''

(f) Local police intelligence files may be exempt from certain disclosure requirements by AR 25–55 and the Freedom of Information Act (FOIA).

§ 635.6 Name checks.

(a) Information contained in military police records may be released under the provisions of AR 340–21 to authorized personnel for valid background check purposes. Examples include child care/youth program providers, access control, unique or special duty assignments, and security clearance procedures. Any information released must be restricted to that necessary and relevant to the requester's official purpose. Provost marshals will establish written procedures to ensure that release is accomplished in accordance with AR 340–21.

(b) Checks will be accomplished by a review of the COPS MPRS. Information will be disseminated according to subpart B of this part.

(c) In response to a request for local files or name checks, provost marshals will release only founded offenses with final disposition. Offenses determined to be unfounded will not be released. These limitations do not apply to requests submitted by law enforcement agencies for law enforcement purposes, and counterintelligence investigative agencies for counterintelligence purposes.

(d) COPS MPRS is a database, which will contain all military police reports filed worldwide. Authorized users of COPS MPRS can conduct name checks for criminal justice purposes. To conduct a name check, users must have either the social security number/foreign national number, or the first and last name of the individual. If a search is done by name only, COPS MPRS will return a list of all matches to the data entered. Select the appropriate name from the list.

(e) A successful query of COPS MPRS would return the following information:

(1) Military Police Report Number;

(2) Report Date;

(3) Social Security Number;

(4) Last Name;

(5) First Name;

(6) Protected Identity (Y/N);

(7) A link to view the military police report; and

(8) Whether the individual is a subject, victim, or a person related to the report disposition.

(f) Name checks will include the criteria established in COPS MPRS and the USACRC. All of the policies and procedures for such checks will conform to the provisions of this part. Any exceptions to this policy must be coordinated with HQDA, Office of the Provost Marshal General before any name checks are conducted. The following are examples of appropriate uses of the name check feature of COPS MPRS:

(1) Individuals named as the subjects of serious incident reports.

(2) Individuals named as subjects of investigations who must be reported to the USACRC.

(3) Employment as child care/youth program providers.

(4) Local checks of the COPS MPRS as part of placing an individual in the COPS MPRS system.

(5) Name checks for individuals employed in law enforcement positions.

(g) Provost marshals will ensure that an audit trail is established and maintained for all information released from military police records.

(h) Procedures for conduct of name checks with the USACRC are addressed in AR 195–2. The following information is required for USACRC name checks (when only the name is available, USACRC should be contacted telephonically for assistance):

(1) Full name, date of birth, SSN, and former service number of the individual concerned.

(2) The specific statute, directive, or regulation on which the request is based, when requested for other than criminal investigative purposes.

(i) Third party checks (first party asks second party to obtain information from third party on behalf of first party) will not be conducted.

§ 635.7 Registration of sex offenders.

Soldiers who are convicted by court-martial for certain sexual offenses must comply with any applicable state registration requirements in effect in the state in which they intend to reside. See AR 190–47, Chapter 14 and AR 27–10, Chapter 24. This is a statutory requirement based on the Jacob Wetterling Act, and implemented by DOD Instruction 1325.7, and AR 27–10. Provost Marshals should coordinate with their local Staff Judge Advocate to determine if an individual must register. The registration process will be completed utilizing the state registration form, which is available through state and local law enforcement agencies. A copy of the completed registration form will be maintained in the installation Provost Marshal Office. Additionally, a Military Police Report (DA Form 3975) will be completed as an information entry into COPS. Installation Provost Marshals will provide written notice to state and local law enforcement agencies of the arrival of an offender to the local area so the registration process can be completed.

Subpart B—Release of Information

§ 635.8 General.

(a) The policy of HQDA is to conduct activities in an open manner and provide the public accurate and timely information. Accordingly, law enforcement information will be released to the degree permitted by law and Army regulations.

(b) Any release of military police records or information compiled for law enforcement purposes, whether to persons within or outside the Army, must be in accordance with the FOIA and Privacy Act.

(c) Requests by individuals for access to military police records about themselves will be processed in compliance with AR 25–55 and AR 340–21.

(d) Military police records in the temporary possession of another organization remain the property of the originating law enforcement agency. The following procedures apply to any organization authorized temporary use of military police records:

(1) Any request from an individual seeking access to military police records will be immediately referred to the originating law enforcement agency for processing.

(2) When the temporary purpose of the using organization has been satisfied, the military police records will be destroyed or returned to the originating law enforcement agency.

(3) A using organization may maintain information from military police records in their system of records, if approval is obtained from the originating law enforcement agency. This information may include reference to a military police record (for example, MPR number or date of offense), a summary of information contained in the record, or the entire military police record. When a user includes a military police record in its system of records, the originating law enforcement agency may delete portions from that record to protect special investigative techniques, maintain confidentiality, preclude compromise of an investigation, and protect other law enforcement interests.

§ 635.9 Guidelines for disclosure within DOD.

(a) Criminal record information contained in military police documents will not be disseminated unless there is a clearly demonstrated official need to know. A demonstrated official need to know exists when the record is necessary to accomplish a function that is within the responsibility of the requesting activity or individual, is prescribed by statute, DOD directive, regulation, or instruction, or by Army regulation.

(1) Criminal record information may be disclosed to commanders or staff agencies to assist in executing criminal justice functions. Only that information reasonably required will be released. Such disclosure must clearly relate to a law enforcement function.

(2) Criminal record information related to subjects of criminal justice disposition will be released when required for security clearance procedures.

(3) Criminal record information may be released to an activity when matters of national security are involved.

(4) When an individual informs an activity of criminal record information pertaining to them, the receiving activity may seek verification of this information through the responsible law enforcement agency or may forward the request to that organization. The individual must be advised by the receiving agency of the action being pursued. Law enforcement agencies will respond to such requests in the same manner as FOIA and Privacy Act cases.

(b) Nothing in this part will be construed to limit the dissemination of information between military police, the USACIDC, and other law enforcement agencies within the Army and DOD.

§ 635.10 Release of information.

(a) Release of information from Army records to agencies outside DOD will be governed by AR 25–55, AR 340–21, AR 600–37, and this part. Procedures for release of certain other records and information is contained in AR 20–1, AR 27–20, AR 27–40, AR 40–66, AR 195–2, AR 360–1, and AR 600–85. Installation drug and alcohol offices may be provided an extract of DA Form 3997 (Military Police Desk Blotter) for offenses indicating excessive use of alcohol (for example, drunk driving or disorderly conduct) or illegal use of drugs.

(b) Installation provost marshals are the release authorities for military police records under their control. They may release criminal record information to other activities as prescribed in AR 25–55 and AR 340–21, and this part.

(c) Authority to deny access to criminal records information rests with the initial denial authority (IDA) for the FOIA and the access and amendment refusal authority (AARA) for Privacy Acts cases, as addressed in AR 25–55 and AR 340–21.

§ 635.11 Release of information under the Freedom of Information Act (FOIA).

(a) The release and denial authorities for all FOIA cases concerning military police records include provost marshals and the Commander, USACIDC. Authority to act on behalf of the Commander, USACIDC is delegated to the Director, USACRC.

(b) FOIA requests from members of the press will be coordinated with the installation public affairs officer prior to release of records under the control of the installation provost marshal. When the record is on file at the USACRC the request must be forwarded to the Director, USACRC.

(c) Requests will be processed as prescribed in AR 25–55 and as follows:

(1) The provost marshal will review requested reports to determine if any portion is exempt from release. Any discretionary decision to disclose information under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

(2) Statutory and policy questions will be coordinated with the local staff judge advocate.

(3) Coordination will be completed with the local USACIDC activity to ensure that the release will not interfere with a criminal investigation in progress or affect final disposition of an investigation.

(4) If it is determined that a portion of the report, or the report in its entirety will not be released, the request to include a copy of the MPR or other military police records will be forwarded to the Director, USACRC, ATTN: CICR–FP, 6010 6th Street, Fort Belvoir, VA 22060–5585. The requestor will be informed that their request has been sent to the Director, USACRC, and provided the mailing address for the USACRC. When forwarding FOIA requests, the outside of the envelope will be clearly marked ''FOIA REQUEST.''

(5) A partial release of information by a provost marshal is permissible when partial information is acceptable to the requester. (An example would be the deletion of a third party's social security number, home address, and telephone number, as permitted by law). If the requester agrees to the omission of exempt information, such cases do not constitute a denial. If the requester insists on the entire report, a copy of the report and the request for release will be forwarded to the Director, USACRC. There is no requirement to coordinate such referrals at the installation level. The request will simply be forwarded to the Director, USACRC for action.

(6) Requests for military police records that have been forwarded to USACRC and are no longer on file at the

installation provost marshal office will be forwarded to the Director, USACRC for processing.

(7) Requests concerning USACIDC reports of investigation or USACIDC files will be referred to the Director, USACRC. In each instance, the requestor will be informed of the referral and provided the Director, USACRC address.

(8) Requests concerning records that are under the supervision of an Army activity, or other DOD agency, will be referred to the appropriate agency for response.

§ 635.12 Release of Information under the Privacy Act of 1974.

(a) Military police records may be released according to provisions of the Privacy Act of 1974, as implemented by AR 340–21 and this part.

(b) The release and denial authorities for all Privacy Act cases concerning military police records are provided in § 635.10 of this part.

(c) Privacy Act requests for access to a record, when the requester is the subject of that record, will be processed as prescribed in AR 340–21.

§ 635.13 Amendment of records.

(a) *Policy.* An amendment of records is appropriate when such records are established as being inaccurate, irrelevant, untimely, or incomplete. Amendment procedures are not intended to permit challenging an event that actually occurred. For example, a request to remove an individual's name as the subject of a MPR would be proper providing credible evidence was presented to substantiate that a criminal offense was not committed or did not occur as reported. Expungement of a subject's name from a record because the commander took no action or the prosecutor elected not to prosecute normally will not be approved. In compliance with DOD policy, an individual will still remain entered in the Defense Clearance Investigations Index (DCII) to track all reports of investigation.

(b) *Procedures.* (1) Installation provost marshals will review amendment requests. Upon receipt of a request for an amendment of a military police record that is five or less years old, the installation provost marshal will gather all relevant available records at their location. A decision to grant or deny the request will be made by the Commanding General, USACIDC. In accordance with AR 340–21, paragraph 1–7l, the Commanding General, USACIDC is the sole access and amendment authority for criminal investigation reports and military police reports. Access and amendment refusal authority is not delegable. If the decision is made to amend a MPR, a supplemental DA Form 3975 will be prepared. The supplemental DA Form 3975 will change information on the original DA Form 3975 and will be mailed to the Director, USACRC with the amendment request from the requestor as an enclosure. The Director, USACRC will file the supplemental DA Form 3975 with the original MPR.

(2) Requests to amend military police documents that are older than five years will be coordinated through the Director, USACRC. The installation provost marshal will provide the Director, USACRC a copy of an individual's request to amend a military police record on file at the USACRC. If the Director, USACRC receives an amendment request, the correspondence with any documentation on file at the USACRC will be sent to the originating provost marshal office. The installation provost marshal will review the request and either approve the request or forward it to the Director, USACRC for denial. A copy of the provost marshal's decision must be sent to the Director, USACRC to be filed in the USACRC record. If an amendment request is granted, copies of the supplemental DA Form 3975 will be provided to each organization, activity, or individual who received a copy of the original DA Form 3975.

(3) If the provost marshal office no longer exists, the request will be staffed with the major Army commander that had oversight responsibility for the provost marshal office at the time the DA Form 3975 was originated.

§ 635.14 Accounting for military police record disclosure.

(a) AR 340–21 prescribes accounting policies and procedures concerning the disclosure of military police records.

(b) Provost Marshals will develop local procedures to ensure that disclosure data requirements by AR 340–21 are available on request.

§ 635.15 Release of law enforcement information furnished by foreign governments or international organizations.

(a) Information furnished by foreign governments or international organizations is subject to disclosure, unless exempted by AR 25–55, AR 340–21, or federal statutes or executive orders.

(b) Information may be received from a foreign source under an express pledge of confidentiality as described in AR 25–55 and AR 340–21 (or under an implied pledge of confidentiality given prior to September 27, 1975).

(1) Foreign sources will be advised of the provisions of the Privacy Act of 1974, the FOIA, and the general and specific law enforcement exemptions available, as outlined in AR 340–21 and AR 25–55.

(2) Information received under an express promise of confidentiality will be annotated in the MPR or other applicable record.

(3) Information obtained under terms of confidentiality must clearly aid in furthering a criminal investigation.

(c) Denial recommendations concerning information obtained under a pledge of confidentiality, like other denial recommendations, will be forwarded by the records custodian to the appropriate IDA or AARA per AR 25–55 or AR 340–21.

(d) Release of U.S. information (classified military information or controlled unclassified information) to foreign governments is accomplished per AR 380–10.

Subpart C—Offense Reporting

§ 635.16 General.

(a) This subpart establishes policy for reporting founded criminal offenses by Army installation and major Army command provost marshal offices.

(b) This subpart prescribes reporting procedures, which require the use of the COPS MPRS and a systems administrator to ensure that the system is properly functioning. Reporting requirements include—

(1) Reporting individual offenders to the USACRC, NCIC, CJIS, and the DOD.

(2) *Crime reports to the DOD.* DOD collects data from all the Services utilizing the Defense Incident-Based Reporting System (DIBRS). The Army inputs its data into DIBRS utilizing COPS. Any data reported to DIBRS is only as good as the data reported into COPS, so the need for accuracy in reporting incidents and utilizing proper offense codes is great. DIBRS data from DOD is eventually sent to the Department of Justice's National Incident-Based Reporting System (NIBRS). The data is eventually incorporated into the Uniform Crime Report.

(c) A provost marshal office initiating a DA Form 3975 or other military police investigation has reporting responsibility explained throughout this subpart and this part in general.

(d) In the event the provost marshal office determines that their office does not have investigative responsibility or authority, the MPR will be terminated and the case cleared by exceptional clearance. A case cleared by exceptional clearance is closed by the provost

marshal when no additional investigative activity will be performed or the case is referred to another agency. If a case is transferred to the provost marshal from another law enforcement investigation agency the provost marshal office will have all reporting responsibility using the COPS MPRS system.

§ 635.17 Military Police Report.

(a) *General use.* DA form 3975 is a multipurpose form used to—

(1) Record all information or complaints received or observed by military police.

(2) Serve as a record of all military police and military police investigator activity.

(3) Document entries made into the COPS MPRS system and other automated systems.

(4) Report information concerning investigations conducted by civilian law enforcement agencies related to matters of concern to the U.S. Army.

(5) Advise commanders and supervisors of offenses and incidents involving personnel or property associated with their command or functional responsibility.

(6) Report information developed by commanders investigating incidents or conducting inspections that result in the disclosure of evidence that a criminal offense has been committed.

(b) *Special use.* The DA Form 3975 will be used to—

(1) Transmit completed DA Form 3946 (Military Police Traffic Accident Report). This will include statements, sketches, or photographs that are sent to a commander or other authorized official.

(2) Transmit the DD Form 1805 (U.S District Court Violation Notice) when required by local installation or U.S. Magistrate Court policy. The DA Form 3975 is used to advise commanders or supervisors that military, civilian, or contract personnel have been cited on a DD Form 1805.

(3) Match individual subjects with individual victims or witnesses, and founded criminal offenses. This is a federal statutory requirement. This is done using the relationships tab within COPS MPRS.

(4) Document victim/witness liaison activity.

(c) *Distribution.* The DA Form 3975 will be prepared in three copies, signed by the Provost Marshal or a designated representative, and distributed as follows—

(1) Original to USACRC. Further information, arising or developed at a later time, will be forwarded to USACRC using a supplemental DA Form 3975. Reports submitted to USACRC will include a good, legible copy of all statements, photographs, sketches, laboratory reports, and other information that substantiates the offense or facilitates the understanding of the report. The USACRC control number must be recorded on every DA Form 3975 sent to the USACRC. A report will not be delayed for adjudication or commander's action beyond 45 days.

(2) One copy retained in the provost marshal's files.

(3) One copy forwarded through the field grade commander to the immediate commander of each subject or organization involved in an offense.

(d) *Changing reports for unfounded offenses.* If an offense is determined to be unfounded, after the case has been forwarded to USACRC, the following actions will be completed:

(1) A supplemental DA Form 3975, using the same MPR number and USACRC control number will be submitted stating the facts of the subsequent investigation and that the case is unfounded.

(2) A copy of the supplemental DA Form 3975 will be provided to those agencies or activities that received a copy of the completed DA Form 3975 at the time of submission to USACRC and to the commander for action.

§ 635.18 Identifying criminal incidents and subjects of investigation.

(a) An incident will not be reported as a founded offense unless adequately substantiated by police investigation. A person or entity will be reported as the subject of an offense on DA Form 3975 when credible information exists that the person or entity may have committed a criminal offense or are otherwise made the object of a criminal investigation. The decision to title a person is an operational rather than a legal determination. The act of titling and indexing does not, in and of itself, connote any degree of guilt or innocence; but rather, ensures that information in a report of investigation can be retrieved at some future time for law enforcement and security purposes. Judicial or adverse administrative actions will not be based solely on the listing of an individual or legal entity as a subject on DA Form 3975.

(b) A known subject will be reported to the USACRC when the suspected offense is punishable by confinement of six months or more. The COPS MPRS will be used to track all other known subjects. A subject can be a person, corporation, or other legal entity, or organization about which credible information exists that would cause a reasonable person to suspect that the person, corporation, other legal entity or organization may have committed a criminal offense, or otherwise make them the object of a criminal investigation.

(c) When investigative activity identifies a subject, all facts of the case must be considered. When a person, corporation, or other legal entity is entered in the subject block of the DA Form 3975, their identity is recorded in DA automated systems and the DCII. Once entered into the DCII, the record can only be removed in cases of mistaken identity. This policy is consistent with DOD reporting requirements. The Director, USACRC enters individuals from DA Form 3975 into the DCII.

§ 635.19 Offense codes.

(a) The offense code describes, as nearly as possible, the complaint or offense by using an alphanumeric code. Appendix C of AR 190–45 lists the offense codes that are authorized for use within the Army. This list will be amended from time to time based on new reporting requirements mandated by legislation or administrative procedures. MACOM commanders and installation provost marshals will be notified by special letters of instruction issued in numerical order from HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) when additions or deletions are made to list. The COPS MPRS module will be used for all reporting requirements.

(b) MACOMs and installations may establish local offense codes in category 2 (major Army command and installation codes) for any offense not otherwise reportable. Locally established offense codes will not duplicate, or be used as a substitute for any offense for which a code is contained for other reportable incidents. Category 2 incidents are not reported to the Director, USACRC or the DOJ. If an offense occurs meeting the reporting description contained in Appendix C of AR 190–45, that offense code takes precedence over the local offense code. Local offense codes may be included, but explained, in the narrative of the report filed with the USACRC. Use the most descriptive offense code to report offenses.

(c) Whenever local policy requires the provost marshal to list the subject's previous offenses on DA Form 3975, entries will reflect a summary of disposition for each offense, if known.

§ 635.20 Military Police Codes (MPC).

(a) MPCs identify individual provost marshal offices. The Director, USACRC

will assign MPCs to provost marshal offices.

(b) Requests for assignment of a MPC will be included in the planning phase of military operations, exercises, or missions when law enforcement operations are anticipated. The request for a MPC will be submitted as soon as circumstances permit, without jeopardizing the military operation to HQDA, Office of the Provost Marshal General (DAPM–MPD–LE). Consistent with security precautions, MACOMs will immediately inform HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) when assigned or attached military police units are notified for mobilization, relocation, activation, or inactivation.

(c) When a military police unit is alerted for deployment to a location not in an existing provost marshal's operational area, the receiving MACOM or combatant commander will request assignment of an MPC number from HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) providing the area of operations does not have an existing MPC number. The receiving MACOM or Unified Combatant Commander is further responsible for establishing an operational COPS system for the deployment.

§ 635.21 USACRC control numbers.

(a) Case numbers to support reporting requirements will be issued by the Director, USACRC to HQDA (DAPM–MPD–LE) prior to the beginning of a new calendar year. HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) will release block numbers to each MACOM for assignment to their installation provost marshals. To ensure accuracy in reporting criminal incidents, USACRC control numbers will be used only one time and in sequence. Every MPR sent to the USACRC will have a USACRC control number reported. Violation of this policy could result in significant difficulties in tracing reports that require corrective action.

(b) Each MACOM will report the USACRC control numbers they have assigned to their installations by January 15th of each year. If during the calendar year the MACOM reassigns control numbers from one installation to another, HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) will be notified. The Director USACRC will receive an information copy of such notification from the MACOM provost marshal office.

(c) USACRC control numbers will be issued along with each newly assigned MPC.

(d) When the deploying unit will be located in an area where there is an existing provost marshal activity, the deploying unit will use the MPC number and USACRC control numbers of the host provost marshal.

§ 635.22 Reserve component, U.S. Army Reserve, and Army National Guard personnel.

(a) When in a military duty status pursuant to official orders (Federal status for National Guard) Reserve and National Guard personnel will be reported as active duty. Otherwise they will be reported as civilians.

(b) The DA Form 3975 and DA Form 4833 will be forwarded to the individual's continental U.S. Army Commander, state adjutant, or 7th Army Reserve Command, as appropriate. The forwarding correspondence will reflect this part as the authority to request disposition of the individual.

§ 635.23 DA Form 4833 (Commander's Report of Disciplinary or Administrative Action).

(a) *Use.* DA Form 4833 is used with DA Form 3975 to—

(1) Record actions taken against identified offenders.

(2) Report the disposition of offenses investigated by civilian law enforcement agencies.

(b) *Preparation by the provost marshal.* The installation provost marshal initiates this critical document and is responsible for its distribution and establishing a suspense system to ensure timely response by commanders. Disposition reports are part of the reporting requirements within DA, DOD, and DOJ.

(c) *Completion by the unit commander.* Company, troop, and battery level commanders are responsible and accountable for completing DA Form 4833 with supporting documentation in all cases investigated by MPI, civilian detectives employed by the Department of the Army, and the PMO. The Battalion Commander or the first Lieutenant Colonel in the chain of command is responsible and accountable for completing DA Form 4833 with support documentation (copies of Article 15s, court-martial orders, reprimands, etc) for all USACIDC investigations. The commander will complete the DA Form 4833 within 45 days of receipt.

(1) Appropriate blocks will be checked and blanks annotated to indicate the following:

(i) Action taken (for example, judicial, nonjudicial, or administrative). In the event the commander takes action against the soldier for an offense other than the one listed on the DA Form 3975, the revised charge or offense will be specified in the REMARKS section of the DA Form 4833.

(ii) Sentence, punishment, or administrative action imposed.

(iii) Should the commander take no action, the DA Form 4833 must be annotated to reflect that fact.

(2) If the commander cannot complete the DA Form 4833 within 45 days, a written memorandum is required to explain the circumstances. The delay will have an impact on other reporting requirements (*e.g.*, submitting fingerprint cards to the FBI).

(d) *Procedures when subjects are reassigned.* When the subject of an offense is reassigned, the provost marshal will forward the DA Form 3975, DA Form 4833, and all pertinent attachments to the gaining installation provost marshal who must ensure that the new commander completes the document. Copies of the documents may be made and retained by the processing provost marshal office before returning the documents to the losing installation provost marshal for completion of automated entries and required reports.

(e) *Report on subjects assigned to other installations.* When the DA Form 3975 involves a subject who is assigned to another installation, the initiating provost marshal will forward the original and two copies of DA Form 4833 to the provost marshal of the installation where the soldier is permanently assigned. The procedures in paragraph (d) of this section will be followed for soldiers assigned to other commands.

(f) *Offenses not reportable to USACRC.* When the offense is not within a category reportable to USACRC, the original DA Form 4833 is retained by the provost marshal. Otherwise, the original is sent to the Director, USACRC for filing with the MPR.

(g) *Civilian court proceedings.* If a soldier is tried in a civilian court, and the provost marshal has initiated a MPR, the provost marshal must track the civilian trial and report the disposition on DA Form 4833 as appropriate. That portion of the signature block of DA Form 4833 that contains the word ''Commanding'' will be deleted and the word ''Reporting'' substituted. The provost marshal or other designated person will sign DA Form 4833 before forwarding it to USACRC.

(h) *Dissemination to other agencies.* A copy of the completed DA Form 4833 reflecting offender disposition will also be provided to those agencies or offices that originally received a copy of DA

Form 3975 when evidence is involved. The evidence custodian will also be informed of the disposition of the case. Action may then be initiated for final disposition of evidence retained for the case now completed.

(i) *Review of offender disposition by the provost marshal.* On receipt of DA Form 4833 reflecting no action taken, the provost marshal will review the MPR. The review will include, but is not limited to the following—

(1) Determination of the adequacy of supporting documentation.

(2) Whether or not coordination with the supporting Staff Judge Advocate should have been sought prior to dispatch of the report to the commander for action.

(3) Identification of functions that warrant additional training of military police or security personnel (for example, search and seizure, evidence handling, or rights warning).

(j) *Offender disposition summary reports.* Provost marshals will provide the supported commander (normally, the general courts-martial convening authority or other persons designated by such authority) summary data of offender disposition as required or appropriate. Offender disposition summary data will reflect identified offenders on whom final disposition has been reported. These data will be provided in the format and at the frequency specified by the supported commander.

§ 635.24 Updating the COPS MPRS.

Installation provost marshals will establish standard operating procedures to ensure that every founded offense is reported into the COPS MPRS. Timely and accurate reporting is critical. If a case remains open, changes will be made as appropriate. This includes reporting additional witnesses and all aspects of the criminal report.

§ 635.25 Submission of criminal history data to the CJIS.

(a) *General.* This paragraph establishes procedures for submitting criminal history data (fingerprint cards) to CJIS when the provost marshal has completed a criminal inquiry or investigation. The policy only applies to members of the Armed Forces and will be followed when a military member has been read charges and the commander initiates proceedings for—

(1) *Field Grade Article 15, Uniform Code of Military Justice.* Initiation refers to a commander completing action to impose non-judicial punishment. Final disposition shall be action on appeal by the next superior authority, expiration of the time limit to file an appeal, or the date the military member indicates that an appeal will not be submitted.

(2) *A special or general courts-martial.* Initiation refers to the referral of court-martial charges to a specified court by the convening authority or receipt by the commander of an accused soldier's request for discharge in lieu of court-martial. Final disposition of military judicial proceedings shall be action by the convening authority on the findings and sentence, or final approval of a discharge in lieu of court-martial. The procedures in this subpart meet administrative and technical requirements for submitting fingerprint cards and criminal history information to CJIS. No variances are authorized. Results of summary court-martial will not be reported to the FBI.

(3) In instances where final action is taken by a magistrate, the provost marshal will complete the DA Form 4833.

(4) Provost marshal offices will submit fingerprint cards on subjects apprehended as a result of Drug Suppression Team investigations and operations unless the USACIDC is completing the investigative activity for a felony offense. In those cases, the USACIDC will complete the fingerprint report process.

(b) *Procedures.* The following procedures must be followed when submitting criminal history data to CJIS.

(1) Standard FBI fingerprint cards will be used to submit criminal history data to CJIS. FBI Form FD 249, (Suspect Fingerprint Card) will be used when a military member is a suspect or placed under apprehension for an offense listed in Appendix D of AR 190–45. Two FD 249s will be completed. One will be retained in the provost marshal file. The second will be sent to the Director, USACRC and processed with the MPR as prescribed in this subpart. A third set of prints will also be taken on the FBI Department of Justice (DOJ) Form R–84 (Final Disposition Report). The R–84 requires completion of the disposition portion and entering of the offenses on which the commander took action. Installation provost marshals are authorized to requisition the fingerprint cards by writing to FBI, J. Edgar Hoover Building, Personnel Division, Printing Unit, Room lB973, 925 Pennsylvania Ave., NW, Washington, DC 20535–0001.

(2) Fingerprint cards will be submitted with the MPR to the Director, USACRC, ATTN: CICR-CR, 6010 6th Street, Fort Belvoir, VA 22060–5585. The Director, CRC will forward the fingerprint card to CJIS. The USACRC is used as the central repository for criminal history information in the Army. They also respond to inquiries from CJIS, local, state and other federal law enforcement agencies.

(3) Submission of the MPR with the FD 249 to USACRC will normally occur upon a commander's initiation of judicial or nonjudicial proceedings against a military member. If final disposition of the proceeding is anticipated within 60 days of command initiation of judicial or nonjudicial proceedings, the FD 249 may be held and final disposition recorded on FD 249. Provost marshals and commanders must make every effort to comply with the 60 days reporting requirement to ensure that the FD Form 249 is used as the primary document to submit criminal history to CJIS. Approval of a discharge in lieu of court-martial will be recorded as a final disposition showing the nature and character of the discharge in clear English (*e.g.*, resignation in lieu of court-martial; other than honorable discharge).

(4) If the commander provides the DA Form 4833 after the 60th day, a letter of transmittal will be prepared by the provost marshal forwarding the FBI (DOJ) R–84 with the DA Form 4833 to the USACRC within 5 days after disposition. Submission of fingerprint cards shall not be delayed pending appellate actions. Dispositions that are exculpatory (*e.g.*, dismissal of charges, acquittal) shall also be filed.

(5) The procedures for submitting fingerprint cards will remain in effect until automated systems are in place for submission of fingerprints electronically.

§ 635.26 Procedures for reporting absence without leave (AWOL) and desertion offenses.

(a) *AWOL reporting procedures.* (1) The commander will notify the installation provost marshal in writing within 24 hours after a soldier has been reported AWOL.

(2) The provost marshal will initiate an information blotter entry.

(3) If the AWOL soldier surrenders to the parent unit or returns to military control at another installation, the provisions of AR 630–10 will be followed.

(4) On receipt of written notification of the AWOL soldier's return or upon apprehension, the provost marshal will initiate a reference blotter entry indicating the soldier's return to military control and will prepare an initial DA Form 3975, reflecting the total period of unauthorized absence, and the DA Form 4833. Both of these documents will be forwarded through the field grade commander to the unit commander.

(5) The unit commander will report action taken on the DA Form 4833 no later than the assigned suspense date or provide a written memorandum to the provost marshal explaining the delay.

(6) An original DD Form 460 (Provisional Pass) is issued to the soldier to facilitate their return to the parent unit. DD Form 460 will not be required if the provost marshal elects to return the soldier through a different means.

(7) If the soldier is apprehended at or returns to an installation other than his or her parent installation DA Form 3975 and 4833 with a copy of DD Form 460 will be sent to the parent installation provost marshal. The parent installation provost marshal will initiate an information blotter entry reflecting the AWOL soldiers return to military control. A DA Form 3975 and 4833 with an appropriate suspense will be sent through the field grade commander to the unit commander. On return of the completed DA Form 4833 from the unit commander, the original and one copy will be sent to the apprehending provost marshal. The parent installation provost marshal may retain a copy of DA Form 3975 and DA Form 4833.

(b) *Desertion reporting procedures.* (1) The unit commander must comply with the provisions of AR 630–10 when reporting a soldier as a deserter.

(2) On receipt of the DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), the provost marshal will—

(i) Initiate a DA Form 3975 and a blotter entry reflecting the soldier's desertion status.

(ii) Complete portions of DD Form 553 concerning the soldier's driver's license and vehicle identification. In the remarks section, add other information known about the soldier such as confirmed or suspected drug abuse; history of violent acts; history of escapes; attempted escapes from custody; suicidal tendencies; suspicion of involvement in crimes of violence (for which a charge sheet has been prepared and forwarded); history of unauthorized absences; and any other information useful in the apprehension process or essential to protect the deserter or apprehending authorities.

(iii) An MPR number and a USACRC control number will be assigned to the case and be included in the remarks section of the DD Form 553.

(iv) The DD Form 553 must be returned to the unit commander within 24 hours.

(v) If the deserter surrenders to or is apprehended by the parent installation provost marshal, the provost marshal will telephonically verify the deserter's status with the U.S. Army Deserter Information Point (USADIP). A reference blotter entry will be completed changing the soldier's status from desertion to return to military control.

(vi) If the deserter surrenders to or is apprehended by an installation not the parent installation, the provost marshal will telephonically verify the deserter's status with USADIP. An information military police report will be prepared, utilizing the CRC number from the original military police report prepared by the parent installation. A blotter entry will also be prepared.

(vii) A DD Form 616 (Report of Return of Absentee) will be completed when deserters are apprehended or surrender to military authority. The USACRC control number assigned to the DD Form 553 will be included in the remarks section of the DD Form 616.

(viii) Upon return of the deserter to military control, DA Forms 3975, 2804 (Crime Records Data), fingerprint card and 4833 will be initiated. The MPR number and USACRC control number will be recorded on all four forms.

(ix) The original DA Form 3975 and other pertinent documents will be sent to the Director, USACRC. The DA Form 4833 must include the commander's action taken, to include the Commander, Personnel Control Facility, or other commander who takes action based on the desertion charge.

§ 635.27 Vehicle Registration System.

The Vehicle Registration System (VRS) is a module within COPS. Use of VRS to register vehicles authorized access to Army installations is mandated in AR 190–5. Within VRS there are various tabs for registration of vehicles authorized access to an installation, to include personal data on the owner of the vehicle. There are also tabs for registering weapons, bicycles, and pets. Information on individuals barred entry to an installation is also maintained within VRS.

§ 635.28 Domestic Violence and Protection Orders.

(a) Responding to incidents of spouse abuse requires a coordinated effort by law enforcement, medical, and social work personnel, to include sharing information and records as permitted by law and regulation. AR 608–18 contains additional information about domestic violence and protective orders.

(b) Appendix C of AR 190–45 includes specific offense codes for domestic violence. All domestic violence incidents will be reported to the local PMO. All reported domestic violence incidents will be entered into MPRS, utilizing DA Form 3975. These codes will be utilized in addition to any other offense code that may be appropriate for an incident. For example, a soldier strikes his or her spouse. When entering the offense data into MPRS, both the offense code for assault (*i.e.* 5C2B) and the offense code for spouse abuse (from the 5D6 series) will be entered.

(c) A military Protection Order is a written lawful order issued by a commander that orders a soldier to avoid contact with his or her spouse or children. Violations of a military Protection Order must be reported on DA Form 3975, entered into COPS, and entered into NCIC. Violations of a military Protection Order may be violations of Article 92, UCMJ. The commander should provide a written copy of the order within 24 hours of its issuance to the person with whom the member is ordered not to have contact. A copy should be forwarded to the installation Family Advocacy Program Manager (FAPM), the Chief, Social Work Service, and the installation military police.

(d) A civilian Protection Order is an order issued by a judge, magistrate or other authorized civilian official, ordering an individual to avoid contact with his or her spouse or children. Pursuant to the Armed Forces Domestic Security Act a civilian protection order has the same force and effect on a military installation as such order has within the jurisdiction of the court that issued the order. Violations of a civilian Protection Order must be reported on DA Form 3975, entered into COPS, and entered into NCIC.

§ 635.29 Establishing Domestic Violence Memoranda of Understanding.

(a) Coordination between military law enforcement personnel and local civilian law enforcement personnel is essential to improve information sharing, especially concerning domestic violence investigations, arrests, and prosecutions involving military personnel. Provost Marshals or other law enforcement officials shall seek to establish formal Memoranda of Understanding (MOU) with their civilian counterparts to establish or improve the flow of information between their agencies, especially in instances of domestic violence involving military personnel. MOUs can be used to clarify jurisdictional issues for the investigation of incidents, to define the mechanism whereby local law enforcement reports involving active duty service members will be forwarded to the appropriate installation law enforcement office, to

encourage the local law enforcement agency to refer victims of domestic violence to the installation Family Advocacy office or victim advocate, and to foster cooperation and collaboration between the installation law enforcement agency and local civilian agencies.

(b) MOUs should address the following issues:

(1) A general statement of the purpose of the MOU.

(2) An explanation of jurisdictional issues that affect respective responsibilities to and investigating incidents occurring on and off the installation. This section should also address jurisdictional issues when a civilian order of protection is violated on military property (see 10 U.S.C. 1561a).

(3) Procedures for responding to domestic violence incidents that occur on the installation involving a civilian alleged offender.

(4) Procedures for transmitting incident/investigation reports and other law enforcement information on domestic violence involving active duty service members from local civilian law enforcement agencies to the installation law enforcement office.

(5) Procedures for transmitting civilian protection orders (CPOs) issued by civilian courts or magistrates involving active duty service members from local law enforcement agencies to the installation law enforcement office.

(6) Designation of the title of the installation law enforcement recipient of such information from the local law enforcement agency.

(7) Procedures for transmitting military protection orders (MPOs) from the installation law enforcement office to the local civilian law enforcement agency with jurisdiction over the area in which the service member resides.

(8) Designation of the title of the local law enforcement agency recipient of domestic violence and CPO information from the installation law enforcement agency.

(9) Respective responsibilities for providing information to domestic violence victims regarding installation resources when either the victim or the alleged offender is an active duty service member.

(10) Sharing of information and facilities during the course of an investigation in accordance with the Privacy Act of 1974 (see 5 U.S.C. section 552a(b)(7)).

(11) Regular meetings between the local civilian law enforcement agency and the installation law enforcement office to review cases and MOU procedures.

§ 635.30 Lost, abandoned, or unclaimed property.

This is personal property that comes into the possession, custody, or control of the Army and is unclaimed by the owner. Property is considered to be abandoned only after diligent effort has been made to determine and locate its owner, the heir, next of kin, or legal representative. A military person who is ordered overseas and is unable to dispose of their personal property should immediately notify their chain-of-command. The commander will appoint a board to rule on the disposition of the property. If a law enforcement agency takes custody of the property it will be tagged and a record made as shown in paragraph (a) of this section. A report will be made to the installation commander who will take action in accordance with DOD 4160.21–M, chapter 4, paragraph 40, Defense Materiel Disposition Manual. Pending board action under DOD 4160.21–M, the law enforcement agency having physical custody is responsible for the safekeeping of seized property. The following procedures should be used:

(a) Property will be tagged using DA Form 4002 (Evidence/Property Tag) or clearly identified by other means, inventoried, and made a matter of record. These records are kept by the custodian of the property.

(b) Lost, abandoned, or unclaimed property will be kept in a room or container separate from one used to store property held as evidence. Records or logs of property not held as evidence will be separated from those pertaining to evidence. However, all property will be tagged, accounted for, and receipted for in a similar manner as evidence.

(c) Property that has been properly identified through board action under DOD 4160.21–M as having an owner will be segregated and tagged with the name of that person.

(d) Abandoned or unclaimed property will be held until its status can be determined. In many instances, lost property can be returned to the owner upon presentation of proof of ownership.

(e) In all cases, a receipt should be obtained at time of release.

Subpart D—Army Quarterly Trends and Analysis Report

§ 635.31 General.

(a) This subpart prescribes policies and procedures for the coordination and standardization of crime statistics reporting with HQDA. Crime statistical reports and trends provided to HQDA and other agencies and those related to special interests inquiries, the media, and the public must reflect uniformity in terminology, methods of presentation, and statistical portrayal to preclude misinterpretation of information.

(b) Any report containing Army-wide aggregate crime data or statistics addressed to the Secretary of the Army, Chief of Staff of the Army, or Vice Chief of Staff of the Army will be coordinated and cleared with HQDA, Office of the Provost Marshal General (DAPM–MPD–LE). Correspondence and reports will be coordinated with HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) prior to release to any agency, activity, or individual.

(c) HQDA staff agencies and MACOMs authorized by regulation or statute to conduct independent investigations, audits, analyses, or inquiries need not coordinate reported information with HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) unless the information contains crime data for the Army as a whole. For example, reports submitted by USACIDC containing only USACIDC investigative data need not be coordinated with HQDA, Office of the Provost Marshal General (DAPM–MPD–LE).

§ 635.32 Crime rate reporting.

(a) The USACRC is the Army's collection point and analytic center for all Army aggregate crime data. Requests for Army-wide crime data reports will be forwarded through HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) to the Director, USACRC. Replies will be routed back through HQDA Office of the Provost Marshal General (DAPM–MPD–LE) where they will be coordinated, as appropriate, prior to release. Requests for USACIDC, MACOM, or subordinate command specific crime data reports can be made directly to the specific command. Replies need not be coordinated with HQDA.

(b) Requests for Army aggregate crime reports are limited to data collected and accessible through the Automated Criminal Investigative Reporting System (ACIRS) and COPS.

(c) Routine collection of MACOM crime data, for use in Army-wide database, will be limited to that data collected by the above systems. MACOMs may determine internal data collection requirements.

(d) All provost marshal crime data will be recorded and forwarded by installations through MACOMS using the COPS system.

(e) In support of the Secretary Of the Army and the Office of the Chief of Staff

of the Army, the Chief, Operations Division, Office of the Provost Marshal General, will determine the requirements for routine publication of Army aggregate crime statistics.

(f) Normally, raw data will not be released without analysis on routine or non-routine requests. Comparison of MACOM crime data is generally not reported and should be avoided. General categories of CONUS or OCONUS are appropriate.

Subpart E—Victim and Witness Assistance Procedures

§ 635.33 General.

(a) This subpart implements procedures to provide assistance to victims and witnesses of crimes that take place on Army installations and activities. The procedures in this subpart apply to—

(1) Every victim and witness.

(2) Violations of the UCMJ, including crimes assimilated under the Assimilative Crimes Act reported to or investigated by military police.

(3) Foreign nationals employed or visiting on an Army installation OCONUS.

(b) Provost marshal personnel should refer to AR 27–10, chapter 18, for additional policy guidance on the Army Victim/Witness Program.

§ 635.34 Procedures.

(a) As required by Federal law, Army personnel involved in the detection, investigation, and prosecution of crimes must ensure that victims and witnesses rights are protected. Victims rights include—

(1) The right to be treated with fairness, dignity, and a respect for privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial, or for other good cause.

(5) The right to confer with the attorney for the Government in the case.

(6) The right to restitution, if appropriate.

(7) The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.

(b) In keeping with the requirements listed in paragraph (a) of this section, provost marshals must ensure that—

(1) All law enforcement personnel are provided copies of DD Form 2701 (Initial Information for Victims and Witnesses of Crime).

(2) A victim witness coordinator is appointed in writing.

(3) Statistics are collected and reported into COPS.

(4) Coordination with the installation staff judge advocate victim witness coordinator occurs to ensure that individuals are properly referred for information on restitution, administrative, and judicial proceedings.

(5) Coordination with installation Family Advocacy Program's Victim Advocate occurs to support victims of spouse abuse. Victim Advocacy services include crisis intervention, assistance in securing medical treatment for injuries, information on legal rights and proceedings, and referral to military and civilian shelters and other resources available to victims.

§ 635.35 Notification.

(a) In addition to providing crime victims and witnesses a DD Form 2701, law enforcement personnel must ensure that individuals are notified about—

(1) Available military and civilian emergency medical care.

(2) Social services, when necessary.

(3) Procedures to contact the staff judge advocate victim/witness liaison office for additional assistance.

(b) Investigating law enforcement personnel, such as military police investigators—

(1) Must ensure that victims and witnesses have been offered a DD Form 2701. If not, investigating personnel will give the individual a copy.

(2) In coordination with the provost marshal victim witness coordinator, provide status on investigation of the crime to the extent that releasing such information does not jeopardize the investigation.

(3) Will, if requested, inform all victims and witnesses of the apprehension of a suspected offender.

§ 635.36 Statistical reporting requirements.

(a) DOD policies on victim witness assistance require reporting of statistics on the number of individuals who are notified of their rights. The DA Form 3975 provides for the collection of statistical information.

(b) The COPS system supports automated reporting of statistics. HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) as the program manager may require periodic reports to meet unique requests for information.

(c) It is possible that a victim or witness may initially decline a DD Form 2701. As the case progresses, the individual may request information. If a case is still open in the provost marshal office, the provost marshal victim witness coordinator shall provide the DA Form 2701 to the individual and update the records. Once the case is referred to the staff judge advocate or law enforcement activity ceases, COPS will not be updated.

[FR Doc. 04–27574 Filed 12–15–04; 8:45 am]

BILLING CODE 3710–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7848–2]

Ocean Disposal; Designation of a Dredged Material Disposal Site in Rhode Island Sound

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today designates the Rhode Island Sound Disposal Site (RISDS) in Rhode Island Sound offshore of Rhode Island. This action is necessary to provide a long-term dredged material disposal site for the current and future disposal of dredged material from Rhode Island, southeastern Massachusetts, and surrounding harbors (hereinafter referred to as the Rhode Island Region, or RIR). The site designation is for an indefinite period of time. The RISDS will be subject to continuing monitoring to ensure that significant unacceptable, adverse environmental impacts do not occur. The action is described in the Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project Final Environmental Impact Statement (FEIS), and the monitoring plan is described in the RISDS Site Management and Monitoring Plan (SMMP). The SMMP is provided as Appendix C of the FEIS. Site designation does not itself actually authorize the disposal of any particular dredged material at a site. Proposals to dispose of dredged material at a designated site are subject to project-specific reviews and authorization and still must satisfy the criteria for ocean dumping.

DATES: This final regulation is effective on January 18, 2005.

ADDRESSES: EPA has established a file supporting this action that includes this rule, the FEIS and its appendices, including the SMMP, and other supporting documents. This information

is available for review by the public as follows:

1. Electronically. You may review and/or obtain electronic copies of this document and various support documents from the EPA home page at the **Federal Register**, *http://www.epa.gov/fedrgstr/,* or on the EPA New England Region's homepage at: *http://www.epa.gov/region1/eco/ridredge/index.html.*

2. In person. The Final Rule, the Final Environmental Impact Statement (FEIS) which includes the SMMP (Appendix C), and the complete administrative record for this action are available for inspection at the following locations: A. EPA New England Library, 11th Floor, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023. For access to the documents, call Peg Nelson at (617) 918–1991 between 10 a.m. and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. B. EPA Atlantic Ecology Division, Library, 27 Tarzwell Drive, Narragansett, RI 02882. For access to the documents, call Mimi Johnson at (401) 782–3025 between 10 a.m and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying. We also are putting copies of the FEIS in all of the town libraries in the coastal towns in Rhode Island and southeastern Massachusetts.

FOR FURTHER INFORMATION CONTACT: Ms. Olga Guza, U.S. Environmental Protection Agency New England Region, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023, telephone (617) 918–1542, electronic mail: *guza.olga@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Entities potentially regulated by this action are persons, organizations, or government bodies seeking to dispose of dredged material into ocean waters of Rhode Island Sound, under the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (hereinafter referred to as the MPRSA) and its implementing regulations. The rule is expected to be primarily of relevance to: (a) Parties seeking permits from the U.S. Army Corps of Engineers, New England District (Corps) to transport dredged material for the purpose of disposal into the waters of Rhode Island Sound; and (b) to the Corps itself for its own dredged material disposal projects. Potentially regulated categories and entities that may seek to use the RIR dredged material disposal site may include:

Category	Examples of potentially regulated entities
Federal Government Agencies.	U.S. Army Corps of Engineers Civil Works Projects, and Other Federal Agencies.
Industry and General Public.	Port Authorities, Marinas and Harbors, Shipyards, and Marine Repair Facilities, Berth Owners.
State, local and tribal governments.	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that could potentially be regulated by this action. To determine whether your organization is affected by this action, you should carefully consider whether your organization is required to obtain an MPRSA permit (40 CFR 220.1), and you wish to use the RISDS. EPA notes that nothing in this final rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this final rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

In 1972, the Congress of the United States enacted the MPRSA to address and control the dumping of materials into ocean waters. Title I of the MPRSA authorized EPA and the Corps to regulate dumping in ocean waters. Regulations implementing the MPRSA are set forth at 40 CFR parts 220 through 229. With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit or authorization (in the case of Corps projects) issued under the MPRSA. The MPRSA divides permitting responsibility between EPA and the Corps. Under Section 102 of the MPRSA, EPA has responsibility for issuing permits for all materials other than dredged material (*e.g.,* vessels, fish wastes, burial at sea). Under Section 103 of the MPRSA, the Secretary of the Army has the responsibility for issuing permits and authorizations (in the case of Corps projects) for the ocean dumping of dredged material. This permitting authority has been delegated to the District Engineers of the Corps' district offices. Determinations to issue permits and authorizations (in the case of Corps projects) for dredged material are subject to EPA review and concurrence.

Section 102(c) of the MPRSA, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA authority to designate sites and times where ocean disposal, also referred to interchangeably as ocean dumping, may be permitted. Section 103(b) further provides that the Corps should use such EPA designated sites to the maximum extent feasible. EPA's ocean dumping regulations provide that EPA's designation of an ocean dumping site is accomplished by promulgation of a site designation in 40 CFR part 228 specifying the site. On October 1, 1986, the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. The RISDS site is located within New England (EPA New England); therefore, this action is being taken pursuant to the Regional Administrator's delegated authority. EPA regulations (40 CFR 228.4(e)(1)) promulgated under the MPRSA require, among other things, that EPA designate ocean dredged material disposal sites (ODMDS) by promulgation in 40 CFR part 228. Designated ocean dumping sites are codified at 40 CFR 228.15.

On April 30, 2004, EPA published a draft rule and notice of availability of a Draft Environmental Impact Statement (DEIS) proposing the designation of the RISDS as an ODMDS (69 FR 23706). This final rule designates the site for open water disposal of dredged material. This site is currently being used by the Corps under the site selection authority provided by Section 103 of the MPRSA as Site 69B for disposal of dredged material from the Providence River and Harbor Maintenance Dredging Project. The site is located in ocean waters of Rhode Island Sound approximately nine nautical miles (nmi) south of Point Judith, Rhode Island.

The RISDS will provide a long-term disposal option for the Corps to maintain deep-draft, international commerce and navigation through authorized Federal navigation projects and to ensure safe navigation for public and private entities.

The RISDS will be subject to continuing site management and monitoring to ensure that unacceptable,

adverse environmental impacts do not occur. The management of the RISDS is further described in the SMMP (Appendix C of the FEIS).

The designation is in accordance with 40 CFR 228.4(e) of the Ocean Dumping Regulations, which allows EPA to designate ocean sites for disposal of dredged materials.

C. EIS Development

Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting environmental quality. The objective of NEPA is to build into agency decisionmaking processes careful consideration of all environmental aspects of proposed actions, including evaluation of reasonable alternatives to the proposed action. While NEPA does not apply to EPA activities in designating ocean disposal sites under the MPRSA, EPA has voluntarily agreed as a matter of policy to conduct a NEPA environmental review in connection with ocean dumping site designations. (63 *FR* 58045, October 29, 1998, ''Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.'') Consistent with this policy, EPA, in cooperation with the Corps, has prepared a FEIS entitled, ''Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project,'' which considers the environmental aspects of site designation in ocean waters of Rhode Island Sound. Anyone wishing to receive a copy of the FEIS may do so in one of the ways described above in the **ADDRESSES** section.

The purpose of today's action is to designate an ocean disposal site that will meet the long-term dredged material disposal needs in the RIR. The appropriateness of ocean disposal for any specific, individual dredging project is determined on a case-by-case basis under the permit and authorization (in the case of Corps projects) process under MPRSA.

Designation of an ocean disposal site under 40 CFR part 228 is essentially a preliminary, planning measure. The practical effect of such a designation is only to require that if future ocean disposal activity is permitted and/or authorized (in the case of Corps projects) under 40 CFR part 227, then such disposal should normally be consolidated at the designated sites (See 33 U.S.C. 1413(b)). Designation of an ocean disposal site does not authorize any actual disposal and does not preclude EPA or the Corps from finding available and environmentally preferable alternative means of managing dredged materials, or from finding that certain dredged material is not suitable for ocean disposal under the applicable regulatory criteria. Nevertheless, EPA has determined that it is appropriate to designate an ocean disposal site for dredged material in the ocean waters of Rhode Island Sound now, because it appears unlikely that feasible alternative means of managing dredged material will be available to accommodate the quantity of dredged material that is projected to be generated in this region in the future.

Proposals for the ocean disposal of dredged materials from individual projects are evaluated by EPA and the Corps on a case-by-case basis, taking into account all the disposal alternatives available at the time of permitting. Beneficial use alternatives will be preferred over ocean disposal whenever they are practicable.

The FEIS describes the purpose and need for the proposed action and evaluates a number of alternatives to this action. EPA's analysis of alternatives considered several different potential ocean disposal sites for dredged material from Rhode Island, southeastern Massachusetts, and surrounding harbors, as well as potential alternative means of managing these dredged materials other than ocean disposal. As described in the FEIS, the initial screening effort was established to consider the most environmentally sound, economically and operationally feasible area for site designation, termed the ''zone of siting feasibility'' (ZSF). Alternatives evaluated included various marine sites, upland disposal, beneficial uses, and the no action alternative.

In addition to considering reasonable distances to transport dredged material, the ocean disposal analysis considered areas of critical resources as well as areas of incompatibility for use as a disposal site. This included but was not limited to such factors as the sensitivity and value of natural resources, geographically limited habitats, fisheries and shellfisheries, natural resources, shipping and navigation lanes, physical and environmental parameters, and economic and operational feasibility. The analysis was carried out in a tiered process. The final tier involved further analysis of the no action alternative and the following alternative sites: Site E and Site W (now the RISDS). These sites were evaluated and the RISDS was identified as the preferred alternative for potential ocean disposal site designation. Management strategies were developed for the preferred alternative and are described in the SMMP (Appendix C of the FEIS).

In summary, the NEPA process informed EPA's decision to take the current action designating the RISDS as an ODMDS.

D. Site Description

The RISDS is currently being used by the Corps under its short-term site selection authority as Site 69B. Since 2003, Site 69B has received approximately 4.5 million cubic yards of dredged material from the Providence River and Harbor Maintenance Dredging Project. The RISDS is in the same exact location and is the same size as Site 69B. The site is approximately one nautical mile by one nautical mile, for a size of one square nautical mile (nmi^2). The RISDS is located approximately nine nmi south of Point Judith, Rhode Island and approximately 6.5 nmi east of Block Island, Rhode Island, with depths from 115 to128 feet (35 to 39 m). The sediments at the site range from glacially derived till to soft, silty sand. The corner coordinates (North American Datum 1983: NAD 83) for the RISDS site, are as follows: 41°14′21″ N, 71°23′29″ W; 41°14′21″ N, 71°22′09″ W; 41°13′21″ N, 71°23′29″ W; 41°13′21″ N, 71°22′09″ W.

E. Analysis of Criteria Pursuant to the Ocean Dumping Act Regulatory Requirements

Five general criteria are used in evaluating possible dredged material disposal sites for long-term use under the MPRSA (40 CFR 228.5).

General Criteria (40 CFR 228.5)

1. *Minimize interference with other activities, particularly avoiding fishery areas or major navigation areas (40 CFR 228.5(a)).* The first of the five general criteria requires that a determination be made as to whether the site or its use will minimize interference with other uses of the marine environment. For this final rule, a determination was made to overlay individual uses and resources over GIS bathymetry and disposal site locations. This process was used to visually determine the maximum and minimum interferences with other uses of the marine environment that could be expected to occur. Areas that would interfere with other activities, particularly fishing and navigation, were eliminated from further consideration. Sites E and W were the only areas left for consideration. The RISDS (Site W) showed minimum interference with other activities and was thus selected for this proposal. The RISDS is not in an area of distinctive

lobster, shellfish, or finfish resources and thus will not interfere with lobstering or fishing activities. The RISDS is not located in shipping lanes or major navigation areas, is not in a geographically limited fishery area, and has been selected to minimize interference with fisheries, shellfisheries and regions of commercial and recreational navigation.

2. *Minimize Changes in Water Quality. Temporary water quality perturbations (during initial mixing) caused by disposal operations would be reduced to normal ambient levels before reaching areas outside of the disposal site (40 CFR 228.5(b)).* The second of the five general criteria requires that locations and boundaries of disposal sites be selected so that temporary changes in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within a site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching beaches, shorelines, sanctuaries, or geographically limited fisheries or shellfisheries. The RISDS will be used only for dredged material disposal of suitable sediments as determined by application of MPRSA criteria. Based on model results and data evaluated as part of the FEIS, disposal of either sandy or fine-grained material would have no long-term impact on water quality at the site. In addition, dredged material deposited at the RISDS will not reach any marine sanctuary, beach, or other important natural resource area. Further, disposal at the RISDS will be managed and monitored in accordance with the SMMP (Appendix C of the FEIS) such that there will be no temporary perturbations in water quality anywhere outside the site or within the site after allowance for initial mixing.

3. *Interim Sites Which Do Not Meet Criteria (40 CFR 228.5 (c)).* There are no interim sites to be considered under this criterion. The RISDS (formerly known as Site 69B) is not an interim site as defined under the Ocean Dumping regulations.

4. *Size of sites (40 CFR 228.5(d)).* The fourth general criterion requires that the size of open water disposal sites be limited to localize for identification and control any immediate adverse impacts and to permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation. For this final rule, EPA has determined, based on the information presented in the FEIS, that the RISDS (formerly known as Site 69B) has been sized to provide sufficient capacity to accommodate material dredged from within the RIR and to facilitate effective monitoring and surveillance. The site management and monitoring plan is described in the RISDS SMMP (Appendix C of the FEIS).

5. *EPA must, wherever feasible, designate dumping sites beyond the edge of the continental shelf and where historical disposal has occurred (40 CFR 228.5(e)).* The fifth criterion requires EPA, wherever feasible, to designate ocean dumping sites beyond the edge of the continental shelf and at other such sites that have historically been used. Sites beyond the edge of the continental shelf are not economically feasible due to the extended travel time and associated expense. In addition, the RISDS encompasses the footprint of Site 69B, currently in use. Thus, the RISDS is consistent with this criterion.

As discussed briefly above, EPA has determined that the RISDS satisfies the five general criteria described in 40 CFR 228.5 of the EPA Ocean Dumping Regulations. More detailed information relevant to these criteria can be found in the FEIS and SMMP.

In addition to the general criteria discussed above, 40 CFR 228.6(a) lists 11 specific factors to be used in evaluating a proposed disposal site under the MPRSA to assure that the five general criteria are met. The RISDS, as discussed below, also is acceptable under each of the 11 specific criteria. The evaluation of the preferred disposal sites relevant to the five general and 11 specific criteria is discussed in substantially more detail in the FEIS and SMMP.

Specific Criteria (40 CFR 228.6)

1. *Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1)).* The RISDS is in the same location and is the same size as Site 69B. The RISDS will replace Site 69B. The site is a square area, approximately one nautical mile by one nautical mile, for a size of one nmi^2. The RISDS is located approximately nine nmi south of Point Judith, Rhode Island and approximately 6.5 nmi east of Block Island, Rhode Island, with depths from 115 to 128 feet (35 to 39 meters). The sediments at the site range from glacially derived till to soft, silty sand. Water depths in the surrounding areas are between 110 and 118 feet to the north, east, and south of the site. The southeastern portion of the site shoals more rapidly than the northern area. The corner coordinates (North American Datum 1983: NAD 83) of the RISDS site, are as follows: 41°14′21″ N, 71°23′29″ W; 41°14′21″ N, 71°22′09″ W; 41°13′21″ N, 71°23′29″ W; 41°13′21″ N, 71°22′09″ W.

2. *Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).* The Corps and EPA initiated informal Endangered Species Act (ESA) and Essential Fish Habitat (EFH) consultation in January 2003 and formal consultation with publication of the DEIS in coordination with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS). Additional coordination was conducted with the Commonwealth of Massachusetts and State of Rhode Island. Through these efforts, data has been obtained on current threatened or endangered species in the RIR. The plankton community at the RISDS includes zooplankton (copepods, larval forms of many species of invertebrates and fish, Foraminifera, and Radiolara) and phytoplankton (diatoms and dinoflagellates). These organisms display a range of abundance by season. The populations at or near the site are not unique to the site and are present over most of the RIR. It is expected that although small, short-term entrainment losses may occur immediately following disposal, no long term, adverse impacts to organisms in the water column will occur.

The benthic community at the RISDS is comprised primarily of Annelida, Crustacea, and Mollusca. It is expected that short-term reduction in abundance and diversity at the sites may occur immediately following disposal, but long term, adverse impacts to benthic organisms are not expected to occur. Recovery to levels similar to pre-disposal is expected within a few years after disposal.

The RISDS is located in the ocean waters of Rhode Island Sound, which is utilized by more than 116 fish species. Seven species appear consistently dominant among all trawl surveys. These were scup, butterfish, longfin squid, little skate, winter flounder, silver hake, and red hake. Atlantic herring, Atlantic mackerel, and ocean pout also were very abundant. It is expected that impacts to finfish resources will consist of short-term, local disruptions and the potential loss of some individual fish of certain non-migratory species. Most of the finfish species are migratory. Several commercially harvested species of shellfish occur in the RIR. They are Atlantic surf clams, blue mussels, lobster, northern quahogs, ocean quahogs, sea scallops, razor clams, and

whelks. It is expected that impacts to shellfish within the RISDS will be short-term and associated with disposal, burial, and loss of habitat or food. No impacts to shellfish or finfish resources are anticipated outside of the RISDS.

Many different types of resident, migratory, and coastal birds may potentially use the RIR as a feeding habitat or resting area. Dozens of marine and coastal birds migrate through Rhode Island Sound annually. In addition, the RIR provides limited habitat for most marine mammals and reptiles. The species that are frequent or occasional visitors to the RIR are harbor porpoises, white-sided dolphins, minke whales, seals (harbor, hooded, and harp) and sea turtles (green, Kemp's ridley, loggerhead, leatherback and hawksbill).

There are 16 federally-listed threatened and endangered species and five species of ''special concern'' which may utilize the area of the RISDS. The threatened and endangered species are: whales (humpback, fin, northern right, sperm, blue and sei), turtles (loggerhead, green, Kemp's ridley, leatherback, and hawksbill), birds (bald eagle, piping plover and roseate tern), and insects (American burying beetle and northeastern beach tiger beetle). The species of ''special concern'' are: common loon, common tern, arctic tern, least tern, and Leach's storm-petrel. Occurrence of these species varies by season. Use of the site by whales and birds would be incidental. Sea turtles may be present in the RISDS during the summer and fall. It is not expected that disposal activities would have any significant adverse effect on these species or their critical habitat. With respect to endangered and threatened species, informal consultation was conducted with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). In 2001, EPA prepared a Biological Assessment (BA) for selection of Site 69B, which is in the exact same location as the RISDS.

The USFWS and NMFS concurred with EPA's determination that species under its jurisdiction would not likely be adversely affected by the proposed action. The BA concludes that the proposed action is not likely to affect the threatened and endangered species. EPA reinitiated threatened and endangered species consultation with NMFS and USFWS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 and USFWS concurred on April 1, 2004 that there are unlikely to be any effects on threatened or endangered species or their critical habitat as a result of the proposed action. The BA is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The RIR provides Essential Fish Habitat (EFH) for 33 finfish and five invertebrate species, mostly for adults and juveniles. All of the species occur along the northeastern Atlantic Coast of the United States and have EFH designated for waters other than those within the RIR. In 2001, an EFH assessment was prepared for the selection of Site 69B. The EFH assessment concludes that the proposed action is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA reinitiated EFH consultation with NMFS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 that the proposed action is not likely to effect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA has incorporated the NMFS recommendations into the SMMP (appendix C of the FEIS). The EFH assessment is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The RISDS is not located in areas that provide limited or unique breeding, spawning, nursery, feeding, or passage areas.

3. *Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3).* The RISDS is located approximately 8.3 nmi from the nearest beach or other amenity area. Modeling and sediment transport studies indicate a very low probability that any dredged material remaining in the water column following disposal would be transported more than one nmi. Plumes would be reduced to background concentrations shortly after disposal. Given the rapid dissipation characteristics of dredged material plumes and that the vast majority of released materials settle to the bottom near the release point, dredged material placed at the RISDS would not adversely affect beaches or similar amenities. As such, it is expected that impacts would not occur to beaches, areas of special concern, parks, natural resources, sanctuaries or refuges since they are either land-based or farther than 8.3 nmi from the proposed disposal site. There also are no marine sanctuaries or limited fisheries or shellfisheries at or near the RISDS. Therefore, EPA has determined that dredged material disposal at the RISDS location should not have any adverse effect on beaches or other amenity areas, including wildlife refuges or other areas of biological or recreational significance.

4. *Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).* The RISDS has an estimated capacity of approximately 20 million cubic yards. However, there is no disposal site capacity volume restriction. The composition of dredged material to be disposed at the site is expected to be typical estuarine sediments dredged from channels, berths, and marinas from harbors and federal navigation areas within the RIR. The disposal of this material shall occur at designated buoys or coordinates and would be expected to be placed so as to concentrate material from each disposal. This placement is expected to help minimize bottom impacts to benthic organisms. EPA will make a suitability determination prior to the Corps issuing any MPRSA permit or authorization (in the case of Corps projects) for disposal at the RISDS. The site will receive only dredged material determined to be suitable for ocean disposal that is transported by either government or private contractor hopper dredges or ocean-going, bottom-dump barges towed by tugboat. Both types of equipment release the material at or very near the surface. Dredged material placed at the RISDS would not be containerized or packaged.

Furthermore, it should be emphasized that the RISDS is being designated only to receive dredged material; disposal of other types of material at these sites will not be allowed. It also should be noted that the disposal of certain other types of material is expressly prohibited by the MPRSA and EPA regulations (*e.g.*, industrial waste, sewage sludge, chemical warfare agents). *See, e.g.*, 33 U.S.C. 1414b; 40 CFR 227.5(b). For these reasons, no significant adverse impacts are expected to be associated with the types and quantities of dredged material that may be disposed at the RISDS.

5. *Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).* Surveillance of the site can be accomplished by boat, plane, helicopter, disposal inspectors aboard barges, scows, and tugboats, or through radar or satellite. This effort would be conducted jointly by the EPA, the Corps, and the U.S. Coast Guard. Based on the various methods that can be utilized it has been determined that monitoring and surveillance are feasible at the RISDS. The site is readily accessible for bathymetric surveys and has undergone monitoring, including side-scan sonar. If field monitoring of the disposal activities is required because of a future concern for habitat changes or limited resources, a management decision will

be made by EPA and the Corps, who share the responsibilities of managing and monitoring the disposal sites. EPA and the Corps have prepared a RISDS SMMP (Appendix C of the FEIS). Monitoring shall be completed in accordance with the SMMP. It is expected that revisions to the SMMP may be made periodically; revisions will be circulated for review, coordinated with the affected states and become final when approved by EPA New England Region in conjunction with the Corps' New England District. See 33 U.S.C. 1413(c)(3).

6. *Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).* The RISDS is located within the ocean waters of Rhode Island Sound, a water body that is exposed to wind and wave energy from the northwest Atlantic Ocean. The dominant tidal flow directions are northwest and southeast. The amplitude of the tidal velocity decreases with depth (12.7 cm/s at the surface and 7 cm/s near the bottom. The mean current velocity was 2.5 cm/s directed toward the west at mid-depth and 1.6 cm/s toward the west at the bottom. A modeling study performed as part of the Providence River and Harbor Maintenance Dredging Project EIS examined the likelihood of erosion and transport of cohesive sediments proposed for placement at Site 69B (now the RISDS), located at a depth of 128 ft. The study concluded that a disposal mound placed at 69B would not be dispersive under any conditions other then the most severe (50-year return period) hurricane; their results, however, were based on an assumption of extremely cohesive material and should therefore be viewed as potentially under-predicting erosion. Areas of the ZSF between 170 and 105 ft, including the north-central portion northeast of Block Island, were depositional areas with some infrequent sorting and reworking by waves and currents. The deepest areas here were the most depositional.

It is expected that peak wave induced bottom orbital velocities are not sufficient to cause significant erosion of dredged material at the RISDS. For these reasons, EPA has determined that the dispersal, transport and mixing characteristics, and current velocities and directions at the RISDS are appropriate to support its designation as a dredged material disposal site.

7. *Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).* The RISDS is currently being used for disposal activity pursuant to the Corps' short-term site selection authority under Section 103(b) of the MPRSA. 33 U.S.C. 1413(b) as Site 69B. This generally makes the RISDS preferable to more pristine sites that have either not been used or have been used in the more distant past (40 CFR 228.5(e)). Beyond this, however, EPA's evaluation of data and modeling results indicates that these past disposal operations have not resulted in unacceptable or unreasonable environmental degradation, and that there should be no significant adverse cumulative environmental effects from continuing to use the RISDS on a long-term basis.

8. *Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).* In evaluating whether disposal activity at the RISDS could interfere with shipping, fishing, recreation, mineral extraction, desalination, areas of scientific importance and other legitimate uses of the ocean, EPA considered both the direct effects from depositing dredged material on the ocean bottom at the proposed sites and the indirect effects associated with increased vessel traffic that will result from transportation of dredged material to the RISDS. Areas that raised concerns with respect to these criteria were removed from consideration early in the screening process for the FEIS. The RISDS is not located in shipping lanes and is not an area of special scientific importance, desalination, fish and shellfish culture or mineral extraction. Accordingly, depositing dredged material at the RISDS will not interfere with any of the activities mentioned in this criterion. Increased vessel traffic involved in the transportation of dredged material to the disposal site should not impact shipping or activities discussed above.

9. *The Existing Water Quality and Ecology of the Sites as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9)).* Water and sediment quality analyses conducted at the site and experience with past disposal in this region have not identified any adverse water quality or ecological impacts from ocean disposal of dredged material. Baseline data on which this determination is based are further described in the FEIS.

10. *Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Sites (40 CFR 228.6(a)(10)).* Based on the available evidence, dredged material is not a potential source for the development or recruitment of nuisance species at the RISDS. Monitoring results and available data indicate that placement of dredged material at Site 69B (which is in the same exact location as the RISDS) has not extended the range of undesirable living organisms, pathogens, degraded areas, or introduced viable non-indigenous species into the area. Local opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ocean dredged material disposal site in response to physical deposition of sediments. However, no recruitment of nuisance species or species capable of harming human health or the marine ecosystem is expected to occur at the site.

11. *Existence at or in Close Proximity to the Sites of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).* As part of the site selection for Site 69B, the Corps conducted an archaeological assessment entitled, ''Archaeological Assessment, Remote Sensing, and Underwater Archaeological Survey for the Providence River and Harbor Maintenance Dredging Project, Rhode Island, April 12, 2001.'' The archaeological assessment is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The assessment determined that no significant sites were likely to be found within the areas of interest, but there was a potential for historic resources because of known shipwrecks in the vicinity. Additional remote sensing studies were conducted and no significant cultural resources were identified. Coordination between EPA and the Corps and the Commonwealth of Massachusetts and State of Rhode Island are detailed in the FEIS. The Narragansett Tribe was included as a cooperating agency during the development of the FEIS. The Tribe has not raised any objections to the final choice of location for the RISDS.

F. Public Comments

In the preamble to the proposed rule, EPA requested public comment by June 21, 2004. EPA held two public hearings attended by an estimated total of 50 people.

June 15, 2002, at 1 p.m.: Lighthouse Inn, 307 Great Island Road, Galilee, Rhode Island 02882. (One individual presented testimony.)

June 15, 2002, at 7 p.m.: Lighthouse Inn, 307 Great Island Road, Galilee, Rhode Island 02882. (Three individuals presented testimony.)

In addition to the testimony and comments provided at the hearings, EPA also received three sets of written comments on the proposed action.

EPA received both supportive and non-supportive comments. In developing the final rule, EPA reviewed and considered all the written comments as well as those received verbally at the two public hearings. Following are summaries of the most significant comments and EPA's responses:

Designation of the RISDS as a Long-Term Disposal Site was Premature When the Currently Selected Site (69B) Would Remain in Effect Until 2013. This project was initiated at the written request on the Governor of Rhode Island in September 2000. There was a concern that the navigational needs of the region were not being met due to the lack of viable disposal options. In addition, there also was a concern that additional disposal sites, other than Site 69B, could be selected for disposal of dredged material. There are several advantages, including environmental reasons, to a designated long-term disposal site, rather than a selected site (*i.e.*, the current Site 69B). The site designation process evaluates the cumulative impacts of placing dredged material from the RIR at the site. In contrast, the site selection process requires only project-specific and individual action review of the environmental consequences at the disposal site associated with its use and not an evaluation of cumulative impacts of all potential projects. An EPA-designated site also must have a Site Monitoring and Management Plan (SMMP), whereas a selected site is not required to have a SMMP. Moreover, the EPA designation process evaluates dredging needs over long planning horizons, while the site selection process evaluates each proposed dredging project on a project-specific basis. Designating a single long-term site would limit the ocean floor footprint that would be disturbed, whereas having additional sites selected would potentially impact more of the ocean bottom.

The DEIS Relies Extensively on Outdated Baseline Data Used by the USACE to Select Site 69B. The commenter incorrectly assumed that this DEIS relied only on surveys conducted as part of the Providence River and Harbor Maintenance Dredging Project EIS and that no other surveys were conducted. The DEIS contains references and information from numerous baseline studies that were conducted in 2001–2003 in support of the RIR EIS. These surveys included: bathymetry, physical oceanography, water quality, side scan sonar, sediment profile imaging, benthic infauna, sediment chemistry, finfish trawls and chemistry, lobster trawls and chemistry, shellfish tows, and chemistry. A complete listing of surveys conducted is provided in Section 9 of the DEIS. Information from these surveys is used and referenced throughout Sections 3 and 4 of the DEIS to establish a baseline for assessing potential environmental impacts. Survey plans, survey reports, and data reports were prepared for each of the baseline surveys and approved by EPA and the Corps. As part of the public review process, these data reports also were made available to the public at two repositories and were posted on the project Web page: (*http://www.epa.gov/ne/eco/ridredge/index.html*). The availability of this information was published in the Project Public Notice of Availability.

The Rulemaking Should Limit the RISDS Capacity to 8.8 Million Cubic Yards or Less. EPA believes the comment was based on the estimated dredging needs derived from a survey of potential users, including the Corps. Based on that survey, the estimated dredging needs would generate approximately 8.8 million cubic yards of dredged material. However, there is a strong likelihood of additional needs in the future, due in part to the fact that only about 40 percent of the potential users responded to the survey. The capacity of the disposal site should not be limited to the current estimate of dredging needs.

The analysis in the DEIS calculated that the preferred alternative has an estimated physical consolidated capacity of ~20 million cubic yards. The evaluation of impacts conducted in the DEIS was performed assuming that up to 20 million cubic yards would be disposed of at the proposed site. The current disposal from the Providence River and Harbor Maintenance dredging project (projected to be ~5.5 million cubic yards) also was taken into consideration.

The SMMP reflects that the estimated capacity of the site, as designated by the specified boundaries, is approximately 20 million cubic yards. This is just an estimated capacity; there is no capacity restriction on the RISDS.

EPA carefully considered and responded to each comment it received on the FEIS. A complete Response to Comments Document (Appendix D of the FEIS) has been prepared which contains all the comments received and EPA's responses to each of these comments. That document is available for viewing at the locations specified in the **ADDRESSES** section.

G. Action

The FEIS concludes that the RISDS (currently known as Site 69B) may appropriately be designated for long-term use as a dredged material ocean disposal site. The site is compatible with the general and specific factors used for site evaluation.

EPA is publishing this Final Rule to finalize the designation of the RISDS as an EPA-approved dredged material ocean disposal site. The monitoring and management of requirements that will apply to this site are described in the draft SMMP (Appendix C of the FEIS). Management and monitoring will be carried out by EPA New England in conjunction with the Corps' New England District.

It should be emphasized that an ocean disposal site designation does not constitute or imply Corps or EPA approval of open water disposal of dredged material from any specific project. Before disposal of dredged material at the site may commence, EPA and the Corps must evaluate the proposal according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize disposal. EPA has the right to disapprove of the actual disposal, if it determines that environmental requirements under the MPRSA have not been met.

The information generated for this project and referenced in the FEIS is available for review on line at the address: *http://www.epa.gov/region1/eco/ridredge/index.html.*

H. Supporting Documents

1. EPA Region 1/USACE NED. 2004. Draft Environmental Impact Statement Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project. April, 2004.

2. EPA Region 1/USACE New England District. 2004. Final Environmental Impact Statement Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project. October, 2004.

3. EPA/USACE. 1991. Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual. Environmental Protection Agency, Washington, DC, and U.S. Army Corps of Engineers, Washington, DC. EPA–503/8–91/001. February 1991.

4. EPA Region 1/USACE/NED (New England District). 2004. Regional Implementation Manual for the Evaluation of Dredged Material Proposed for Disposal in New England Waters. U.S. Army Corps of Engineers New England District and

Environmental Protection Agency Region 1, Boston, MA. April 2004.

5. Memorandum to the File from Olga Guza. Subject: Small Businesses Applications to Place Dredged Material at Site 69B. September 28, 2004.

I. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(A) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

After considering the anticipated effects of this action in relation to these criteria, EPA has determined that it is not a ''significant regulatory action'' under Executive Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

Revised in 1995, the PRA is managed by the Office of Management and Budget through its approval of Information Collection Requests (ICRs) submitted by Federal agencies. The statute was written and revised to reduce the information collection burden on the public.

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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

3. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant adverse economic impact on small entities because the ocean disposal site designation does not regulate small entities. The site designation will only have the effect of providing a long-term, environmentally acceptable disposal option for dredged material. This action will help to facilitate the maintenance of safe navigation on a continuing basis. After considering the economic impacts of today's final rule on small entities, it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities.

4. The Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal Mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA also has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 and 205 of the UMRA do not apply to this rule.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an

accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have, ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule addresses the designation of an ocean disposal site in Rhode Island Sound for the potential disposal of dredged material. This action neither creates new obligations nor alters existing authorizations of any State, local or governmental entities. Thus, Executive Order 13132 does not apply to this rule. Although Section 6 of the Executive Order 13132 does not apply to this final rule, EPA did consult with representatives of State and local governments in developing this rule. In addition, and consistent with Executive Order 13132 and EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comments on the proposed rule from State and local officials. A summary of the concerns raised during that consultation and EPA's response to those concerns is provided in sections C and D of this preamble.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This final rule designates an ocean dredged material disposal site and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this rule. Although Executive Order 13175 does not apply to this rule, EPA consulted with tribal officials in developing this rule, particularly as it relates to potential impacts to historic or cultural resources. EPA specifically solicited additional comment on the proposed rule from tribal officials but didn't receive any.

7. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, national origin, or income level.

No action from this final rule would have a disproportionately high and adverse human health and environmental effect on any particular segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

11. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective January 18, 2005.

12. National Environmental Policy Act of 1969

Section 102(c) of the National Environmental Policy Act of 1969, Section 4321 *et seq.,* (NEPA) requires Federal agencies to prepare environmental impact statements (EIS) for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decisionmaking process careful consideration of all environmental aspects of proposed actions. Although EPA ocean dumping program activities have been determined to be ''functionally equivalent'' to NEPA, it is EPA policy to voluntarily follow NEPA procedures when designating ocean dumping sites (63 FR 58045, October 29, 1998). In addition to the Notice of Intent published in the **Federal Register** on April 6, 2001 (66 FR 18244), EPA and the Corps published legal notices in local newspapers and issued a press release inviting the public to participate in DEIS scoping meetings. Formal scoping meetings were conducted on May 17, 2001 and May 22, 2001. In addition EPA and the Corps have held public workshops and several working group meetings. A DEIS entitled, ''Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project,'' was issued on April 30, 2004. A FEIS entitled, ''Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project,'' was issued on October 22, 2004. The FEIS includes a Response to Comments Document (Appendix D) and final SMMP (Appendix C).

In addition, EPA submitted a Coastal Zone Consistency Determination to the State of Rhode Island on September 21, 2004. Coordination efforts with NMFS and USFWS for ESA and EFH consultation was completed on April 8 and April 1, respectively, during the DEIS process.

13. The Endangered Species Act

Under Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), Federal agencies are required to ''insure that any action authorized, funded, or carried on by such agency * * * is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species * * *.'' Under regulations implementing the Endangered Species Act, a Federal agency is required to consult with either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on the species involved) if the agency's action ''may affect'' endangered or threatened species or their critical habitat (50 CFR 402.14(a)).

In 2001, EPA prepared a BA for the selection of Site 69B, which is in the exact same location as the RISDS. EPA reinitiated threatened and endangered species consultation with NMFS and USFWS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 and USFWS concurred on April 1, 2004 that there are unlikely to be any effects on threatened or endangered species or their critical habitat as a result of the proposed action. The USFWS and NMFS concurred with EPA's determination that species under its jurisdiction would not likely be adversely affected by the proposed action. The BA concludes that the proposed action is not likely to affect threatened and endangered species. The BA is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

14. Magnuson-Stevens Fishery Conservation and Management Act

The 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) require the designation of essential fish habitat (EFH) for federally managed species of fish and shellfish. Pursuant to section 305(b)(2) of the MSFCMA, Federal agencies are required to consult with the National Marine Fisheries Service (NMFS) regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as follows: ''Any impact which reduces the quality and/or quantity of EFH. Adverse effects may include direct (*e.g.*, contamination or physical disruption), indirect (*e.g.*, loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.'' In 2001, an EFH assessment was prepared for the selection of Site 69B (the RISDS). EPA reinitiated EFH consultation with NMFS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 that the designation of the RISDS is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA has incorporated NMFS recommendations into the SMMP (appendix C of the FEIS). The EFH assessment concludes that the proposed action is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The EFH assessment is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

15. Plain Language Directive

Executive Order 12866 requires each agency to write all rules in plain language. EPA has written this final rule in plain language to make this final rule easier to understand.

16. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to ''expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment.'' EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means ''those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.''

Today's final rule implements Section 103 of the MPRSA, which requires that permits for dredged material are subject to EPA review and concurrence. The final rule will amend 40 CFR 228.15 by establishing the RISDS. As such, this final rule will afford additional protection of aquatic organisms at individual, population, community, or ecosystem levels of ecological structures. Therefore, EPA expects today's final rule will advance the objective of the Executive Order to protect marine areas.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: December 8, 2004.

Robert W. Varney,

Regional Administrator, EPA New England.

■ In consideration of the foregoing, EPA is amending part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by adding paragraph (b) (3) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(b) * * *

(3) Rhode Island Sound Disposal Site (RISDS).

(i) *Location:* Corner Coordinates (NAD 1983): 41°14′21″ N, 71°23′29″ W; 41°14′21″ N, 71°22′09″ W; 41°13′21″ N, 71°23′29″ W; 41°13′21″ N, 71°22′09″ W.

(ii) *Size:* One square nautical mile.

(iii) *Depth:* Ranges from 115 to 128 feet (35 to 39 meters).

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

[FR Doc. 04–27439 Filed 12–15–04; 8:45 am]

BILLING CODE 6560–50–P

PANAMA CANAL COMMISSION

48 CFR Chapter 35

Federal Acquisition Regulations

Removal of CFR Chapter

Effective October 1, 2004, the Panama Canal Commission was terminated by Public Law 108–309. Therefore the Office of the Federal Register is removing the Panama Canal Commission's regulations pursuant to its authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR 8.2

Accordingly, 48 CFR is amended by removing Chapter 35 consisting of parts 3501 through 3599.

[FR Doc. 04–55528 Filed 12–15–04; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 69, No. 241
Thursday, December 16, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19865; Directorate Identifier 2003–NM–242–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747, 757, 767 and 777 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain Boeing Model 747, 757, 767, and 777 series airplanes. That AD currently requires modifying certain drip shields located on the flight deck, and follow-on actions. This proposed AD would remove certain airplanes that are included in the applicability statement of the existing AD, and would require modifying additional drip shields on the flight deck of certain other airplanes. This proposed AD is prompted by a determination that certain airplanes have drip shields that are not adequately resistant to fire. We are proposing this AD to prevent potential ignition of the moisture barrier cover of the drip shield, which could propagate a small fire that results from an electrical arc, leading to a larger fire.

DATES: We must receive comments on this proposed AD by January 31, 2005.

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.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT:

Technical information: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6429; fax (425) 917–6590.

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

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19865; Directorate Identifier 2003–NM–242–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 received 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 Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

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

Examining the Docket

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

Discussion

On December 20, 2000, we issued AD 2000–26–04, amendment 39–12054 (65 FR 82901, December 29, 2000), for certain Boeing Model 747, 757, 767, and 777 series airplanes. That AD requires modification of certain drip shields located on the flight deck, and follow-on actions. That AD was prompted by a report that, on certain Boeing Model 747, 757, 767, and 777 series airplanes, the airplane manufacturer found some drip shields assembled with the

moisture barrier cover bonded to the insulation and multiple insulation layers bonded together using a non-flame-resistant adhesive. We issued that AD to prevent potential ignition of the moisture barrier cover of the drip shield, which could propagate a small fire that results from an electrical arc, leading to a larger fire.

Actions Since Existing AD Was Issued

Since we issued AD 2000–26–04, the airplane manufacturer has determined that additional Model 757–200, –200CB, and –200PF series airplanes in certain configurations have drip shields that were not fire-blocked from potential ignition sources.

Also, the airplane manufacturer has sampled and tested drip shield material on certain Model 747 and 767 series airplanes, and has determined that airplanes within certain line number ranges have compliant drip shields. Neither further testing nor installation of fire blocks is necessary on airplanes within these line number ranges. As a result, we estimate that approximately 550 Model 747 series airplanes and 470 Model 767 series airplanes, worldwide, will no longer be subject to the existing requirements.

Relevant Service Information

We have reviewed Boeing Service Bulletin 757–25–0226, Revision 3, dated September 2, 2004. (AD 2000–26–04 refers to the original issue of that service bulletin, dated July 3, 2000, as the acceptable source of service information for doing the required actions on certain Model 757–200, –200CB, and –200PF series airplanes.) Revision 3 of the service bulletin describes procedures for modifying certain drip shields on the flight deck by installing fire blocks in areas where the drip shield is exposed to potential ignition sources. The procedures in Revision 3 of the service bulletin are substantially similar to those in Revision 2 of the service bulletin, dated October 31, 2002. However, Revision 2 differs from the original issue of the service bulletin in that Revision 2 adds procedures for installing fire blocks above windows number 2 and 3 on the flight deck on certain airplanes. Revision 2 also clarifies certain other procedures and corrects a part number of a washer that is used with a rivet to attach fire blocks to the drip shields. We have determined that accomplishment of the actions specified in Revision 3 of the service information will adequately address the unsafe condition.

We have also reviewed Boeing Service Bulletins 747–25–3253, Revision 3, dated September 4, 2003; and 767–25–0290, Revision 4, dated October 28, 2004. (AD 2000–26–04 refers to the original issues of these service bulletins, both dated June 29, 2000, as the acceptable sources of service information for doing the required actions on affected Model 747 and 767 series airplanes.) Service bulletins 747–25–3253, Revision 3, and 767–25–0290, Revision 4, describe procedures that are similar to those in the original issue of those service bulletins. The latest revisions include a revised effectivity listing (but don't add any airplanes on which work is required) and clarify certain procedures.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would supersede AD 2000–26–04. This proposed AD would continue to require modifying certain drip shields on the flight deck, and related investigative and other specified actions. This proposed AD would remove certain Model 747 and Model 767 series airplanes from the applicability statement, and would require modifying additional drip shields on the flight deck on certain Model 757–200, –200CB, and –200PF series airplanes. This proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Difference Between the Proposed AD and Service Information.''

Difference Between the Proposed AD and Service Information

We have revised the applicability stated in paragraph (c) of this proposed AD to state that the requirements of this AD apply to Model 747 series airplanes having line numbers (L/Ns) 1 through 299 inclusive and 951 through 1234 inclusive (except L/Ns 292, 296, 297, 1174, and 1216), and Model 767 series airplanes having L/Ns 470 through 768 (except L/N 758). This applicability doesn't directly correspond to the effectivity listing of Boeing Service Bulletins 747–25–3253, Revision 3, and 767–25–0290, Revision 4. Those service bulletins state that no action is necessary on airplanes in Group 3 of Boeing Service Bulletin 747–25–3253, Revision 3, and in Group 1 of Boeing Service Bulletin 767–25–0290, Revision 4. However, instructions for airplanes in those groups have been included in the service bulletin for the convenience of affected operators, so those airplanes are included in the effectivity listing. Because no action is necessary for those airplanes, we have removed the airplanes in those groups from the applicability stated in paragraph (c) of this AD.

Changes to Existing AD

This proposed AD would retain all requirements of AD 2000–26–04. Since AD 2000–26–04 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2000–26–04	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (h).

Also, we have revised the ''Optional Sampling'' provision in paragraph (h) of this AD. We changed the service bulletin reference for Model 747 series airplanes from the original issue to Revision 3 of Boeing Service Bulletins 747–25–3253. As explained under ''Difference Between the Proposed AD and Service Information,'' Boeing has moved certain airplanes on which no action is necessary from Group 1 to Group 3 in Revision 3 of the service bulletin. We have also removed the reference to Model 767 series airplanes listed in Group 1 of Boeing Service Bulletin 767–25–0290. Boeing doesn't need any more sampling data from these airplanes.

Costs of Compliance

This proposed AD would affect about 2,222 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with the actions that are required by AD 2000–26–04 and retained in this proposed AD. The average labor rate is $65 per work hour.

ESTIMATED COSTS

Model	U.S.-registered airplanes	Work hours (estimated)	Labor cost (estimated)	Parts cost (estimated)	Maximum fleet cost (estimated)
747	105	39	$2,535	$2,300 to $3,500	$633,675
757	491	26	1,690	1,700	1,664,490
767	140	17	1,105	2,300	476,700
777	56	3	195	1,700	106,120

For Model 747 series airplanes listed in Group 1 in Boeing Service Bulletin 747–25–3253, Revision 3, in lieu of doing the modification of the drip shields, this proposed AD provides an option to take samples of the drip shields to determine if the modification is necessary. Therefore, the estimated costs above may be reduced if some airplanes do not need the modification. It would take approximately 18 work hours to do the sampling, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the sampling is estimated to be $1,170 per sampled airplane.

As many as 491 U.S.-registered Model 757–200, –200CB, and –200PF series airplanes may be subject to the new proposed actions. These new actions would take about 8 additional work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost an additional $160 per airplane (for a total parts cost of $1,860). Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators of affected airplanes is up to an additional $333,880 or $680 per airplane.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safety flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this proposed AD.

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 removing amendment 39–12054 (65 FR 82901, December 29, 2000), and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19865; Directorate Identifier 2003–NM–242–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by January 31, 2005.

Affected ADs

(b) This AD supersedes AD 2000–26–04, amendment 39–12054 (65 FR 82901, December 29, 2000).

Applicability

(c) This AD applies to Model 747, 757, 767, and 777 series airplanes having the line numbers (L/Ns) listed in Table 1 of this AD; certificated in any category.

TABLE 1.—APPLICABILITY

Model	Affected L/Ns	Except L/Ns
747	1 through 299 inclusive and 951 through 1234 inclusive	292, 296, 297, 1174, 1216.
757	2 through 895 inclusive	870, 886, 894.
767	470 through 768 inclusive	758.
777	2 through 254 inclusive	120, 219, 230, 235, 242, 245, 249.

Unsafe Condition

(d) This AD was prompted by a determination that certain airplanes have drip shields that are not adequately resistant to fire. We are issuing this AD to prevent potential ignition of the moisture barrier cover of the drip shield, which could propagate a small fire that results from an electrical arc, leading to a larger fire.

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.

Requirements of AD 2000–26–04

Modification

(f) Within 6 years after February 2, 2001 (the effective date of AD 2000–26–04, amendment 39–12054), accomplish paragraphs (f)(1), (f)(2), and (f)(3) of this AD; in accordance with Boeing Service Bulletin 747–25–3253, dated June 29, 2000, or Revision 3, dated September 4, 2003; 757–25–0226, dated July 3, 2000, or Revision 3, dated September 2, 2004; 757–25–0228, dated July 3, 2000; 767–25–0290, dated June 29, 2000, or Revision 4, dated October 28, 2004; or 777–25–0164, dated June 29, 2000; as applicable; except as provided by paragraph (g) of this AD. For Model 757–200, –200CB, and –200PF series airplanes subject to Boeing Service Bulletin 757–25–0226: As of the effective date of this AD, only Revision 3 of the service bulletin may be used. For Model 747 and 767 series airplanes: As of the effective date of this AD, only Boeing Service Bulletin 747–25–3253, Revision 3, or 767–25–0290, Revision 4, as applicable, may be used.

(1) Modify drip shields located on the flight deck by installing fire blocks.

(2) Prior to further flight following accomplishment of paragraph (f)(1) of this AD, perform a functional test of any system disturbed by the modification, in accordance with the applicable service bulletin or the Airplane Maintenance Manual (AMM), as applicable. If any functional test fails, prior to further flight, isolate the fault, correct the discrepancy in accordance with the applicable AMM, and repeat the failed test until it is successfully accomplished.

(3) Prior to further flight following the accomplishment of paragraphs (f)(1) and (f)(2) of this AD, install placards on all modified drip shields.

(g) If any wires or equipment are installed on the outboard surface of the drip shield (that is, between the drip shield and the airplane structure), modify that area in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Optional Sampling (Certain Model 747 Series Airplanes)

(h) For Model 747 series airplanes listed in Group 1 in Boeing Service Bulletin 747–25–3253, Revision 3, dated September 4, 2003: In lieu of accomplishing paragraph (f) of this AD, within 6 years after February 2, 2001, collect samples of the insulation and adhesive of the drip shields, and submit the samples to the manufacturer for testing, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–25–3253, dated June 29, 2000, or Revision 3, dated September 4, 2003. After the effective date of this AD, only Revision 3 may be used.

(1) If the test on all samples is positive, no further action is required by this AD.

(2) If the test on any sample is negative, accomplish paragraph (f) of this AD before the compliance time specified in that paragraph.

New Requirements of This AD

Model 757–200, –200CB –200PF Series Airplanes Previously Modified

(i) For Model 757–200, –200CB, and –200PF series airplanes that were modified before the effective date of this AD in accordance with Boeing Service Bulletin 757–25–0226, dated July 3, 2000: Within 6 years after the effective date of this AD, modify drip shields located above windows number 2 and 3 on the flight deck by installing fire blocks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–25–0226, Revision 3, dated September 2, 2004; except as provided by paragraph (g) of this AD. After the modification, do the actions required by paragraph (f)(2) and (f)(3) of this AD as these actions apply to the drip shields modified in accordance with this paragraph.

Previously Accomplished Actions

(j) Modifying the drip shields before the effective date of this AD in accordance with the applicable service bulletin specified in paragraph (j)(1) or (j)(2) of this AD is acceptable for compliance with the corresponding requirements of paragraphs (f) and (i) of this AD, as applicable.

(1) For Model 757–200, –200CB, and –200PF series airplanes: Boeing Service Bulletin 757–25–0226, Revision 2, dated October 31, 2002.

(2) For Model 767 series airplanes: Boeing Service Bulletin 767–25–0290, Revision 3, dated June 26, 2003.

Alternative Methods of Compliance (AMOCs)

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

(2) Except for Model 757–200, –200CB, and –200PF series airplanes listed in Boeing Service Bulletin 757–25–0226, Revision 3, dated September 2, 2004: Alternative methods of compliance, approved previously in accordance with AD 2000–26–04, amendment 39–12054, are approved as alternative methods of compliance with this AD.

Issued in Renton, Washington, on December 6, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27503 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19866; Directorate Identifier 2004–NM–25–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F 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 767–200, –300, and –300F series airplanes. This proposed AD would require verifying the part and serial numbers of certain main landing gear (MLG) bogie beam pivot pins; replacing those pivot pins with new or overhauled pivot pins if necessary; and ultimately replacing all pivot pins with new, improved pivot pins. This proposed AD is prompted by reports indicating that numerous fractures of the MLG bogie beam pivot pin have been found and that some pivot pins may have had improper rework during manufacture. We are proposing this AD to prevent fracture of the MLG bogie beam pivot pin, which could lead to possible loss of the MLG truck during takeoff or landing and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by January 31, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19866; the directorate identifier for this docket is 2004–NM–25–AD.

FOR FURTHER INFORMATION CONTACT:

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

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

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19866; Directorate Identifier 2004–NM–25–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

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

Discussion

We have received reports indicating that numerous fractures of the main landing gear (MLG) bogie beam pivot pin have been found on certain Boeing Model 767–200 and –300 series airplanes. In four cases, a portion of the pin and the uplock fitting departed the airplane. The airplane manufacturer determined that the fractures are probably due to cracks initiating in areas of heat damage and propagating due to fatigue. Also, one supplier of pivot pins to the airplane manufacturer has reported that some pivot pins may have had improper rework during manufacture, which could have caused heat damage, cracks, or other defects. Fracture of the pivot pin, if not corrected, could lead to possible loss of the MLG truck during takeoff or landing and consequent loss of control of the airplane.

The MLG on certain Model 767–300F series airplanes is identical to that on the affected Model 767–200 and –300 series airplanes. Therefore, certain Model 767–300F series airplanes may be subject to the same unsafe condition revealed on the Model 767–200 and –300 series airplanes.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–32A0202, dated July 22, 2004. The service bulletin describes procedures for a check of the part numbers and serial numbers of certain MLG bogie beam pivot pins and replacing discrepant pivot pins with new pins or overhauled pins that include a chrome plate strip as part of the pin overhaul, and for reporting the inspection results and numbers of suspect pivot pins to Boeing.

We have also reviewed Boeing Service Bulletin 767–32A0199, Revision 1, dated July 22, 2004. The service bulletin describes procedures for replacing the MLG bogie beam pivot pin with a new, improved pivot pin. The service bulletin specifies a compliance time for these actions of 6–10 years since the pivot pin was new or overhauled (depending upon airplane group), or 18 months after the original issue date of the service bulletin, whichever occurs later.

Accomplishing the actions in Service Bulletin 767–32A0199, Revision 1, eliminates the need to do the actions in Service Bulletin 767–32A0202.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require replacement of the MLG bogie beam pivot pin with a new, improved pivot pin. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Difference Between the Proposed AD and Service Bulletins.'' The proposed AD would also require sending the inspection results to the manufacturer.

Difference Between the Proposed AD and Service Bulletins

The referenced service bulletins specify compliance times relative to the date of the original issue of the service bulletins; however, this proposed AD would require compliance times relative to the effective date of the AD.

Costs of Compliance

This proposed AD would affect about 374 airplanes of U.S. registry and 857 airplanes worldwide.

The proposed inspection 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 inspection for U.S. operators is $55,705, or $65 per airplane.

The proposed pin replacement would take about 12 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $35,134 per airplane. Based on these figures, the estimated cost of the proposed pin replacement for U.S. operators is $13,431,836 or $35,914 per airplane.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safety flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this proposed AD.

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–2004–19866; Directorate Identifier 2004–NM–25–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by January 31, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category, as specified in Boeing Alert Service Bulletin 767–32A0202, and Boeing Alert Service Bulletin 767–32A0199, Revision 1, both dated July 22, 2004.

Unsafe Condition

(d) This AD was prompted by reports indicating that numerous fractures of the main landing gear (MLG) bogie beam pivot pin have been found and that some pivot pins may have had improper rework during manufacture. We are issuing this AD to prevent fracture of the MLG bogie beam pivot pin, which could lead to possible loss of the MLG truck during takeoff or landing and consequent loss of control of the airplane.

Compliance

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

Pin Inspection, Short-Term Replacement, and Discrepancy Reporting

(f) Within 6 months after the effective date of this AD, do an inspection of the part and serial numbers of the MLG bogie beam pivot pin in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0202, dated July 22, 2004.

(1) If the serial number of the pivot pin contains the letters ''MA'' or ''MAM'', no further action is required by this paragraph.

(2) If any pivot pin has a part and serial number as listed in figure 1 of the service bulletin, prior to further flight, remove and overhaul the pivot pin, or replace it with a new pivot pin or an overhauled pivot pin that includes a chrome plate strip as part of the pin overhaul; in accordance with the service bulletin.

(g) If any pivot pin has a part and serial number as listed in figure 1 of the service bulletin, submit a report of the inspection required by paragraph (f) of this AD to the Manager, Airline Support, Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD. The report must include the part and serial number of the pivot pin, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Final Pin Replacement

(h) Replace any MLG bogie beam pivot pin having part number (P/N) 161T1145–2, –3, or –4, with a new, improved pivot pin having P/N 161T1145–5, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0199, Revision 1, dated July 22, 2004. Do the replacement within the applicable compliance times specified in paragraph 1.E., ''Compliance,'' of the service bulletin; except, where the service bulletin specifies a compliance time after the original issue date of the service bulletin, this AD specifies compliance time after the effective date of this AD.

(i) Airplanes on which the replacement required by paragraph (h) of this AD is performed within the compliance time specified in paragraph (f) of this AD are not required to accomplish the inspection required by paragraph (f).

Final Pin Replacement per Previous Issue of Service Bulletin

(j) Replacing any pivot pin before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–32A0199, dated April 8, 2004, is considered acceptable for compliance with the corresponding action specified in this AD.

Part Installation

(k) As of the effective date of this AD, no person may install on any airplane a MLG bogie beam pivot pin having part number (P/N) 161T1145–2, –3, or –4, except in accordance with paragraph (f)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering

Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Issued in Renton, Washington, on December 6, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27504 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19863; Directorate Identifier 2003–NM–29–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Airbus Model A319, A320, and A321 series airplanes. The existing AD currently requires modification of the telescopic girt bar of the escape slide/raft assembly, and follow-on actions. This proposed AD would mandate a new modification of the telescopic girt bar, which would terminate the repetitive functional tests required by the existing AD. This proposed AD would also expand the applicability of the existing AD. This proposed AD is prompted by development of a new, improved modification. We are proposing this AD to prevent failure of the escape slide/raft to deploy correctly, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers.

DATES: We must receive comments on this proposed AD by January 31, 2005.

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.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT:

Technical information: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

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

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19863; Directorate Identifier 2003–NM–29–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 received 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 Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

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

Examining the Docket

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

Discussion

On August 9, 2001, the FAA issued AD 2001–16–14, amendment 39–12383 (66 FR 42939, August 16, 2001). That AD applies to certain Airbus Model A319, A320, and A321 series airplanes, and requires modifying the telescopic girt bar of the escape slide/raft assembly, and follow-on actions. That AD was prompted by several reports of the telescopic girt bar of the slide/raft assembly detaching from the door sill fittings and preventing proper deployment of the emergency escape slide. The requirements of that AD are intended to prevent failure of the escape slide/raft to deploy correctly, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers.

Actions Since Existing AD Was Issued

The preamble to AD 2001–16–14 specified that we considered the requirements ''interim action'' and that the manufacturer was developing a new modification to address the unsafe

condition. That AD explained that we may consider further rulemaking if that modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Relevant Service Information

Airbus has issued Service Bulletin A320–52–1112, Revision 02, dated September 6, 2002, which describes procedures for replacing the sliding part of the telescopic girt bar of the escape slide/raft assembly with a new part having a larger trigger; and doing an operational test after the replacement. For all airplanes, the replacement involves removing the four telescopic girt bars, installing a new slide on each of the four telescopic girt bars, and installing the four modified telescopic girt bars on the airplanes. For airplanes that have been modified per airplane configuration 02 (as required by AD 2001–16–14), the service bulletin also contains procedures for removing the ''U–shaped'' reinforcement bar installed on the four girt bar assemblies during the previous modification.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service information as mandatory and issued French airworthiness directive 2002–637(B) R1, dated April 16, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

For this reason, this proposed AD would supersede AD 2001–16–14. This proposed AD would retain the requirements of the existing AD and would mandate a new modification of the telescopic girt bar, which would constitute terminating action for the repetitive functional tests of the existing AD. This proposed AD would also expand the applicability of the existing AD.

Clarification of Concurrent Requirements

Airbus Service Bulletin A320–52–1112, Revision 02, specifies Airbus Service Bulletins A320–25–1055 (currently at Revision 15, dated February 11, 2004), and A320–25–1218 (currently at Revision 01, dated November 2, 2001), as concurrent requirements. These service bulletins describe procedures for installing Air Cruisers slide raft assemblies that are the subject of this proposed AD on the passenger/crew doors. If the slide rafts specified in these service bulletins have not been installed previously, then the airplane would not be subject to the proposed AD (*i.e.*, the airplane would not be equipped with slide rafts needing to be modified). Thus, we find it is not necessary for this proposed AD to require accomplishing Service Bulletin A320–25–1055 or A320–25–1218.

Change to Existing AD

This proposed AD would retain all requirements of AD 2001–16–14. Since AD 2001–16–14 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifier has changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIER

Requirement in AD 2001–16–14	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).

Change to Labor Rate Estimate

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.

Costs of Compliance

This proposed AD would affect about 517 airplanes of U.S. registry.

The modification that is required by AD 2001–16–14 and retained in this proposed AD takes about 7 work hours per airplane, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the estimated cost of the currently required modification is $235,235, or $455 per airplane.

The functional test that is required by AD 2001–16–14 and retained in this proposed AD takes about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required functional test is $33,605, or $65 per airplane, per test cycle.

For airplanes that have not been modified in accordance with AD 2001–16–14: The new proposed modification would take about 16 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $5,040 per airplane. Based on these figures, the estimated cost of the new modification specified in this proposed AD is $6,080 per airplane.

For airplanes that have been modified in accordance with AD 2001–16–14: The new proposed modification would take about 20 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $5,040 per airplane. Based on these figures, the estimated cost of the new modification specified in this proposed AD is $6,340 per airplane.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safety flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this proposed AD.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 removing amendment 39–12383 (66 FR 42939, August 16, 2001) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2004–19863; Directorate Identifier 2003–NM–29–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by January 31, 2005.

Affected ADs

(b) This AD supersedes AD 2001–16–14, Amendment 39–12383 (66 FR 42939, August 16, 2001).

Applicability

(c) This AD applies to Airbus Model A319, A320, and A321 series airplanes; certificated in any category; equipped with telescopic girt bars of the escape slide/raft assembly installed per Airbus Modification 20234, or Airbus Service Bulletin A320–25–1055 or A320–25–1218 in service; except those airplanes with Airbus Modification 31708.

Unsafe Condition

(d) This AD was prompted by development of a new, improved modification of the telescopic girt bar of the escape slide/raft assembly. We are issuing this AD to prevent failure of the escape slide/raft to deploy correctly, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers.

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.

Restatement of Requirements of AD 2001–16–14

Modification/Follow-On Actions

(f) For airplanes listed in Airbus Industrie All Operators Telex A320–52A1111, Revision 01, dated July 23, 2001: Within 1,500 flight hours after August 31, 2001 (the effective date of AD 2001–16–14); except as provided by paragraph (h) of this AD, modify the telescopic girt bar of the escape slide/raft assembly installed on all passenger and crew doors and do a functional test to ensure the girt bar does not retract, per Airbus Industrie AOT A320–52A1111, Revision 01, dated July 23, 2001.

(1) If the girt bar retracts, before further flight, replace any discrepant parts and do another functional test to ensure the girt bar does not retract, per the AOT. Repeat the functional test after that at intervals not to exceed 18 months until paragraph (g) of this AD is accomplished.

(2) If the girt bar does not retract, repeat the functional test thereafter at intervals not to exceed 18 months.

Note 1: Modification and follow-on actions accomplished prior to the effective date of this AD per Airbus Industrie AOT A320–52A1111, dated July 5, 2001, are considered acceptable for compliance with the applicable actions specified in this amendment.

New Requirements of This AD

Modification

(g) Within 48 months after the effective date of this AD: Modify the telescopic girt bar of the escape slide/raft assembly by doing all the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–52–1112, Revision 02, dated September 6, 2002. Accomplishing the actions required by this paragraph terminates the repetitive functional tests required by paragraph (f) of this AD.

(h) Airplanes on which the modification required by paragraph (g) of this AD is accomplished within the compliance time specified in paragraph (f) of this AD are not required to accomplish the modification required by paragraph (f).

Modifications Accomplished According to Previous Issues of Service Bulletin

(i) Modifications accomplished before the effective date of this AD in accordance with either Airbus Service Bulletin A320–52–1112, dated January 16, 2002; or Revision 01, dated April 3, 2002; are considered acceptable for compliance with paragraph (g) of this AD.

Parts Installation

(j) As of the effective date of this AD, no person may install on any airplane a telescopic girt bar of the escape slide/raft assembly unless it has been modified as required by paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, International Branch, ANM–116, has the authority to approve alternative methods of compliance (AMOCs) for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously in accordance with AD 2001–16–14, amendment 39–12383, are approved as AMOCs with paragraph (f) of this AD.

Related Information

(l) French airworthiness directive 2002–637(B) R1, dated April 16, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on December 6, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27505 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18678; Directorate Identifier 2001–NM–312–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. The original NPRM would have required repetitive detailed inspections of the rear fuselage upper skin to detect cracking due to fatigue, and repair if necessary. The original NPRM was prompted by evidence of cracking due to fatigue along the edges of certain chemi-etched pockets in the rear fuselage upper skin. This new action revises the area of inspection specified in the original NPRM. We are proposing this supplemental NPRM to prevent a possible sudden loss of cabin pressure and consequent injury to passengers and flightcrew.

DATES: We must receive comments on this supplemental NPRM by January 10, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–18678; the directorate identifier for this docket is 2001–NM–312–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. 2000–FAA–18678; Directorate Identifier 2001–NM–312–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

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

Examining the Docket

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

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an airworthiness directive (AD) (the ''original NPRM''). The original NPRM applies to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. The original NPRM was published in the **Federal Register** on July 26, 2004 (69 FR 44474). The original NPRM proposed to require repetitive detailed inspections of the rear fuselage upper skin to detect cracking due to fatigue, and repair if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the original NPRM.

Request To Clarify Inspection Area

The commenter notes a discrepancy between the original NPRM and the source of service information for the inspection (Inspection Service Bulletin ISB.53–164). The original NPRM specifies inspecting the rear fuselage skin, and the service bulletin specifies inspecting the center and rear fuselage skin. The commenter requests that we clarify the area to be inspected.

The commenter notes another potential conflict between the original NPRM and the service bulletin. While paragraph (f) the original NPRM specifies inspecting ''the rear fuselage upper skin,'' the service bulletin specifies inspecting ''all the lap joints (stringers 2, 10, 19, and 30).'' The commenter requests that we define the term ''upper skin''—specifically, the lap joints of the upper skin that must be inspected.

We agree that clarification is necessary. The original NPRM specifies inspecting only the rear fuselage skin; reference to the center fuselage skin was inadvertently omitted from this proposed requirement. We have revised paragraph (f) in this supplemental NPRM to require inspection of the center and rear fuselage skin including all the lap joints at stringers 2, 10, 19, and 30.

Request To Revise Repetitive Interval

The commenter requests that we revise the repetitive inspection interval in paragraph (f)(1)(i) of the original NPRM for Model Avro 146–RJ series airplanes. The commenter requests that the proposed interval be extended from 4,000 to 6,000 landings. The commenter asserts that a 6,000-landing interval would better accommodate maintenance schedules.

We do not agree with the request. We have determined that a 4,000-landing interval represents the maximum interval of time allowable for the affected airplanes to continue to safely operate between inspections. We have not changed this supplemental NPRM regarding this issue.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

Certain changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

This supplemental NPRM would affect about 55 airplanes of U.S. registry. The proposed actions would take about 4 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the supplemental NPRM for U.S. operators is $14,300, or $260 per airplane, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this supplemental NPRM would not have federalism implications under Executive Order 13132. This supplemental NPRM 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 supplemental NPRM. *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):

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2004–18678; Directorate Identifier 2001–NM–312–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by January 10, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by evidence of cracking due to fatigue along the edges of certain chemi-etched pockets in the rear fuselage upper skin. We are issuing this AD to prevent a possible sudden loss of cabin pressure and consequent injury to passengers and flightcrew.

Compliance

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

Inspection and Repair

(f) Within the applicable compliance times specified in paragraph (f)(1) or (f)(2) of this AD, perform a detailed inspection to detect cracking of the center and rear fuselage skin, including all the lap joints at stringers 2, 10, 19, and 30, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–164, dated July 10, 2001.

Note 1: For the purposes of this AD, a detailed inspection is: ''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) For Model Avro 146–RJ series airplanes: Inspect before the accumulation of 10,000 total landings, or within 2,000 landings after the effective date of this AD, whichever is later.

(i) For areas where no crack is found, repeat the inspection at intervals not to exceed 4,000 landings.

(ii) For areas where any crack is found, before further flight, perform repairs in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent). No further inspection of any repaired area is required by this AD.

(2) For Model BAe 146 series airplanes: Inspect before the accumulation of 16,000 total landings, or within 4,000 landings after the effective date of this AD, whichever is later.

(i) For areas where no crack is found, repeat the inspection at intervals not to exceed 8,000 landings.

(ii) For areas where any crack is found, before further flight, perform repairs in accordance with a method approved by the Manager, International Branch, ANM–116; or the CAA (or its delegated agent). No further inspection of any repaired area is required by this AD.

No Reporting Requirement

(g) Although the referenced service bulletin specifies to submit appendix 1 of the service bulletin with certain information to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, ANM–116, 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 December 6, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27511 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19867; Directorate Identifier 2004–NM–58–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model MD–90–30 airplanes. This proposed AD would require replacing existing dual anti-skid control manifolds (DACM) with new, improved or reworked and reidentified DACMs; inspecting the inlet filters and other components of the DACMs for damage; replacing any damaged DACM components with new or serviceable components; and flushing/cleaning the braking system prior to replacing the inlet filters. This proposed AD is prompted by reports of multiple incidents of blown tires on landing while using maximum autobrake. We are proposing this AD to prevent metallic fibers from the first stage filter of the servo valves inside the DACM from becoming lodged in the first stage nozzle of the servo valve, which could lead to tire failure during high speed/

high energy braking and possible subsequent runway departure.

DATES: We must receive comments on this proposed AD by January 31, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19867; the directorate identifier for this docket is 2004–NM–58–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Cheyenne Del Carmen, Aerospace Engineer, Cabin Safety, Mechanical & Environmental Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

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

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19867; Directorate Identifier 2004–NM–58–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You 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 can 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 of multiple incidents of blown tires on landing while using maximum autobrake on McDonnell Douglas Model MD–90–30 airplanes. The reports indicate that, due to filter contamination, structural damage, or excessive wear, metallic fibers from the first stage filter of the servo valves inside the dual anti-skid control manifold (DACM) are becoming lodged in the first stage nozzle of the servo valve. This condition, if not corrected, could result in tire failure during high speed/high energy braking and possible subsequent runway departure.

Relevant Service Information

We have reviewed McDonnell Douglas Service Bulletin MD90–32–056, dated October 7, 2003. The service bulletin describes procedures for replacing existing DACMs with new, improved or reworked and reidentified DACMs.

Service Bulletin MD90–32–056 specifies prior or concurrent accomplishment of McDonnell Douglas Service Bulletin MD90–32–043, Revision 01, dated November 9, 2000.

We have reviewed Service Bulletin MD90–32–043, which describes procedures for replacing the metered pressure inlet filters of the DACM with new filters. Service Bulletin MD90–32–043 also describes procedures for inspecting the inlet filters and other components of the DACM for damage, and flushing/cleaning the braking system prior to replacing the inlet filters.

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

Service Bulletin MD90–32–056 refers to Aircraft Braking Systems Corporation (ABSC) Service Bulletin MD–90 6006079–32–02, dated August 7, 2003, as an additional source of service information for reworking and reidentifying DACMs.

Service Bulletin MD90–32–043 refers to ABSC Service Bulletin MD90–32–12, dated January 12, 2000, as an additional source of service information for inspecting components of the DACM for cleanliness, structural damage, or excessive wear, and replacing any damaged components with new or serviceable components.

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 replacing DACMs with new, improved or reworked and reidentified DACMs;

inspecting the inlet filters and other components of the DACMs for damage; replacing any damaged DACM components with new or serviceable components; and flushing/cleaning the braking system prior to replacing the inlet filters; in accordance with Service Bulletin MD90–32–056, dated October 7, 2003, and Service Bulletin MD90–32–043, Revision 01, dated November 9, 2000; except as discussed under ''Differences Between Service Information and the Proposed AD.''

Differences Between Service Information and the Proposed AD

Although Service Bulletin MD90–32–056 recommends that ''operators do this service bulletin at a scheduled maintenance period when manpower, materials, and facilities are available,'' we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 18 months for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Although Service Bulletin MD90–32–043, Revision 01, specifies inspecting the DACM assembly inlet filters for damage, this proposed AD would require a detailed inspection of the filters to eliminate any possible confusion about the proper type of inspection. Note 3 of this proposed AD includes a definition of this type of inspection.

Costs of Compliance

This proposed AD would affect about 115 airplanes worldwide and 24 airplanes of U.S. registry. The proposed actions would take about 8 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost between $8,000 and $240,780 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $204,480 and $5,791,200, or between $8,520 and $241,300 per airplane.

Regulatory Authority and Findings

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, General requirements. Under that section, the FAA is charged with prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety and air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

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–2004–19867; Directorate Identifier 2004–NM–58–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by January 31, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model MD–90–30 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of multiple incidents of blown tires on landing while using maximum autobrake. We are issuing this AD to prevent metallic fibers from the first stage filter of the servo valves inside the dual anti-skid control manifolds (DACM) from becoming lodged in the first stage nozzle of the servo valve, which could lead to tire failure during high speed/high energy braking and possible subsequent runway departure.

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.

Replacement of DACMs

(f) Within 18 months after the effective date of this AD, replace existing DACMs with new, improved or reworked and reidentified DACMs, part number 6006079–2, by doing all actions in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD90–32–056, dated October 7, 2003.

Note 1: McDonnell Douglas Service Bulletin MD90–32–056 refers to Aircraft Braking Systems Corporation (ABSC) Service Bulletin MD–90 6006079–32–02, dated August 7, 2003, as an additional source of service information for installing new, improved or reworked and reidentified DACMs.

Concurrent Service Bulletin

(g) Prior to or concurrent with the accomplishment of paragraph (f) of this AD, perform paragraphs (g)(1) and (g)(2) of this AD in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD90–32–043, Revision 01, dated November 9, 2000.

(1) Perform a detailed inspection of the metered pressure inlet filters and other components of the DACM for damage. Replace any damaged DACM components with new or serviceable components, and flush/clean the braking system, as applicable.

(2) Replace the metered pressure inlet filters of the DACM assembly with new filters.

Note 2: McDonnell Douglas Service Bulletin MD90–32–043, Revision 01, refers to ABSC Service Bulletin MD90–32–12, dated January 12, 2000, as an additional source of service information for inspecting the components of the DACM assembly for uncleanliness, structural damage or excessive wear that may render the DACM inoperable, and for replacing those components with new or serviceable components, if necessary.

Note 3: For the purposes of this AD, a detailed inspection is ''an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good

lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required.''

Prior Inspection/Replacement of Inlet Filters

(h) Inspecting and replacing DACM inlet filters and flushing/cleaning braking systems before the effective date of this AD in accordance with McDonnell Douglas Service Bulletin MD90–32–043, dated April 10, 2000, is considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Los Angeles Aircraft Certification Office, 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 December 6, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27512 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19891; Directorate Identifier 2004–NM–136–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes Modified in Accordance With Supplemental Type Certificate (STC) ST00127BO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Boeing Model 737–300, –400, and –500 series airplanes modified in accordance with STC ST00127BO. This proposed AD would require installation of bonding straps to the safe side harnesses of the digital transient suppression device of the fuel quantity indicating system. This proposed AD is prompted by the results of fuel system reviews conducted by the STC holder. We are proposing this AD to prevent unsafe levels of current or energy from entering the fuel tank, due to hot short faults or threat conditions associated with the safe side harness assembly, which could result in a fire or explosion of the fuel tank.

DATES: We must receive comments on this proposed AD by January 31, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Goodrich Fuel & Utility Systems, Goodrich Corporation, 100 Panton Road, Vergennes, Vermont 05491.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19891; the directorate identifier for this docket is 2004–NM–136–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Richard Spencer, Aerospace Engineer, Boston Aircraft Certification Office, ANE–150, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7184; fax (781) 238–7170.

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

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19891; Directorate Identifier 2004–NM–136–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to

those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

As a result of fuel system reviews associated with SFAR 88, the STC holder determined that the existing design of the safe side harness for the digital transient suppression device (DTSD) does not incorporate a method of positively bonding the harness shields to the airframe on certain Boeing transport category airplanes that have been modified in accordance with STC ST00127BO. The DTSD is designed to limit current and energy present during external threat (lightning/electromagnetic interference (EMI)) conditions from being introduced to the fuel quantity indicating system (FQIS) wiring. Bonding of the shielded safe side wire harnesses that extend from the DTSD to the fuel tank entry is essential to ensure that any induced threats or hot short faults are limited to safe levels. Unsafe levels of current or energy entering the fuel tank, due to hot short faults or threat conditions associated with the safe side harness assembly, if not corrected, could result in a fire or explosion of the fuel tank.

Relevant Service Information

We have reviewed Goodrich Service Bulletin 737–300766–28–2, Revision 2, dated July 28, 2004. The service bulletin describes procedures for:

1. Installing bonding straps on each safe side harness.
2. Modifying each safe side harness connector backshell at the tank penetrations and at the DTSDs.
3. Replacing only the backshell for all circular tank and center tank penetrations and DTSD connections that use a short 90 degree connector backshell.
4. Replacing the whole backshell for all rectangular wing tank penetrations that use a long 90 degree connector backshell.
5. Installing ground bracket(s) at the wing tank penetration(s).
6. Installing a ground bracket at the center tank penetration.
7. Installing a ground bracket at wing station DTSD locations.
8. Installing a ground bracket at center tank DTSD location.
9. Installing fuel quantity warning labels of the safe side harnesses.
10. Modifying part number labels for the safe side harness.
11. Bonding verification.
12. Ensuring each safe side harness meets the requirements for minimum clearances from other airplane equipment.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The Goodrich service bulletin specifies that the actions must be accomplished within the ''applicable AD compliance period.''

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 accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 404 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 2 airplanes of U.S. registry. The proposed actions would take about 9 work hours per airplane, at an average labor rate of $65 per work hour. For airplanes equipped with a Cinch rectangular connector, required parts would cost about $1,650 per airplane. For all other airplanes, required parts would cost about $1,500 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $2,085 and $2,235 per airplane.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safety flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

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–2004–19891; Directorate Identifier 2004–NM–136–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by January 31, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes modified in accordance with Supplemental Type Certificate (STC) ST00127BO, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the STC holder. We are proposing this AD to prevent unsafe levels of current or energy from entering the fuel tank, due to hot short faults or threat conditions associated with the safe side harness assembly, which could result in a fire or explosion of the fuel tank.

Compliance

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

Modification

(f) Within 12 months after the effective date of this AD, modify the safe side harness connectors at the tank penetrations and the digital transient suppression devices, in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 737–300766–28–2, Revision 2, dated July 28, 2004.

Parts Installation

(g) As of the effective date of this AD, no person may install a safe side harness, Part Number 50357–01XX, on any airplane, unless that safe side harness has been modified in accordance with Goodrich Service Bulletin 737–300766–28–2, Revision 2, dated July 28, 2004.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on December 3, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27519 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–129–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series 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 all Lockheed Model L–1011–385 series airplanes, that would have required repetitive inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane; corrective actions if necessary; and incorporation of certain structural modifications. This new action revises the proposed rule by referencing a new service bulletin that, among other changes, corrects the effectivity and revises the modification threshold of various secondary service bulletins. The actions specified by this new proposed AD are intended to prevent corrosion or fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 10, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–129–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. 99–NM–129–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 Lockheed Martin Aircraft & Logistics Centers, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: William Herderich, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6082; fax (770) 703–6097.

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 99–NM–129–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. 99–NM–129–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 all Lockheed Model L–1011–385 series airplanes, was published as a notice of proposed rulemaking (NPRM) (hereafter referred to as ''the original NPRM'') in the **Federal Register** on December 9, 1999 (64 FR 68960). The original NPRM would have required repetitive inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane; corrective actions if necessary; and incorporation of certain structural modifications. The original NPRM was prompted by new recommendations related to incidents of fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. Such corrosion or fatigue cracking in certain structural elements, if not corrected, could result in reduced structural integrity of the airplane.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Request To Reference Latest Revision of Service Bulletin

One commenter, the airplane manufacturer, provides clarification about the compliance times specified in paragraphs (a)(1), (a)(2), (c)(1), and (c)(2) of the original NPRM as they pertain to certain service bulletins identified in Lockheed Tristar L–1011 Service Bulletin (SB) 093–51–041, dated April 27, 1998 (which is referenced in the original NPRM as the appropriate source of service information for accomplishing the proposed actions; hereafter called the ''Collector Service Bulletin''). The commenter states that it will initiate Revision 1 of the Collector Service Bulletin to reflect that continuing inspections are called for by SB 093–57–208; to list the latest revision CN4, dated May 8, 1998, of SB 093–53–260; to reference AD 99–09–14, amendment 39–11147 (64 FR 20144, April 28, 1999); and to revise the threshold of certain modifications.

From this comment, the FAA infers that the commenter is requesting that the original NPRM reference Revision 1 of the Collector Service Bulletin. We agree. The original issue of the Collector Service Bulletin was referenced in the original NPRM as the appropriate source of service information. The original issue describes procedures for certain repetitive inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane; corrective actions, if necessary; and incorporation of certain structural modifications. Since the issuance of the original NPRM, we have reviewed and approved Revision 1 of Lockheed SB 093–51–41, dated March 3, 2000. Revision 1 of the service bulletin corrects the effectivity and revises the ''Modification Termination Threshold'' of various secondary SBs; revises SB 093–53–260, CN3 to CN4; and contains certain editorial changes. We have revised the supplemental NPRM to include reference to Revision 1 of SB 093–51–041 as the appropriate source of service information.

Requests To Clarify Certain Compliance Times

One commenter, the airplane manufacturer, provides further clarification about the compliance times specified in paragraphs (a)(1) and (a)(2) of the original NPRM for the inspections specified in SB 093–57–058, R5–CN1, dated August 22, 1995, which is listed in the Collector Service Bulletin. The commenter states the SB 093–57–208, Revision 1, dated October 28, 1997, which is also listed in the Collector Service Bulletin, forces inspection of the center box wing spar web at different frequencies. Since both of these SBs will be mandated, the commenter assumes the earlier schedule will take precedence.

From this comment, we infer that the commenter is requesting that the compliance times specified in paragraphs (a)(1) and (a)(2) of the supplemental NPRM be clarified. We agree. We find that paragraph (c)(1) of the supplemental NPRM also needs to be clarified. Those paragraphs refer to the threshold and repetitive intervals specified in the individual service bulletin as listed in Tables 1 and II of the Collector Service Bulletin, as applicable. In the ''Inspection Threshold'' and ''Reinspection Intervals'' columns of Tables 1 and II, the Collector Service Bulletin references a total of eight notes (*i.e.*, three notes in Table 1 and five notes in Table II) located at the bottom of those tables. Our intent was that the information specified in those notes be required as part of the applicable compliance time.

As indicated in NOTE (1) of Tables I and II the Collector Service Bulletin, ''Inspection thresholds and repeat inspection intervals are shown for convenience, in the event of conflicts the individual service bulletin shall take precedence. Some service bulletins contain inspection options that are not shown here.'' Therefore, for the subject inspections, the inspection times listed in SB 093–57–058, R5–CN1, take precedence.

In light of this request and other similar requests below, we find that operators may misinterpret the compliance times specified in the original NPRM. Therefore, for clarification purposes, we have revised the supplemental NPRM by listing the compliance times for each individual service bulletin in a table (*i.e.*, Table 1) and revised paragraphs (a)(1), (a)(2), and (c)(1) to refer to the individual service bulletin listed in Table 1.

One commenter requests that the compliance times specified in paragraphs (a)(1) and (a)(2) of the original NPRM for the initial fatigue-related inspection (*i.e.*, reference SB 093–53–276, Basic, dated June 17, 1996) be clarified as to whether that inspection is to be done at two or four years or is dependent upon corrosion inhibiting compound (CIC) application. The commenter notes that Table 1 of the ''Collector Service Bulletin states that the repetitive interval for Service Bulletin 093–53–276 is ''CPCP (5).'' The commenter states that SB 093–53–276 refers to two Corrosion Prevention and Control Program (CPCP) tasks, which are accomplished repetitively at either two or four years (if 2 part CIC is used).

We do not agree. SB 093–53–276 recommends the use of the initial and repetitive intervals specified in corrosion tasks C–53–120–04 and C–53–160–01, as described in the Lockheed Corrosion Prevention and Control Program (CPCP). In this case, the later of the times is the 15-year threshold and

10-year repetitive interval specified in C–53–160–01. No change to the supplemental NPRM is necessary in this regard.

One commenter requests that SB 093–53–266, which is referenced in the Collector Service Bulletin as an additional source of service information, be revised as described in items 1 through 4 below.

1. The initial threshold should be ''prior to the threshold listed in SB 093–53–266, or within one 'C' interval after the effective AD date of the AD, whichever occurs later.'' From this comment, we infer that the commenter is requesting a grace period for the initial threshold specified in the service bulletin, because the compliance time specified in the subject SB is ''within 1 year after receipt of this service bulletin.''

We do not agree. As indicated in ''NOTE 2'' of the Collector Service Bulletin, ''* * * perform these inspections as specified except substitute 'Effective Date of Airworthiness Directive' for 'After Receipt of Service Bulletin.' '' Therefore, the initial threshold specified in this supplemental NPRM is within 1 year after the effective date of this AD for that SB. However, for clarification purposes, we have revised the supplemental NPRM by listing the compliance times for each individual service bulletin in Table 1 and revised paragraphs (a)(1), (a)(2), and (c)(1) to refer to the individual service bulletin listed in that table (discussed previously).

2. For airplanes not previously repaired per SB 093–53–264: Within 1 year, do the inspection per paragraph B of the Accomplishment Instructions of SB 093–53–266, and repetitively inspect frames found to be cracked at intervals not to exceed 90 days until modified by the referenced ''LCC'' drawing.

We do not agree. The 1-year inspection threshold is already identified in paragraph (1)(C)(1) of SB 093–53–266. In addition, it is our policy to require repair of known cracks before further flight (we may make exceptions to this policy in certain cases of unusual need, as discussed below). This policy is based on the fact that such damaged airplanes do not conform to the FAA-certificated type design and, therefore, are not airworthy until a properly approved repair is incorporated. While recognizing that repair deferrals may be necessary at times, our policy is intended to minimize adverse human factors relating to the lack of reliability of long-term repetitive inspections, which may reduce the safety of the type certificated design if such repair deferrals are practiced routinely. Additionally, our policy applies to airplanes certificated to damage tolerance evaluation regulations, as well as those not so certificated.

As noted above, we may make an exception to this policy in certain cases, if there is an unusual need for a temporary deferral. Unusual needs include such circumstances as legitimate difficulty in acquiring parts to accomplish repairs. Under such conditions, we may allow a temporary deferral of the repair, subject to a stringent inspection program acceptable to us. We acknowledge that the manufacturer has specified inspection intervals that are intended to allow continued operation with known cracks, and to prevent the need for extensive repairs. However, since we are not aware of any unusual need for repair deferral in regard to this supplemental NPRM, we have not evaluated these inspection intervals.

We consider the compliance times in this supplemental NPRM to be adequate to allow operators time to acquire parts to have on hand in the event that a crack is detected during inspection. Therefore, we have determined that, due to the safety implications and consequences associated with such cracking, any subject frame that is found to be cracked must be repaired or modified prior to further flight. No change to the supplemental NPRM is necessary in this regard.

3. For airplanes previously repaired per LCC drawings LCC–7622–337 or –325: Within 15,000 flight after repair installation, and thereafter at intervals not to exceed 15,000 cycles, inspect per paragraph C of the Accomplishment Instructions of SB 093–53–266.

We do not agree. The compliance times identified by the commenter are already identified in paragraph (1)(C)(2) of SB 093–53–266. No change to the supplemental NPRM is necessary in this regard.

4. For airplanes repaired or modified per SB 093–53–264 or –266: Every heavy maintenance visit (HMV), do a visual inspection per paragraph C of SB 093–53–266.

We do not agree. The compliance time identified by the commenter is already identified in paragraph (1)(C)(3) of SB 093–53–266. No change to the supplemental NPRM is necessary in this regard.

One commenter, the airplane manufacturer, notes that Table II of the Collector Service Bulletin does not specify a threshold or repetitive interval for SB 093–53–054, Revision 1, dated August 12, 1975. However, the notes of the Collector Service Bulletin say to modify at next HMV. The commenter notes that this SB is a modification only.

From this comment, we infer that the commenter is requesting that the compliance times specified in paragraph (c)(1) of the supplemental NPRM be clarified. We agree. For clarification purposes, we have revised the supplemental NPRM by listing the compliance times for each individual service bulletin in Table 1 and revised paragraphs (a)(1), (a)(2), and (c)(1) to refer to the individual service bulletin listed in that table (discussed previously).

Request for Credit for Previously Approved Alternative Methods of Compliance (AMOC) for Other ADs

One commenter requests that previously approved AMOCs for other ADs (*i.e.*, AD 91–21–51, and AD 99–09–14) that refer to several of the SBs listed in the Collector Service Bulletin be approved for the original NPRM.

We do not agree. We find that any previously approved AMOC must be assessed for its impact on the actions specified by this supplemental NPRM. Paragraph (d) of this supplemental NPRM provides affected operators the opportunity to apply for an AMOC. No change to the supplemental NPRM is necessary in this regard.

Conclusion

Since certain of 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 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. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

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 235 airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 32 work hours per airplane (for actions specified in Table I of the Collector Service Bulletin) and 97 work hours per airplane (for actions specified in Table II of the Collector Service Bulletin) to accomplish the proposed inspections, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $243,360, or $2,080 per airplane, per inspection cycle (for Table I), and $737,685, or $6,305 per airplane, per inspection cycle (for Table II).

It would take approximately 614 work hours per airplane to accomplish the proposed modifications, at an average labor rate is $65 per work hour. Required parts would cost approximately $142,275 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $21,315,645, or $182,185 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.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safety flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

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:

Lockheed: Docket 99–NM–129–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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) 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 corrosion or fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspections

(a) At the time specified in the ''Initial Compliance Time'' column of Table 1 of this AD, perform structural inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane, in accordance with the applicable service bulletins listed under ''Service Bulletin Number, Revision, and Date'' in Tables I and II of Lockheed Tristar L–1011 Service Bulletin 093–51–041, Revision 1, dated March 3, 2000. Thereafter, repeat the inspections at intervals specified in the ''Repetitive Intervals'' column of Table 1 of this AD.

TABLE 1.—COMPLIANCE TIMES

Lockheed service bulletin	Initial compliance time (whichever occurs later between the times in ''Inspection Threshold'' and ''Grace Period'')		Repetitive intervals
	Inspection threshold	Grace period	
(1) 093–53–269, Revision 1, dated October 28, 1997.	Before the accumulation 8,000 total flight cycles or 15,000 total flight hours, whichever occurs first.	Within 6,450 flight cycles or 5 years after the effective date of this AD, whichever occurs first.	At intervals not to exceed 6,450 flight cycles or 5 years, whichever occurs first.
(2) 093–53–274, dated May 28, 1997.	Within 14 months after the effective date of this AD.	(None)	At intervals not to exceed 14 months.

TABLE 1.—COMPLIANCE TIMES—Continued

Lockheed service bulletin	Initial compliance time (whichever occurs later between the times in "Inspection Threshold" and "Grace Period")		Repetitive intervals
	Inspection threshold	Grace period	
(3) 093–53–275, dated December 10, 1996.	Within 6,450 flight cycles or 5 years after the effective date of this AD, whichever occurs first.	(None)	(None).
(4) 093–53–276, dated June 17, 1996.	At the next Corrosion Prevention and Control Program (CPCP) inspection after the effective date of this AD.	(None)	At intervals not to exceed the next CPCP inspection.
(5) 093–57–085, Revision 1, dated December 1, 1997.	Before the accumulation of 26,000 total flight cycles or 48,000 total flight hours, whichever occurs first.	Within 1,800 flight cycles or 3,300 flight hours after the effective date of this AD, whichever occurs first.	At intervals not to exceed 1,800 flight cycles or 3,300 flight hours, whichever first occurs first.
(6) 093–57–208, Revision 1, dated October 28, 1997.	Before the accumulation of 18,000 total flight cycles.	Within 6,450 flight cycles or 5 years after the effective date of this AD, whichever occurs first.	At intervals not to exceed 6,450 flight cycles or 5 first years, whichever occurs first.
(7) 093–52–210, dated July 19, 1991.	Within 5,000 flight hours or 18 months after the effective date of this AD, whichever occurs first.	(None)	(None).
(8) 093–53–054, dated August 12, 1975.	Within 6,450 flight cycles or 5 years after the effective date of this AD, whichever occurs first.	(None)	(None).
(9) 093–53–070, Revision 3, dated September 19, 1989.	Before the accumulation of 6,000 total flight hours.	Within 1,500 flight hours after the effective date of this AD.	At intervals not to exceed 3,000 flight hours.
(10) 093–53–085, Revision 3, dated December 15, 1989.	Part I: Before the accumulation of 20,000 flight cycles or 37,000 total flight hours, whichever occurs first.	Part I: Within 1,600 flight cycles or 3,000 flight hours after the effective date of this AD, whichever occurs first.	Part I: At intervals not to exceed 1,600 flight cycles or 3,000 flight hours, whichever occurs first.
	Part II: Before the accumulation of 30,000 flight cycles or 55,000 total flight hours, whichever occurs first.	Part II: Within 5,000 flight cycles or 9,200 flight hours after the effective date of this AD, whichever occurs first.	Part II: At intervals not to exceed 5,000 flight cycles or 9,200 flight hours, whichever occurs first.
(11) 093–53–086, Revision 5, dated April 12, 1990.	Before the accumulation of 9,000 flight cycles or 10,000 flight hours, whichever occurs first.	Within 1,600 flight cycles or 3,000 flight hours after the effective date of this AD, whichever occurs first.	At intervals not to exceed 1,600 flight cycles or 3,000 flight hours, whichever occurs first.
(12) 093–53–110, Revision 1, dated May 7, 1993.	Before the accumulation of 22,000 total flight cycles or 40,000 total flight hours, whichever occurs first.	Within 2,200 flight cycles or 4,000 flight hours after the effective date of this AD, whichever occurs first.	At intervals not to exceed 2,200 flight cycles or 4,000 flight hours, whichever occurs first.
(13) Change Notification 093–53–260, CN4, dated May 8, 1998.	Before the accumulation of 8,000 total flight cycles or 20,000 total flight hours, whichever occurs first.	Within 800 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.	At intervals not to exceed 800 flight cycles or 1,500 flight hours, whichever occurs first.
(14) Change Notification 093–53–266, CN1, dated July 10, 1992.	Within 12 months after the effective date of this AD.	(None)	At intervals not to exceed 90 days.
(15) Change Notification 093–57–058, R5–CN1, dated May 3, 1993.	Before the accumulation of 20,000 total flight cycles or 37,000 total flight hours, whichever occurs first.	Within 1,600 flight cycles or 3,000 flight hours after the effective date of this AD, whichever occurs first.	At intervals not to exceed 1,600 flight cycles or 3,000 flight hours, whichever occurs first.
(16) Change Notification 093–57–195, R3–CN1, dated August 22, 1995.	For airplanes having serial numbers (S/N) 1002 through 1109 inclusive: Before the accumulation of 20,000 total flight cycles. For airplanes having S/Ns 1110 through 1250 inclusive: Before the accumulation of 30,000 total flight cycles..	Within 2,200 flight cycles after the effective date of this AD.	At intervals not to exceed 2,200 flight cycles.

TABLE 1.—COMPLIANCE TIMES—Continued

Lockheed service bulletin	Initial compliance time (whichever occurs later between the times in "Inspection Threshold" and "Grace Period")		Repetitive intervals
	Inspection threshold	Grace period	
(17) Change Notification 093–57–213, CN1, dated February 20, 1996.	For Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15: Before the accumulation of 15,00 total flight cycles. For Model L–1011–385–3: Before the accumulation of 10,000 total flight cycles..	Within 6,450 flight cycles or 5 years after the effective date of this AD, whichever occurs first.	At intervals not to exceed 6,450 flight cycles or 5 years, whichever occurs first.

Corrective Action

(b) If any cracking or corrosion is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the actions specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD.

(1) Repair in accordance with the applicable service bulletin referenced in Table I or II of Lockheed Tristar L–1011 Service Bulletin 093–51–041, Revision 1, dated March 3, 2000.

(2) Repair in accordance with the applicable section of the Lockheed L–1011 Structural Repair Manual.

(3) Accomplish the terminating modification in accordance with the applicable service bulletin referenced in Table I or II of Lockheed Tristar L–1011 Service Bulletin 093–51–041, Revision 1, dated March 3, 2000.

(4) Repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Terminating Action

(c) Within 5 years or 5,000 flight cycles after the effective date of this AD, whichever occurs first, install the terminating modification referenced in the applicable service bulletin listed in Table 1 of this AD, per the applicable service bulletin. Such installation constitutes terminating action for the applicable structural inspection required by paragraph (a) of this AD.

Alternative Methods of Compliance

(d) 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, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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.

Issued in Renton, Washington, on December 7, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27520 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 637

RIN 0702–AA44

Military Police Investigations

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of the Army proposes to add its regulation concerning military police investigations. The regulation prescribes policies and procedures on types and categories of offenses investigated by Military Police and DA Civilian detectives/investigators.

DATES: Comments submitted to the address below on or before February 14, 2005 will be considered.

ADDRESSES: You may submit comments, identified by "32 CFR Part 637 and RIN 0702–AA44" in the subject line, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *james.crumley@hqda-aoc.army.pentagon.mil.* Include 32 CFR part 637 and RIN 0702–AA44 in the subject line of the message.
- Mail: Headquarters, Department of the Army, Office of the Provost Marshal General, ATTN: DAPM–MPD–LE, 2800 Army Pentagon, Washington, DC 20310–2800.

FOR FURTHER INFORMATION CONTACT: James Crumley (703) 692–6721.

SUPPLEMENTARY INFORMATION:

A. Background

This rule has not previously been published. The Administrative Procedure Act, as amended by the Freedom of Information Act requires that certain policies and procedures and other information concerning the Department of the Army be published in the **Federal Register**. The policies and procedures covered by this regulation fall into that category.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does 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. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the proposed rule does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the proposed rule does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this proposed rule does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this proposed rule does not apply because it will not have a substantial 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.

Jeffery B. Porter,

Chief, Law Enforcement Policy and Oversight Section.

List of Subjects in 32 CFR Part 637

Crime. Investigations. Law. Law enforcement. Law enforcement officers. Military law. Search Warrant.

For reasons stated in the preamble the Department of the Army proposes to add Part 637 to Subchapter I of Title 32 to read as follows:

PART 637—MILITARY POLICE INVESTIGATIONS

Subpart A—Investigations

Sec.

637.1 General.
637.2 Use of MPI and DAC Detectives/Investigators.
637.3 Installation Commander.
637.4 Military Police and the USACIDC.
637.5 Off-post investigations.
637.6 Customs investigations.
637.7 Drug enforcement activities.
637.8 Identification of MPI.
637.9 Access to U.S. Army facilities and records.
637.10 Authority to apprehend or detain.
637.11 Authority to administer oaths.
637.12 Legal considerations.
637.13 Retention of property.
637.14 Use of National Crime Information Center (NCIC).
637.15 Polygraph activities.
637.16 Evidence.
637.17 Police intelligence.
637.18 Electronic equipment procedures.
637.19 Overseas MP desk.
637.20 Security surveillance systems.
637.21 Recording interviews and interrogations.

Authority: 28 U.S.C. 534 note, 42 U.S.C. 10601, 18 U.S.C. 922, 42 U.S.C. 14071, 10 U.S.C. 1562, 10 U.S.C. Chap. 47.

Subpart A—Investigations

§ 637.1 General.

(a) Military Police Investigators (MPI) and Department of the Army Civilian (DAC) detectives/investigators fulfill a special need for an investigative element within the military police to investigate many incidents, complaints, and matters not within U.S. Army Criminal Investigation Command (USACIDC) jurisdiction, but which cannot be resolved immediately through routine military police operations. Investigative personnel are assets of the installation or activity commander, under the supervision of the local provost marshal. USACIDC elements will provide investigative assistance in the form of professional expertise, laboratory examinations, polygraph examinations, or any other assistance requested which does not distract from the USACIDC mission of investigating serious crimes. A spirit of cooperation and close working relationship is essential between USACIDC and the provost marshal office in order to accomplish the mission and project a professional police image.

(b) Creation of a formalized investigation program does not constitute the establishment of a dual ''detective'' force. The separation of investigative responsibilities is very distinct. The MPI Program is neither a career program nor a separate Military Occupational Specialty (MOS). Individuals in the MPI Program are specially selected, trained, and experienced military or civilian men and women performing traditional military police functions. Military personnel are identified by their additional skill identifiers (ASI V5) and may be employed in any assignment appropriate to their grade and MOS.

(c) The provost marshal may authorize wearing of civilian clothing for the MPI investigative mission.

(d) MPI and DAC detective/investigator personnel must be familiar with and meet the requirements of Army Regulation (AR) 190–14 (Carrying of Firearms and Use of Force for Law Enforcement and Security Duties).

§ 637.2 Use of MPI and DAC Detectives/Investigators.

Only those matters requiring investigative development will be referred to the MPI for investigation. Provost marshals will develop procedures to determine which incidents will be referred to the MPI for completion and which will be retained and completed by uniformed MP personnel. Except as otherwise provided, MPI and DAC detectives/investigators will normally be employed in the following investigations:

(a) Offenses for which the maximum punishment listed in the Table of Maximum Punishment, Manual for Courts-Martial, United States, 2002 is confinement for 1 year or less. Provisions of the Federal Assimilative Crimes Act will also be considered when assigning cases to MPI. The same punishment criteria apply.

(b) Property-related offenses when the value is less than $1,000 provided the property is not of a sensitive nature, such as government firearms, ammunition, night vision devices, or controlled substances.

(c) Offenses involving use and/or possession of non-narcotic controlled substances when the amounts are indicative of personal use only. Military police will coordinate with the local USACIDC element in making determinations of ''personal use''. MPI and DAC detectives/investigators may be employed in joint MPI/USACIDC drug suppression teams; however, the conduct of such operations and activities remain the responsibility of USACIDC. When employed under USACIDC supervision, MPI and DAC detectives/investigators may also be utilized to make controlled buys of suspected controlled substances.

(d) Activities required for the security and protection of persons and property under Army control, to include support of Armed Forces Disciplinary Control Boards as prescribed in AR 190–24. If MPI detect a crime-conducive condition during the course of an investigation, the appropriate physical security activity will be promptly notified. Crime-conducive conditions will also be identified in military police reports.

(e) Allegations against MP personnel, when not within the investigative responsibilities of USACIDC.

(f) Offenses committed by juveniles, when not within the investigative responsibilities of USACIDC.

(g) Gang or hate crime related activity, when not within the investigative responsibilities of USACIDC.

§ 637.3 Installation Commander.

The installation commander, whose responsibilities include ensuring good order and discipline on his installation, has authority to order the initiation of a criminal investigation upon receipt of information of activity of a criminal nature occurring on the installation.

§ 637.4 Military Police and the USACIDC.

(a) The military police or the USACIDC are authorized to investigate allegations of criminal activity occurring on the installation. Nothing in this paragraph is intended to conflict with or otherwise undermine the delineation of investigative responsibilities between the military police and the USACIDC as set forth in AR 195–2.

(b) When investigative responsibility is not clearly defined, and the matter cannot be resolved between military police investigations supervisors and USACIDC duty personnel, or between military police investigations supervisors and unit commanders, the provost marshal will be informed and will resolve the matter with the appropriate USACIDC activity commander/Special Agent in Charge (SAC) or unit commander.

(c) The control and processing of a crime scene and the collection and preservation of the evidence are the exclusive responsibilities of the investigator or supervisor in charge of the crime scene when the military police have investigative responsibility. To prevent the possible loss or destruction of evidence, the investigator or supervisor in charge of the crime scene is authorized to exclude all personnel from the scene. The exercise of this authority in a particular case may be subject to the requirement to preserve human life and the requirement for continuing necessary operations and security. These should be determined in conjunction with the appropriate commander and, where applicable, local host country law enforcement authorities.

(d) Unit commanders should consult with the installation provost marshal concerning all serious incidents. Examples of incidents appropriate for investigation at the unit level include simple assaults not requiring hospitalization and not involving a firearm, or wrongful damage to property of a value under $1,000. Other incidents should be immediately referred to the installation provost marshal.

(e) The military police desk is the official point of contact for initial complaints and reports of offenses. The provisions of AR 190–45 are to be followed for all military police records, reports, and reporting.

(1) When incidents are reported directly to a USACIDC field element, USACIDC may either direct the reporting person to the MP desk or report the incident to the MP desk themselves.

(2) Upon receipt of the complaint or report of offense, the MP desk will dispatch an available patrol to the scene of the incident. The patrol will take appropriate measures to include locating the complainant, witnesses, suspects, and victims, apprehending offenders, securing the crime scene, rendering emergency assistance, determining and reporting to the MP desk, by the most expeditious means possible, the appropriate activity having investigative responsibility.

(f) In those cases in which the USACIDC has an ongoing investigation (typically fraud and narcotics matters), they may delay notification to the military police to avoid compromising their investigation.

(g) Procedures will be developed to ensure mutual cooperation and support between MPI, DAC detectives/investigators and USACIDC elements at each investigative level; however, MPI, DAC detectives/investigators and USACIDC personnel will remain under command and control of their respective commanders at all times.

(1) With the concurrence of the commander concerned, MPI and DAC detectives/investigators may provide assistance to USACIDC whenever elements assume responsibility for an investigation from MPI.

(2) When requested by a USACIDC region, district, or the special agent-in-charge of a resident agency, the provost marshal may provide MPI or DAC detective/investigator assistance to USACIDC on a case-by-case basis or for a specified time period.

(3) With the concurrence of the appropriate USACIDC commander, CID personnel may be designated to assist MPI or DAC detectives/investigators on a case-by-case basis without assuming control of the investigation.

(4) Modification of investigative responsibilities is authorized on a local basis if the resources of either USACIDC or the military police cannot fully support their investigative workload and suitable alternatives are not available. Such modifications will be by written agreement signed by the provost marshal and the supporting USACIDC commander. Agreements will be in effect for no more than two years unless sooner superseded by mutual agreement.

§ 627.5 Off-post investigations.

(a) In Continental United States (CONUS), civilian law enforcement agencies, including state, county, or municipal authorities, or a Federal investigative agency normally investigate incidents occurring off-post. When an incident of substantial interest to the U.S. Army occurs off-post, involving U.S. Army property or personnel, the military police exercising area responsibility will request copies of the civilian law enforcement report.

(b) In Overseas areas, off-post incidents will be investigated in accordance with Status of Forces Agreements and other appropriate U.S. host nation agreements.

§ 637.6 Customs investigations.

(a) Customs violations will be investigated as prescribed in AR 190–41. When customs authorities find unauthorized material such as contraband, explosives, ammunition, unauthorized or illegal weapons or property, which may be property of the U.S. Government, notification must be made via electronic message or facsimile to HQDA, Office of the Provost Marshal General (DAPM–MPD–LE). All such notifications will be made to the military police and investigated by CID or the military police, as appropriate.

(b) Military police will receipt for all seized or confiscated U.S. Government property and contraband shipped by U.S. Army personnel. Property receipted for by military police will be accounted for, and disposed of, in accordance with evidence procedures outlined in AR 195–5.

(c) When it has been determined that the subject of an MP customs investigation is no longer a member of the U.S. Army, the investigation will be terminated, a final report submitted indicating the subject was released from the U.S. Army, and an information copy of the report furnished to the appropriate civil investigative agency.

(d) Recovery of weapons and significant amounts of ammunition will be reported by the U.S. Army element receipting for them from the U.S. Customs Service in accordance with AR 190–11 and AR 190–45.

§ 637.7 Drug enforcement activities.

Provost marshals and U.S. Army law enforcement supervisors at all levels will ensure that active drug enforcement programs are developed and maintained, and that priorities for resources reflect the critical and important nature of the drug enforcement effort.

(a) MPI and DAC detectives/investigators will conduct investigations of offenses involving use and possession of non-narcotic controlled substances. A copy of all initial, interim and final military police reports concerning drug investigations will be provided to the USACIDC at the local level. Enforcement activities will be coordinated with the USACIDC at the local level.

(b) Any investigation of offenses involving possession/use of non-

narcotic controlled substances generated as a result of another USACIDC investigation may be transferred to MPI with the concurrence of both the supporting USACIDC commander and provost marshal.

(c) Elements of USACIDC will be provided the opportunity to interview subjects, suspects or witnesses in MPI or DAC detective investigations involving controlled substances without assuming responsibility for the investigation. MPI and DAC detectives/investigators may also interview subjects, suspects or witnesses of USACIDC investigations.

§ 637.8 Identification of MPI.

(a) During the conduct of investigations, MPI will identify themselves by presenting their credentials and referring to themselves as ''INVESTIGATOR.'' When signing military police records the title ''Military Police Investigator'' may be used in lieu of military titles. Civilian personnel will refer to themselves as ''INVESTIGATOR'' if they are classified in the 1811 series, and as ''DETECTIVE'' if they are in the 083 series. Civilian personnel will use the title ''DAC Investigator'' or ''DAC Detective'' corresponding to their classification series.

(b) The use of titles such as ''Mr.'', ''Mrs.'', ''Miss'' or ''Ms.'' in connection with an individual's identification as an MPI is prohibited, except when employed in a covert investigative role. When MPI or DAC detectives/investigators are employed in covert roles, supervisors will ensure that coordination with USACIDC or civilian law enforcement agencies is accomplished as appropriate.

§ 637.9 Access to U.S. Army facilities and records.

(a) MPI and DAC detectives/investigators will be granted access to all U.S. Army facilities, records or information when necessary for an ongoing investigation, consistent with the investigator's clearance for access to classified national defense information, the requirements of medical confidentiality, and the provisions of applicable regulations.

(b) Upon presentation of proper identification when conducting an official investigation, MPI and DAC detectives/investigators will be authorized access to information contained in medical records and may request extracts or transcripts. Medical records will remain under the control of the records custodian who will make them available for courts-martial or other legal proceedings. Procedures for obtaining information from medical records are contained in AR 40–66.

§ 637.10 Authority to apprehend or detain.

MPI and DAC detectives/investigators have authority to make apprehensions in accordance with Article 7, Uniform Code of Military Justice (UCMJ); Rule for Courts-Martial 302 (b)(1), Manual for Courts-Martial, United States 2002 (Revised Edition). They may detain personnel for identification and remand custody of persons to appropriate civil or military authority as necessary. Civilians committing offenses on U.S. Army installations may be detained until they can be released to the appropriate Federal, state, or local law enforcement agency.

§ 637.11 Authority to administer oaths.

MPI and DAC detectives/investigators have authority pursuant to Article 136(b)(4), UCMJ to administer oaths to military personnel who are subject to the UCMJ. The authority to administer oaths to civilians who are not subject to the UCMJ is 5 U.S.C. 303(b).

§ 637.12 Legal considerations.

(a) Coordination between installation judge advocates and investigators must occur during the conduct of investigations.

(b) The use of the DA Form 3881 (Rights Warning Procedure/Waiver Certificate) to warn accused or suspected persons of their rights is encouraged.

(c) When necessary, investigators will coordinate with a judge advocate or civilian attorney employed in the Office of the Staff Judge Advocate for the purpose of establishing a legal opinion as to whether sufficient credible evidence has been established to title an individual in a report. Investigators should also coordinate with the Office of the Staff Judge Advocate in drafting search warrants and in determining whether probable cause exists to conduct a search.

§ 637.13 Retention of property.

Reports of investigation, photographs, exhibits, handwritten notes, sketches, and other materials pertinent to an investigation, including copies, negatives or reproductions, are the property of the U.S. Government, either as owner, or custodian.

§ 637.14 Use of National Crime Information Center (NCIC).

Provost marshals will make maximum use of NCIC terminals available to them, and will establish liaison with the U.S. Army Deserter Information Point (USADIP) as necessary to ensure timely exchange of information on matters concerning deserters. The USADIP will ensure replies to inquiries from provost marshals on subjects of MP investigations are transmitted by the most expeditious means. Use of NCIC will be in accordance with AR 190–27.

§ 637.15 Polygraph activities.

MPI and DAC detectives/investigators will utilize the polygraph to the full extent authorized. Requests for polygraph examination assistance will be forwarded to the supporting USACIDC element in accordance with provisions of AR 195–6. The investigative or intelligence element requesting approval to conduct a polygraph examination will submit a completed DA Form 2805 (Polygraph Examination Authorization) to the authorizing official. A request may also be sent via an electronic message or electronic mail or media provided all elements of the DA Form 2805 are included in the request. Approvals will be obtained prior to the conduct of an examination. Telephonic requests, followed with written requests, may be used in emergencies. The requesting official will include the following data on every polygraph examination request for criminal investigations:

(a) The offense, which formed the basis of the investigation, is punishable under Federal law or the UCMJ by death or confinement for a term of 1 year or more. Even though such an offense may be disposed of with a lesser penalty, the person may be given a polygraph examination to eliminate suspicion.

(b) The person to be examined has been interviewed and there is reasonable cause to believe that the person has knowledge of, or was involved in, the matter under investigation.

(c) Consistent with the circumstances, data to be obtained by polygraph examination are needed for further conduct of the investigation.

(d) Investigation by other means has been as thorough as circumstances permit.

(e) Examinee has been interviewed on all relevant subjects requested for testing and the polygraph examination is essential and timely.

§ 637.16 Evidence.

Military police are authorized to receive, process, safeguard and dispose of evidence, to include non-narcotic controlled substances, in accordance with AR 195–5. If no suitable facility is available for the establishment of a military police evidence depository or other operational circumstances so dictate, the evidence custodian of the appropriate USACIDC element may be

requested to receipt for and assume responsibility for military police evidence. Personnel selected as military police evidence custodians need not be trained as MPI and should not be issued MPI credentials, unless they are also employed as operational MPI. Further information concerning evidence collection and examination procedures can be found in Field Manual (FM) 3–19.13, Law Enforcement Investigations.

§ 637.17 Police intelligence.

(a) The purpose of gathering police intelligence is to identify individuals or groups of individuals in an effort to anticipate, prevent, or monitor possible criminal activity. If police intelligence is developed to the point where it factually establishes a criminal offense, an investigation by the military police, (USACIDC) or other investigative agency will be initiated.

(b) Police intelligence will be actively exchanged between Department of Defense (DOD) law enforcement agencies, military police, USACIDC, local, state, federal, and international law enforcement agencies. One tool under development by DOD for sharing police intelligence is the Joint Protection Enterprise Network (JPEN). JPEN provides users with the ability to post, retrieve, filter, and analyze real-world events. There are seven reporting criteria for JPEN:

(1) Non-specific threats;
(2) Surveillance;
(3) Elicitation;
(4) Tests of Security;
(5) Repetitive Activities;
(6) Bomb Threats/Incidents; and
(7) Suspicious Activities/Incidents.

(c) If a written extract from local police intelligence files is provided to an authorized investigative agency, the following will be included on the transmittal documents: ''THIS DOCUMENT IS PROVIDED FOR INFORMATION AND USE. COPIES OF THIS DOCUMENT, ENCLOSURES THERETO, AND INFORMATION THEREFROM, WILL NOT BE FURTHER RELEASED WITHOUT THE PRIOR APPROVAL OF THE INSTALLATION PROVOST MARSHAL.''

(d) Local police intelligence files may be exempt from certain disclosure requirements by AR 25–55 and the Freedom of Information Act (FOIA).

§ 637.18 Electronic equipment procedures.

(a) DOD Directive 5505.9 and AR 190–53 provide policy for the wiretap, investigative monitoring and eavesdrop activities by DA personnel. The recording of telephone communications at MP operations desks is considered to be a form of command center communications monitoring which may be conducted to provide an uncontroversial record of emergency communications. This includes reports of emergencies, analysis of reported information, records of instructions, such as commands issued, warnings received, requests for assistance, and instructions as to the location of serious incidents.

(b) The following procedures are applicable to the recording of emergency telephone and/or radio communications at MP operations desks within the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Panama, and Guam.

(1) All telephones connected to recording equipment will be conspicuously marked ''FOR OFFICIAL USE ONLY—connected to recording device'' and access to use will be restricted to MP operations desk personnel.

(2) The connection of voice-recording equipment or private-line service with the telecommunications network will be in accordance with applicable telephone company tariffs which permit direct electrical connection through telephone company recorder-connector equipment. An automatic audible-tone device is not required.

(3) Official emergency telephone numbers for MP desks will be listed in appropriate command, activity, or installation telephone directories with a statement that emergency conversations will be recorded for accuracy of record purposes. Other forms of pre-warning are not required.

(4) Recordings, which contain conversations described in this section, will be retained for a period of 60 days. Transcripts may be made for permanent files, as appropriate.

(5) The recording of telephone communications or radio transmissions by MP personnel for other than emergency purposes is prohibited. If an investigator requires the use of electronic surveillance equipment, assistance must be requested from the USACIDC. This policy is established pursuant to Department of Defense directives that limit such activity to the criminal investigative organizations of the Services and DOD.

(6) Commanders having general courts-martial convening authority will issue written authorizations for the recording of emergency telephone communications at MP operations desks. The letter of authorization will contain specific authority for the type of equipment to be used, the phone numbers identified as emergency lines and instructions limiting recordings to calls received on the phones so designated. One copy of the authorization will be forwarded to the Office of the Provost Marshal General (OPMG), 2800 Army Pentagon, Washington, D.C. 20310–2800.

§ 637.19 Overseas MP desk.

The recording of telephone communications at MP operations desks outside the United States will be conducted within restrictions contained in international agreements between the U.S. and host nations.

§ 637.20 Security surveillance systems.

Closed circuit video recording systems, to include those with an audio capability, may be employed for security purposes in public places so long as notices are conspicuously displayed at all entrances, providing persons who enter with a clear warning that this type of monitoring is being conducted.

§ 637.21 Recording interviews and interrogations.

The recording of interviews and interrogations by military police personnel is authorized, provided the interviewee is on notice that the testimony or statement is being recorded. This procedure is a long-accepted law enforcement procedure, not precluded by DA policies pertaining to wiretap, investigative monitoring, and eavesdrop activities.

[FR Doc. 04–27569 Filed 12–15–04; 8:45 am]

BILLING CODE 3710–08–U

Notices

Federal Register

Vol. 69, No. 241

Thursday, December 16, 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

Forest Service

Upper Granite Mining Projects; Wallowa-Whitman National Forest, Baker County, OR

AGENCY: Forest Service, USDA

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) on a proposed action to approve Proposed Plans of Operations on mining claims located in the Granite Creek Watershed. The project area is located on the Whitman Unit of the Wallowa-Whitman National Forest, approximately 30 miles west of Baker city, Oregon.

The proposed action is a compilation of plans submitted by claimants operating within the analysis area. These plans describe the type of mining operations proposed and how they would be conducted, the type and standard of access routes, the means of transportation to be used, the period during which the proposed mining activity will take place and measures to be taken to meet the requirements for environmental protection. Operations include the exploration and extraction of valuable minerals from placer and lode deposits. Methods range from hand panning to more complex operations utilizing mechanical equipment. The 1990 Land and Resource Management Plan final EIS for the Wallowa-Whitman National Forest, as amended, provides overall guidance for management of this area.

DATES: Written comments concerning the scope of the analysis should be received within 30 days of the scoping letter postmark.

ADDRESSES: Send written comments and suggestions to Richard Haines, Whitman Unit Ranger, 3165 10th Street, Baker City, Oregon 97814.

FOR FURTHER INFORMATION CONTACT: Sophia Millar, Interdisciplinary Team Leader, Wallowa Mountains Office, Enterprise, OR, Phone: (541) 426–5540.

SUPPLEMENTARY INFORMATION: The planning area is within the boundary of the Granite Creek Watershed. The legal description of the decision area is as follows: T8–10S, R35E, 35–½E, 36E, W.M. surveyed.

The Oregon department of Environmental Quality (DEQ) has listed Beaver Creek, Bull Run Creek, and Granite Creek as water quality impaired under section 303(d) of the Clean Water Act. The Forest Service has determined that mining operations have the potential to affect water quality. Accordingly, the effects of new, existing, or modified Plans of Operations prepared under regulations at 36 CFR 228.4 and 228.5, and 36 CFR 228 Subpart C, will be analyzed in this EIS.

Mining operations are associated with the extraction of precious metals from placer and lode deposits. A number of different practices are being proposed on the various claims within the analysis area. These may include one or more of the following practices:

Test Pits: Holes are dug either by hand or mechanical equipment to sample sub-surface deposits.

Drilling: Portable drills are used as part of the exploration process to sample sub-surface mineral deposits.

Placer Mining: This includes a wide variety of practices to extract minerals from placer deposits. The techniques include handwork with shovels and pans, small sluice boxes and more complex operations that use mechanical equipment. On the more heavily worked claims backhoes and front end loaders are used for digging, and power trommels for separation and extraction. Water, to varying degrees, is used in all these techniques. Some minor road maintenance and maintenance of existing structures is also planned.

Lode Mining: This includes tunneling or other mechanical methods used to extract lode deposits.

Activities, which would occur in association with mining operation, include mitigation practices such as construction or maintenance of settling ponds, and reclamation activities such as recontouring, seeding, and treatment of noxious weeds.

Road Construction: This includes construction of ½ mile of road to access an existing operation.

Preliminary issues include effects of proposed activities on—water quality and fish habitat.

The Forest Service will consider a full range of alternatives, including a ''no action'' alternative. The no-action alternative is evaluated order to establish a baseline condition of existing and future environmental conditions in the project area. Based on the issues gathered through scoping, the action alternatives may vary in the type of operations permitted, the timing of permitted operations and the types of mitigation required. Action alternatives include—the proposed mining activities and alternatives that modify the proposed plans with additional mitigation to address effects of mining on water quality and fisheries habitat.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments. and assistance from Federal, State, local agencies, tribes, and other individuals or organizations that may be interested in, or affected by the proposal. This input will be used in preparation of the draft EIS. The scoping process includes: Identifying potential issues; identifying major issues to be analyzed in depth; identifying issues which have been covered by a relevant previous environmental analysis; considering additional alternatives based on themes which will be derived from issues recognized during scoping activities; and identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available to the public for review by May 2005. The comment period on the draft EIS will be 45 days from the date the EPA publishes

the Notice of Availability in the **Federal Register**. It is important that those interested in the management of the Wallowa-Whitman National Forest participate at that time.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

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

The final EIS is scheduled for completion July 2005. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Forest Service is the lead agency. The Whitman Unit Ranger is the Responsible Official. The Responsible Official will decide which, if any, of the proposed plans will be implemented. The Responsible Official will also document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: December 9, 2004.

Richard Haines,

Whitman Unit Ranger.

[FR Doc. 04–27526 Filed 12–15–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 121304C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Sea Scallop Framework 16 Adjustment.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 863.

Number of Respondents: 274.

Average Hours Per Response: VMS installation, 1 hour; VMS verification, 5 minutes; VMS daily report, 10 minutes; Notification, 5 minutes; VMS polling, 5 seconds.

Needs and Uses: Sea Scallop fishermen fishing under the general category permit wishing to fish in exemption areas are subject to certain vessel monitoring system (VMS) and communication reporting requirements. This submission requests clearance for a new collection as it pertains to Framework 16 to the Sea Scallop FMP reporting requirements that all scallop vessels including general category vessels fishing re-opened closed areas have a functional VMS.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Frequency: On occasion, monthly, daily, every 30 minutes.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by December 19, 2004 to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or *David_Rostker@omb.eop.gov*.

Dated: December 9, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–27561 Filed 12–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–2004]

Foreign-Trade Zone 7—Mayaguez, PR, Application for Subzone, Ortho Biologics, LLC (Pharmaceutical Intermediates), Manatí, PR; Correction

The **Federal Register** notice (69 FR 70121–70122, 12/02/2004) describing the application by the Puerto Rico Industrial Development Company (PRIDCO), grantee of FTZ 7, requesting special-purpose subzone status for the pharmaceutical intermediate manufacturing facility of Ortho Biologics, LLC (OBI) in Manatí, Puerto Rico, is corrected as follows:

Paragraph 6 should read ''A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, Midtown Bldg., 10th Floor, 420 Ponce de Leon Avenue, San Juan, Puerto Rico 00918–3416.''

Dated: December 9, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–27581 Filed 12–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832]

Notice of Rescission of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Brazil

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

EFFECTIVE DATE: December 16, 2004.

FOR FURTHER INFORMATION CONTACT: Constance Handley or David Neubacher, at (202) 482–0631 or (202) 482–5823, respectively, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 CFR 351.213(b), on October 29, 2004, the domestic interested parties [1] requested an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Brazil. On November 19, 2004, in accordance with 19 CFR 351.221(c)(1)(i), the Department of Commerce (the Department) published the initiation of an administrative review of this order for the period October 1, 2003, through September 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 69 FR 67701 (November 19, 2004). On November 30, 2004, the domestic interested parties timely withdrew their request for this review.

[1] The domestic interested parties include ISG Georgetown Inc., Gerdau Ameristeel US Inc., and Keystone Consolidated Industries, Inc.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws their request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws their request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. The domestic interested parties withdrew their request within the 90-day period and were the only party to request this review. Accordingly, we are rescinding this review. The Department will issue appropriate assessment instructions to U.S. Customs and Border Protection within 15 days of publication of this notice.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 10, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3681 Filed 12–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China

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

EFFECTIVE DATE: December 16, 2004.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson or Brian C. Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3797, or 482–1766, respectively.

Preliminary Determination

We preliminarily determine that chlorinated isocyanurates from the People's Republic of China (''PRC'') are being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 135 days after the date of publication of this preliminary determination.

Case History

On May 14, 2004, the Department of Commerce (''the Department'') received petitions for the imposition of antidumping duties on imports of chlorinated isocyanurates from the PRC and Spain, filed, in proper form, by Clearon Corporation and Occidental Chemical Corporation (hereafter known as the ''Petitioners''). On May 24 and 28, 2004, the Petitioners filed amendments to their petition.

On June 4, 2004, the Department initiated antidumping duty investigations on chlorinated isocyanurates from the PRC and Spain. *See Notice of Initiation of Antidumping Duty Investigations: Chlorinated Isocyanurates from the People's Republic of China and Spain,* 69 FR 32488 (June 10, 2004) (''*Initiation Notice*''). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice,* 69 FR at 32489. We received comments regarding product coverage from interested parties. For a detailed discussion of the comments regarding the scope of the merchandise under investigation, please see the ''Scope Comments'' section below.

On June 4, 2004, the Department notified the International Trade Commission (''ITC'') of the antidumping investigation initiation and the intent to publish in the **Federal Register** a notice of such initiation. On June 17, 2004, the Department issued initiation instructions to U.S. Customs and Border Protection (''CBP'').

On June 28, 2004, the ITC issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of chlorinated isocyanurates. *See*

Chlorinated Isocyanurates from China and Spain, 69 FR 40417 (July 2, 2004).

On September 16, 2004, the Petitioners made a timely request pursuant to 19 CFR 351.205(e) for a fifty-day postponement of the preliminary determination, or until December 10, 2004. On October 15, 2004, the Department published in the **Federal Register** the notice of postponement of the preliminary determination for this antidumping duty investigation. *See Notice of Postponement of Preliminary Determination of Antidumping Duty Investigations: Chlorinated Isocyanurates from the People's Republic of China (A–570–893) and Spain (A–469–814),* 69 FR 61202 (October 15, 2004).

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Initiation Notice,* 69 FR 32488 (June 10, 2004).

Arch Chemicals, Inc. (''Arch'') submitted comments on July 1, 2004, and rebuttal comments on July 12, 2004, and July 30, 2004, in which it argued that its patented chlorinated isocyanurates tablet should be excluded from the scope of this investigation. The Petitioners submitted comments on June 30, 2004, and rebuttal comments on July 21, 2004, in which they stated their opposition to excluding Arch's patented chlorinated isocyanurates tablet from the scope. On October 21, 2004, we met with Arch's representatives to discuss its scope exclusion request. *See ex-parte* memoranda to the file dated October 22, and 28, 2004.

Based on the information presented by interested parties, the Department determines that Arch's patented chlorinated isocyanurates tablet is included within the scope of this investigation. *See Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, from Holly A. Kuga, Senior Office Director, Office 4, Re: Scope of the Antidumping Duty Investigations of Chlorinated Isocyanurates from the People's Republic of China and Spain,* dated December 10, 2004, which is on file in the Central Records Unit (''CRU''), Room B–099 of the Main Commerce Building, for a detailed discussion of comments submitted by Arch and the Petitioners, as well as the basis for the Department's decision that Arch's patented chlorinated isocyanurates tablet is included in the scope of this investigation.

CONNUM Comments

On June 29, 2004, the Department provided all interested parties in this proceeding the opportunity to submit comments on its proposed matching control number (''CONNUM'') characteristics. From July 7 through 26, 2004, the Department received comments on its proposed product-CONNUM characteristics (''CONNUM characteristics'') from the Petitioners and from the following PRC exporters of the subject merchandise: Hebei Jiheng Chemical Co., Ltd. (''Jiheng''); Nanning Chemical Industry Co., Ltd. (''Nanning''); Liaocheng Huaao Chemical Industry Co., Ltd. (''Huaao''); Shanghai Tian Yuan International Trading Co., Ltd., (''Tian Yuan''); and Changzhou Clean Chemical Co., Ltd. (''Clean Chemical'').

On July 21, 2004, Jiheng placed on the record of the companion investigation involving chlorinated isocyanurates from Spain its July 16, 2004, CONNUM comments submitted in this proceeding.

Quantity and Value Questionnaires

On June 15, 2004, the Department requested quantity and value (''Q&V'') information from a total of 18 producers of chlorinated isocyanurates in the PRC which were identified in the Petition and other sources and for which the Department was able to locate contact information. On June 15, 2004, the Department also sent a letter to the Government of the PRC requesting assistance locating all known producers/exporters of chlorinated isocyanurates in the PRC which exported chlorinated isocyanurates to the United States during the period October 1, 2003, through March 31, 2004.

On June 30, July 1 and 2, 2004, the Department received Q&V responses from seven PRC producers/exporters of chlorinated isocyanurates. The Department did not receive any type of communication from the Government of the PRC in response to its June 15, 2004, letter.

On July 20, 2004, the Department issued its respondent selection memorandum, selecting Jiheng and Nanning as mandatory respondents in this investigation. *See Memorandum to Edward Yang, Director, from James Doyle, Program Manager, Re: Selection of Respondents for the Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China* (''*Respondent Selection Memo*'') at 4, dated July 20, 2004, which is on file in CRU. *See* the ''Selection of Respondents'' section below for further detail.

Mandatory Respondents

On July 20, 2004, the Department issued its Section A questionnaire to Jiheng and Nanning. On July 20, 2004, we also issued a Section A questionnaire to the Government of the PRC (*i.e.*, Ministry of Commerce).

On July 22, 2004, the Department issued its Sections C and D questionnaire to Jiheng and Nanning. On July 23, 2004, the Department issued a Section E and a ''Non-market Economy'' version of the Section D questionnaire to Jiheng and Nanning because the Department had inadvertently issued a ''Market Economy'' version Section D questionnaire on July 22, 2004.

On August 23, 2004, the Department granted Jiheng and Nanning a one-week extension of time until September 2, 2004, to submit their Section A questionnaire responses, which they submitted in a timely manner. Additionally, we provided a two-week extension to the two mandatory respondents to respond to sections C and D of our questionnaire, which they submitted on September 10 and 13, 2004, respectively.

On September 2 and 9, 2004, the Department issued supplemental Section A questionnaires to Nanning and Jiheng, respectively. The Department granted a one-week extension to Nanning and Jiheng to submit their supplemental Section A questionnaire responses, which they submitted on September 17 and 23, 2004, respectively.

On October 14 and 18, 2004, the Department issued supplemental Section A, C, and D questionnaires to Jiheng and Nanning, respectively. The Department granted a one-week extension to Nanning and Jiheng to submit their supplemental Section A, C, and D questionnaire responses, which they submitted on November 5 and 8, 2004, respectively.

On November 5, 2004, Jiheng submitted revised business proprietary and public versions for its bracketing and public summarizations provided in its September 10, 2004, Section C and D questionnaire response.

On November 10 and 12, 2004, the Department issued a second supplemental Section C and D questionnaire to Nanning and Jiheng, respectively. Nanning submitted its response on November 17, 2004. Jiheng submitted a portion of its response on

November 19, 2004 (and the remaining portion on December 10, 2004, in accordance with the Department's instructions).

On November 23, 2004, Jiheng submitted, among other things, a revised U.S. sales database, previously unreported factors of production data for certain additional by-products which it now claims it self-produced, and proposed surrogate values for these by-products. On November 29, 2004, the Petitioners filed comments on Jiheng's November 23, 2004, submission. On December 7, 2004, Jiheng submitted rebuttal comments to the Petitioner's November 29, 2004, letter. Because Jiheng's November 23, 2004, submission was received so close to the date of the preliminary determination, we are unable to consider it for the preliminary determination. However, we intend to examine the information in the submission and will consider how to treat it for the final determination.

Section A Respondents

In August 2004, the Department received an extension request from the following five companies who wished to submit voluntary Section A questionnaire responses (hereafter known as ''Section A Respondents''): Sinochem Hebei Import & Export Corporation (''Sinochem Hebei''), Sinochem Shanghai Import & Export Corporation (''Sinochem Shanghai''), Clean Chemical, Huaao, and Tian Yuan. On August 23, 2004, the Department granted certain Section A Respondents a one-week extension to submit their Section A questionnaire responses. From August 26 to September 3, 2004, we received Section A questionnaire responses from all Section A Respondents.

From September 3 through 9, 2004, the Department issued supplemental Section A questionnaires to Clean Chemical, Sinochem Shanghai, Sinochem Hebei, Huaao, and Tian Yuan, respectively. The Department granted a one-week extension to all Section A Respondents for submitting a response to its supplemental Section A questionnaire and received responses from all five Section A Respondents from September 17 to September 23, 2004.

Surrogate Country and Factors

On July 1, 2004, the Department determined that India is among the countries comparable to the PRC in terms of overall economic development to use in this investigation. On July 12, 2004, the Department solicited comments on surrogate country selection from interested parties. On July 26, 2004, we received comments regarding our selection of a surrogate country from Jiheng, Nanning, Huaao, and Tian Yuan, and the Petitioners. *See* the ''Surrogate Country'' Section below for further detail.

On August 23, 2004, we received requests from Jiheng, Nanning, Huaao, and Tian Yuan for a two-week extension until September 9, 2004, to submit surrogate-value information. In addition, on September 3, 2004, the Petitioners requested an extension until September 17, 2004, to submit factor valuation information. On September 8, 2004, we extended the time period for all interested parties to provide surrogate values for the factors of production until September 15, 2004.

On September 15, 2004, we received surrogate-value information from Jiheng, Nanning, and the Petitioners. Jiheng and the Petitioners also submitted surrogate financial data from Indian companies. For a detailed discussion of the Department's selection of surrogate values and financial ratios, *see* ''Factor Valuation'' Section below. *See also Memorandum from Steve Winkates, Case Analyst, to Brian C. Smith, Program Manager, Re: Investigation of Chlorinated Isocyanurates from the People's Republic of China—Factors Valuation for the Preliminary Determination* (''*Factor Valuation Memo*''), dated December 10, 2004, which is on file in CRU.

On November 24, 2004, Jiheng submitted additional surrogate-value information which the Department was unable to consider for use in the preliminary determination. We will consider it for the final determination.

Pre-Preliminary Determination Comments

On November 29, 2004, the Petitioners requested that the Department reject Jiheng's November 23, 2004, submission as untimely unsolicited new factual information in accordance with 19 CFR 351.301 and remove it from the record of this proceeding. On December 7, 2004, Jiheng submitted rebuttal comments to the Petitioner's November 29, 2004, letter. As discussed above in the ''Mandatory Respondents'' section of this notice, because Jiheng's November 23, 2004, submission was received so close to the date of the preliminary determination, we are unable to consider it for the preliminary determination. However, we intend to examine the information in the submission and will consider how to treat it for the final determination.

Postponement of Final Determination

Section 735(a) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. In accordance with the Department's regulations, any requests by respondents for a postponement of a final determination must be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months. *See* 19 CFR 351.210(e)(2).

On November 24 and 30, 2004, Nanning and Jiheng requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Both requests included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. Accordingly, because we have made an affirmative preliminary determination and the requesting parties account for a significant proportion of the exports of the subject merchandise, we have postponed the final determination until no later than 135 days after the date of publication of the preliminary determination and are extending the provisional measures accordingly as requested by Jiheng and Nanning.

Period of Investigation

The period of investigation (''POI'') is October 1, 2003, through March 31, 2004. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (May 14, 2004). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3 \cdot 2H_2O$), and

(3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. These investigations cover all chlorinated isocyanurates.

Chlorinated isocyanurates are currently classifiable under subheading 2933.69.6050 of the Harmonized Tariff Schedule of the United States (''HTSUS''). This tariff classification represents a basket category that includes chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

As stated above in the ''Scope Comments'' Section of this notice, Arch's patented chlorinated isocyanurates tablet is also included in the scope of this investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act provides the Department discretion, when faced with a large number of exporters/producers, however, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After considering the current available resources of the Department, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. *See Respondent Selection Memo* at 2. Instead, we limited our examination to the two exporters and producers accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. Because the PRC producers/exporters, Jiheng and Nanning, accounted for a significant percentage of all exports of the subject merchandise from the PRC during the POI, the Department selected these two companies as mandatory respondents. *See Respondent Selection Memo* at 4.

Non-Market Economy Country

For purposes of initiation, the Petitioners submitted LTFV analyses for the PRC as a non-market economy (''NME''). *See Initiation Notice*, 69 FR at 32489. In every case conducted by the Department involving the PRC, the Department has treated the PRC as an NME country. In accordance with section 771(18)(c)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See also Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon Quality Line Pipe from the People's Republic of China*, 69 FR 60353, 60354 (October 8, 2004). When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value on the NME producer's factors of production, valued in an economically comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Factor Valuations'' section, below.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (''NV''), in most circumstances, on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the NV section below.

The Department determined that India, Indonesia, Sri Lanka, the Philippines, Morocco, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum to James Doyle, Program Manager, from Ron Lorentzen, Acting Director, Office of Policy, Re: Antidumping Duty Investigation on Chlorinated Isocyanurates from the People's Republic of China* (''*Surrogate Country Memo*''), dated July 10, 2004, which is on file in CRU.

On July 26, 2004, we received comments regarding our selection of a surrogate country from Jiheng, Nanning, Huaao, Tian Yuan, and the Petitioners. Jiheng stated that it is unable to find a suitable surrogate country for use in the Department's factors-of-production analysis for chlorinated isocyanurates. According to Jiheng, India is a deficient choice as surrogate country for a number of reasons: (1) India does not produce chlorinated isocyanurates; (2) although the petition proposed calcium hypochlorite as an appropriate comparable merchandise for chlorinated isocyanurates, the appropriateness of calcium hypochlorite as comparable merchandise to chlorinated isocyanurates has not been established; and (3) there is a lack of adequate appropriate Indian price data to value the factors of production of chlorinated isocyanurates. Although Jiheng did not propose another proper surrogate country, Jiheng contends that the search for an appropriate surrogate should not stop with India and it reserves the right to comment further on this issue during the course of this proceeding. Nanning, Huaao, and Tian Yuan state that none of the five countries proposed by the Department manufactures chlorinated isocyanurates. They claim that the only similarly situated country which produces the subject merchandise is Mexico. However, they did not propose that we use Mexico for this proceeding. The Petitioners state that India is the appropriate market-economy surrogate for the PRC in the chlorinated isocyanurates investigation and urge the Department to select India as the surrogate country. The Petitioners did not rebut Nanning, Huaao, and Tian Yuan's comment regarding the Mexico claim.

We select an appropriate surrogate country based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process*, dated March 1, 2004. In this case, we find that India is at a similar level of economic development pursuant to section 773(c)(4) of the Act. *See Surrogate Country Memo* at 2. Although none of the six surrogate countries produces merchandise identical to chlorinated isocyanurates, data placed on the record of this investigation indicates that calcium hypochlorite is comparable to the subject merchandise because calcium hypochlorite, like chlorinated isocyanurates, has a similar chemical makeup (*i.e.*, chlorine) and similar applications (*i.e.*, both are used to sanitize swimming pools). *See Initiation Notice* and the Petitioners' May 14, 2004, antidumping duty petition at page

10 (which cites *Calcium Hypochlorite from Japan SITC Inv. No. 731–TA–189 (Final)*, Pub. No. 1672 at 2 (April 1985)). Furthermore, data placed on the record of this investigation also indicates that India is a significant producer of calcium hypochlorite. *See also Surrogate Country Memo* at Attachment 4. Therefore, we find that India is a significant producer of comparable merchandise pursuant to section 773(c)(4)(B) of the Act. Accordingly, we have preliminarily selected India as the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate country selection.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The two mandatory respondents and the Section A Respondents have provided company-specific information and each has stated that it has met the standards for the assignment of a separate rate.

We have considered whether each mandatory and Section A Respondent noted above is eligible for a separate rate. The Department's separate rates test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping). The test focuses, rather, on controls over the investment, pricing, and output decisionmaking process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a company is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test established in *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''Sparklers''), and later expanded upon in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2,1994) (''*Silicon Carbide*''). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

Our analysis shows that the evidence on the record supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. *See Memorandum to James C. Doyle, Director, from Hallie Zink, Case Analyst, Re: Chlorinated Isocyanurates from the People's Republic of China: Separate Rates for Producers/Exporters that Submitted Questionnaire Responses (''Separate Rates Memo'')*, dated December 10, 2004, which is on file in CRU.

2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

We determine that, for the mandatory respondents and Section A Respondents, the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management.

Therefore, the evidence placed on the record of this investigation by the mandatory respondents and Section A Respondents demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* As a result, for the purposes of this preliminary determination, we have granted separate, company-specific rates to the mandatory respondents and Section A Respondents which shipped chlorinated isocyanurates to the United States during the POI (*see Separate Rates Memo* for a full discussion of this issue and list of Section A Respondents).

PRC-Wide Rate

Information on the record indicates that there are more known exporters of chlorinated isocyanurates from the PRC during the POI than those exporters who responded to our Q&V questionnaire. *See Respondent Selection Memo.* Although we issued the Q&V questionnaire to eighteen known PRC exporters of subject merchandise (as identified in the petition), we received seven Q&V questionnaire responses, including those from the two mandatory respondents. Also, on July 20, 2004, we issued a Section A questionnaire to the Government of the PRC (*i.e.*, Ministry of Commerce). Although all known exporters were given an opportunity to

provide information showing they qualify for separate rates, not all of these other exporters provided a response to the Department's Section A questionnaire. Further, the Government of the PRC did not respond to the Department's questionnaire. Therefore, the Department preliminarily determines that there were exports of the merchandise under investigation from other PRC producers/exporters, which have not demonstrated that they are separate from the government and, therefore, are considered part of the NME entity.

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Information on the record of this investigation indicates that there are numerous producers/exporters of chlorinated isocyanurates in the PRC. As described above, all exporters were given the opportunity to respond to the Department's Section A questionnaire. Based upon information on the record concerning the volume of imports of subject merchandise from the PRC and the fact that the information indicates that the responding companies did not account for all imports into the United States from the PRC, we have preliminary determined that certain PRC exporters of chlorinated isocyanurates failed to respond to our questionnaires. As a result, use of adverse facts available (''AFA'') pursuant to section 776(a)(2)(A) of the Act is appropriate. Additionally, in this case, the Government of the PRC did not respond to the Department's questionnaire, thereby necessitating the use of AFA to determine the PRC-wide rate. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 35312, 35321 (June 24, 2004) (''*Bedroom Furniture*'').

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); *see also* ''Statement of Administrative Action'' accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) (''SAA''). We find that, because the NME entity did not respond to our request for information, it failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is warranted.

Section 776(b) of the Act authorizes the Department to use AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. As AFA, we have assigned to the PRC-wide entity a margin based on a calculated margin derived from information obtained in the course of the investigation and placed on the record of this proceeding. In this case, we have applied a rate of 179.48 percent. Consequently, we are applying a single antidumping rate—the PRC-wide rate—to producers/exporters that failed to respond to the Q&V questionnaire or Section A questionnaire. This rate will also apply to exporters which did not demonstrate entitlement to a separate rate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from the two mandatory respondents and the Section A Respondents. Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049, 79054 (December 27, 2002), and *Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Magnesium Metal From the People's Republic of China*, 69 FR 59187, (October 4, 2004).

Margins for Section A Respondents

The exporters which submitted responses to Section A of the Department's antidumping questionnaire and had sales of the subject merchandise to the United States during the POI but were not selected as mandatory respondents in this investigation (*i.e.*, the Section A Respondents) have applied for separate rates and provided information for the Department to consider for this purpose. Therefore, for the Section A Respondents which provided sufficient evidence that they are separate from the NME entity, we have established a weighted-average margin based on the rates we have calculated for the two mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA. Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice.

Date of Sale

Section 351.401(i) of the Department's regulations states that ''in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' Nanning reported the invoice date as the date of sale. After examining the sales documentation placed on the record by Nanning, we preliminarily determine that the invoice date is the most appropriate date of sale for Nanning. Jiheng reported the shipment date as the date of sale because it claims that, for its U.S. sales of subject merchandise made during the POI, the material terms of sale were established on the shipment date and its shipment date was on or before the invoice date. We have preliminarily determined that the shipment date is the most appropriate date to use as Jiheng's date of sale in accordance with our long-standing practice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Brazil*, 67 FR 31200 (May 9, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Luxembourg*, 67 FR 35488 (May 20, 2002); and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and*

Hard Red Spring Wheat from Canada, 68 FR 52741 (September 5, 2003).

Fair Value Comparisons

To determine whether sales of chlorinated isocyanurates to the United States of the two mandatory respondents were made at LTFV, we compared export price (''EP'') to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, we used EP for the two mandatory respondents because the subject merchandise was first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, and because the use of CEP was not otherwise indicated.

We calculated EP based on the packed FOB, C&F, or FCA price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.*, foreign inland freight from the plant to the port of exportation, domestic brokerage and handling charges, and international freight) in accordance with section 772(c)(2)(A) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India. *See* ''Surrogate Country'' section above for further discussion of our surrogate-country selection. To value foreign inland trucking charges, we used Indian truck freight rates published in *Chemical Weekly* and distance information obtained from the following Web sites: *http://www.infreight.com,* and *http://www.sitaindia.com/Packages/CityDistance.php.* To value foreign brokerage and handling expenses, we relied on 1999–2000 public information reported in the LTFV investigation on certain hot-rolled carbon steel flat products from India and placed on the record of this case. *See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India,* 67 FR 50406 (October 3, 2001). For a detailed description of all adjustments, see the company-specific analysis memoranda dated December 10, 2004.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department will base NV on the factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

For purposes of calculating NV, we valued the PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to, hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation. *See* Section 773(c)(3) of the Act. In examining surrogate values, we selected, where possible, the publicly available value which was an average non-export value, representative of a range of prices within the POI or most contemporaneous with the POI, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances, and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China,* 69 FR 42654, 42666 (July 16, 2004) (''*Warmwater Shrimp*''). We used the usage rates reported by the respondents for materials, energy, labor, by-products, and packing. *See Factor Valuation Memo* for a more detailed explanation of the methodology used in calculating various surrogate values.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by the respondents for the POI. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except where noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See also Warmwater Shrimp,* 69 FR at 42666. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (Fed. Cir. 1997). Due to the extensive number of surrogate values it was necessary to assign in this investigation, we present a discussion of the main factors. For a detailed description of all surrogate values used for respondents, *see Factor Valuation Memo.* For a detailed description of all actual values used for market-economy inputs (*i.e.*, Nanning's market-economy purchases of sodium chloride during the POI), *see also* the December 10, 2004, Nanning analysis memorandum.

Except where discussed below, we valued raw material inputs using October 2003–March 2004 weighted-average Indian import values derived from the *World Trade Atlas* online (''*WTA*'') (*see also Factor Valuation Memo*). The Indian import statistics we obtained from the *WTA* were published by the DGCI&S, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POI. Indian surrogate values denominated in foreign currencies were converted to U.S. dollars using the applicable average exchange rate for India for the POI. The average exchange rate was based on exchange rate data from the Department's Web site. Where we could not obtain publicly available information contemporaneous with the POI with which to value factors, we adjusted the surrogate values for inflation using Indian wholesale price indices (''WPIs'') as published in the International Monetary Fund's *International Financial Statistics.*

Furthermore, with regard to both the Indian import-based surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to conclude that there is reason to believe or suspect all exports to all markets from these countries are subsidized. *See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From The People's Republic,* 61 FR 66255 (February 12, 1996), and accompanying *Issues and Decision Memorandum* at Comment 1. We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). Rather, Congress directed the Department to base its

decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. *See Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 70644 (Dec. 7, 2004). Our practice of excluding subsidized prices has been upheld in *China National Machinery Import and Export Corporation* v. *United States and the Timken Company,* 293 F. Supp. 2d 1334 (CIT 2003), *aff'd,* 104 Fed. Appx. 183 (Fed. Cir. 2004). Because Nanning's reported purchase prices for sodium chloride during the POI were paid solely to suppliers located in a market-economy country which we have no reason to believe or suspect have been subsidized, we have used Nanning's reported market-economy purchase prices for this input in the preliminary determination.

Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME or a country with general export subsidies.

Cyanuric Acid Surrogate Value

We used an October 2003–March 2004 Indian import value from *WTA* because we find that the Indian import data from *WTA,* unlike the Infodrive India data and Indian price quotes submitted for this input by the parties, ensures that the margins we calculate are as accurate as possible. *See Bedroom Furniture,* 69 FR at 35312, and accompanying *Issues and Decision Memorandum* at Comment 10.

Other Surrogate Values

To value chlorine gas and magnesium oxide, we used a January 2003–December 2003 weighted-average value based on imports of these inputs into the Philippines and Sri Lanka from *WTA,* because we find that the import value for these inputs into India and other possible surrogate countries is aberrational.

To value calcium chloride, hydrochloric acid and sulfuric acid, we used an average Indian domestic price based on October 2003–March 2004 data contained in *Chemical Weekly.* Because the domestic prices for calcium chloride and sulfuric acid from *Chemical Weekly* included Indian excise taxes, we adjusted those prices by subtracting excise taxes to derive tax-exclusive prices for these two inputs. *See Factor Valuation Memo* for further discussion.

To value water, we used the water tariff rate for the greater Municipality of Mumbai, India (''Mumbai Municipality''), that was formerly available on the Municipal Corporation of Greater Mumbai's Web site and was used in the *Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China,* 69 FR 34130 (June 18, 2004). *See also http://www.mcgm.gov.in/Stat%20&%20Fig/Revenue.htm.* The latest available data covers the period from February 2001 through November 2002. The cost of water during this period ranged from 1.0 to 35.00 Rs/1,000 liters (1,000 liters of water is equivalent to 1 cubic meter of water and 1 cubic meter of water is equivalent to 1 metric ton of water). We used the highest value from the water price range data from the Mumbai Municipality.

We valued electricity using the 2000 total average price per kilowatt hour for ''Electricity for Industry'' as reported in the International Energy Agency's publication, *Energy Prices and Taxes, Second Quarter, 2002.*

Section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. Therefore, to value the labor input, the Department used the regression-based wage rate for the PRC published by Import Administration on our Web site. The source of the wage rate data is the *Yearbook of Labour Statistics 2002,* published by the International Labour Office (''ILO''), (Geneva: 2002), Chapter 5B: Wages in Manufacturing. *See* the Import Administration Web site: *http://ia.ita.doc.gov/wages/02wages/02wages.html.*

Both respondents reported certain by-products in producing the *subject* merchandise which each either re-sold or re-used to produce the subject merchandise during the POI. Therefore, in those instances where the respondent provided documentation to support its by-product claim, we allowed a recovery/by-product credit. Our treatment of by-products in this proceeding is in accordance with the Department's practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Steel Flat Products from the People's Republic of China,* 66 FR 49632 (September 28, 2001), and accompanying *Issues and Decision Memorandum* at Comment 3.

To value packing materials, we used October 2003–March 2004 weighted-average Indian import values derived from *WTA.*

To value PRC inland freight for inputs shipped by truck, we used Indian freight rates published in the October 2003–March 2004 issues of *Chemical Weekly* and obtained distances between cities from the following Web sites: *http://www.infreight.com* and *http://www.sitaindia.com/Packages/CityDistance.php.*

To value factory overhead (''FOH''), selling, general & administrative (''SG&A'') expenses, and profit for Jiheng and Nanning, we used data from the 2002–2003 financial reports of Bihar Caustic & Chemicals Ltd. (''Bihar'') and Kanoria Chemicals Industries (''Kanoria''). The companies are Indian producers of caustic soda (*i.e.*, an intermediate product used to produce chlorinated isocyanurates based on the information reported by the respondents in this proceeding in response to the Department's antidumping questionnaire). The Department is using these companies' expenses and profit because there are no Indian producers of the subject merchandise and because we were unable to obtain financial reports for Indian producers of calcium hypochlorite, which we consider merchandise comparable to chlorinated isocyanurates as discussed above in the ''Surrogate Country'' section of this notice. We derived the FOH, SG&A, and profit ratios by averaging the factory overhead costs, SG&A expenses, and profits, respectively, of both companies, Bihar and Kanoria.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Preliminary Determination

The weighted-average dumping margins are as follows:

CHLORINATED ISOCYANURATES FROM THE PRC MANDATORY RESPONDENTS

Manufacturer/exporter	Weighted-average margin (percent)
Hebei Jiheng Chemical Co., Ltd.	125.97
Nanning Chemical Industry Co., Ltd	179.48
PRC-Wide Rate	179.48

CHLORINATED ISOCYANURATES FROM THE PRC SECTION A RESPONDENTS

Manufacturer/exporter	Weighted-average margin (percent)
Changzhou Clean Chemical Co., Ltd	140.27
Liaocheng Huaao Chemical Industry Co., Ltd	140.27
Shanghai Tian Yuan International Trading Co., Ltd	140.27
Sinochem Hebei Import & Export Corporation	140.27
Sinochem Shanghai Import & Export Corporation	140.27

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds U.S. price, as indicated above for Jiheng, Nanning, the five Section A Respondents, and the NME entity. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires that the ITC make a final determination before the later of 120 days after the date of the Department's preliminary determination or 45 days after the Department's final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of chlorinated isocyanurates, or sales (or the likelihood of sales) for importation, of the subject merchandise. Because we have postponed the deadline for our final determination to 135 days from the date of publication of this preliminary determination, the ITC will make its final determination within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report issued in this proceeding and rebuttal briefs limited to issues raised in case briefs, no later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: December 10, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–3679 Filed 12–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles From the People's Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

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

SUMMARY: On August 2, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on Petroleum Wax Candles (''candles'') from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: December 16, 2004.

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

SUPPLEMENTARY INFORMATION

Background

On August 2, 2004, the Department published the notice of initiation of the second sunset review of the antidumping duty order on candles from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Reviews,* 69 FR 46134 (August 2, 2004). The Department received the Notice of Intent to Participate from the domestic interested parties, the National Candles Association (''NCA'') and its participating member companies: AcScents Aromatics Fine Candles, Inc.; Alene Candles, Inc.; Arizona Natural Resources, Inc.; Armadilla Wax Works, Inc.; Aromatique, Inc.; Best Candle, LLC; Blyth HomeScents Intl.; BMC Manufacturing, LLC; Bright Glow Candle Corp.; Bright of America; Bullfrog Light Co.; Candle Lamp Co.;

Candle-Lite, Inc.; Carolina CandleLites, Inc.; Casey Pottery Co.; Cathedral Candle Co.; Changing Paradigms, LLC; Covered Bridge Candle Co.; Dadant & Sons, Inc.; Dial Corp.; Dianne's Custom Candles; Dreamers Candles; Early American Candle; Empire Candle Manufacturing, LLC; Evan Scent, Inc.; General Wax & Candle Co.; GlobalTech Industries, Inc.; Gold Canyon Candles, LLC; Guildhouse—An American Greetings Corp.; Hanna's Candle Co.; Heartland Fragrance & Herb Co.; Heritage Candles, Inc.; Hillhouse Natural Farms, Ltd.; Home Essentials, LLC; Home Fragrance Holdings, Inc.; Hot Wax Candle Co., Inc.; Lamplight Farms; Laredo Candle Co.; Latitudes Intl.; Lumi-Lite Candle Co., Inc.; Miracle Candle Co.; Natures Finest Candles; Old Virginia Candle Co.; Old Williamsburgh Candle Corp.; Olio, Inc.; Panacea Products Corp.; Park Avenue Candles; Primal Elements, Inc.; Private Gardens—Trapp Candles; Reed Candle Co.; Root Candles; Salt City Candle Co.; Starlume, Inc.; Surgipath Medical Industries, Inc. dba Cera Bella; Suzzette's Cabin Candles; Tyler Candle Co.; USA Labs, Inc.; Votivo, Ltd.; Williamsburg Soap and Candle Co.; Wizard Candles, Inc.; and Yankee Candle Co, Inc. (collectively ''the domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations (''Sunset Regulations''). The domestic interested parties claimed interested party status under section 771(9)(E) of the Act, as a trade association, the majority of members of which manufacture, produce, or wholesale a domestic-like product in the United States. We received a complete substantive response only from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no response from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(*2*), the Department conducted an expedited (120-day) sunset review of this order.

Scope of the Order

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were originally classifiable under the Tariff Schedules of the United States item 755.25, Candles and Tapers. The products are currently classifiable under the Harmonized Tariff Schedule item number 3406.00.00.

The Department determined several products were excluded from the scope of this order. For a complete list of the Department's scope rulings, please check our Web site at *http://www.ia.ita.doc.gov/download/candles-prc-scope.* Also, additional scope determinations are pending. The written description remains dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 10, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce Building.

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

Final Results of Reviews

We determine that revocation of the antidumping duty order on candles from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/exporters/producers	Weighted average margin (percent)
PRC-wide	108.30

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

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

Dated: December 10, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3676 Filed 12–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On August 5, 2004, the Department of Commerce (the Department) published the preliminary results of the 2002–2003 administrative review of the antidumping duty order on sebacic acid from the People's Republic of China (PRC). See *Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 47409 (August 05, 2004) (*Preliminary Results*). On August 31, 2004, the Department issued a Memorandum to the File from Jennifer Moats entitled ''Analysis for the Post-Preliminary Calculation of Sebacic Acid from the People's Republic of China: Guangdong Chemicals Import and Export Corporation'' to correct an error it made in the *Preliminary Results.* This review covers subject merchandise exported by Guangdong Chemicals Import and Export Corporation (Guangdong). The products covered by this order are all grades of sebacic acid which include but are not limited to CP Grade, Purified Grade, and Nylon Grade (see Scope of the Review section below). The period of review is July 1, 2002, through June 30, 2003. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differs from the preliminary results. We determine that Guangdong has sold subject merchandise at less than normal value (NV). The final weighted-average dumping margin is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 16, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Brian Ledgerwood, China/NME Group, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047 or (202) 482–3836, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2004, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on sebacic acid from the PRC. See *Preliminary Results.* In the *Preliminary Results,* in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we preliminarily rescinded the review of the antidumping duty order on sebacic acid from the PRC for the period of July 1, 2002, through June 30, 2003, with respect to subject merchandise exported to the United States by Tianjin Chemical Import and Export Corporation. On August 31, 2004, the Department issued a Memorandum to the File from Jennifer Moats entitled ''Analysis for the Post-Preliminary Calculation of Sebacic Acid from the People's Republic of China: Guangdong Chemicals Import and Export Corporation'' to correct an error made in the *Preliminary Results.* This review covers subject merchandise exported by Guangdong. The POR is July 1, 2002, through June 30, 2003.

We invited interested parties to comment on the preliminary results of review. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH_2)_8(COOH)_2$, which include but are not limited to CP Grade (500 ppm maximum ash, 25 maximum APHA color), Purified Grade (1000 ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500 ppm maximum ash, 70 maximum ICV color). The principle difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10(a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 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 proceeding is dispositive.

Separate Rates

Guangdong has requested a separate, company-specific antidumping duty rate. In the *Preliminary Results*, we found that Guangdong met the criteria for the application of a separate antidumping duty rate. We have not received any other information since the *Preliminary Results* which would warrant reconsideration of our separate-rate determination with respect to Guangdong. Therefore, we determine that Guangdong should be assigned an individual dumping margin in this administrative review.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (*Decision Memo*) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 10, 2004, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, 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 this review and the corresponding recommendations in this public memorandum, which is on file in the Central Record Unit, room B–099, of the main Commerce building.

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

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the *Decision Memo.*

Specifically, for these final results, we have revalued activated carbon with a more type-specific price quote consistent with our practice, revalued labor with updated labor statistics, revalued capryl alcohol with a more recently submitted value for octanol, and made the necessary corrections for clerical errors in the *Preliminary Results.*

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Margin (percent)
Guangdong Chemicals Import and Export Corporation	29.87

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the information to calculate an estimated entered value. Accordingly, we have calculated importer/customer-specific duty assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. 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/customer-specific *ad valorem* ratios based on the export prices. We will direct the CBP to assess the resulting assessment rates uniformly on all entries of that particular importer/customer made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Guangdong will be 29.87 percent; (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) the cash deposit rate for the NME/PRC entity will continue to be the NME/PRC-wide rate (*i.e.*, 243.40 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/producer that supplied that non-PRC exporter. These requirements shall remain in effect until publication of the final results of the next administrative review. There are no changes to the rates applicable to any other companies under this antidumping duty order.

Notification to Interested Parties

The Department will disclose calculations performed in connection with the final results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b) of its regulations. This notice 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 subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3) of the Department's regulations. 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 the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with section 751(b)(1) and 777(i)(1) of the Act.

Dated: December 10, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Valuation of Sebacic Acid
2. Valuation of Activated Carbon
3. Valuation of Capryl Alcohol
4. Valuation of Castor Oil
5. Methodology for Calculation of Co-Product Ration
6. Selection of Surrogate Financial Ratios
7. Correction of Clerical Errors

[FR Doc. E4–3678 Filed 12–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: December 16, 2004.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6905.

Background

On July 7, 2004, the Department published the preliminary results of the administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan. *See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 69 FR 40859 (July 7, 2004). On October 20, 2004, the Department published an extension of 45 days for the final results of this proceeding. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,* 69 FR 61649 (October 20, 2004). The final results of this administrative review are currently due no later than December 19, 2004.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable because this review involves a complex affiliation issue. The complexity of this issue requires the Department to fully extend the deadline for the completion of the final results by the remaining 15 days of the 60 days allowed by the statute.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 15 days until no later than January 3, 2005.

Dated: December 10, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3682 Filed 12–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Softwood Lumber Products From Canada

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

EFFECTIVE DATE: December 10, 2004.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Stephanie Moore, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–3692, respectively.

Background

On February 17, 2004, the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) adopted the reports of the panel and Appellate Body in *United States—Final Countervailing Duty Determination with Respect to Softwood Lumber from Canada,* WT/DS257 (''*Softwood Lumber*''). The Appellate Body concluded that Commerce's *Softwood Lumber* determination was inconsistent with the WTO Agreement on Subsidies and Countervailing Measures because the Department of Commerce (the Department) failed to conduct an analysis of certain sales of subsidized Crown logs, which Canadian parties claimed were sold at arm's length, to determine if the subsidy benefit ''passes through'' to the purchasing sawmill. On March 5, 2004, the United States notified the DSB of its intention to implement the findings of the Appellate Body. The Government of Canada and the United States agreed that 10 months was a reasonable period of time for implementation.

Pursuant to section 129(b)(2) of the Uruguay Round Agreements Act (URAA),[1] on November 9, 2004, the U.S. Trade Representative requested the Department to issue a revised determination not inconsistent with the findings of the Appellate Body. On November 19, 2004, the Department issued a draft Section 129 Determination and provided an opportunity for the parties to comment. On December 6, 2004, the Department issued its final Section 129 Determination. See ''Issues and Decision Memorandum for the Section 129 Determination: Final Affirmative Countervailing Duty Determination, Certain Softwood Lumber from Canada'' from Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed December 6, 2004 (''Issues and Decision Memorandum'').

Pursuant to section 129(b)(4) of the URAA, following consultations with the Department and congressional committees concerning the revised determination, on December 10, 2004, the U.S. Trade Representative directed the Department to implement the Section 129 Determination.

Implementation

Accordingly, the Department is publishing this notice of its revised final affirmative countervailing duty determination with respect to Certain Softwood Lumber from Canada. Consistent with the recommendations and findings of the Appellate Body in Softwood Lumber, the revised final determination reflects the results of the Department's analysis of whether there were ''arm's-length'' transactions involving Crown timber in which some or all of the stumpage subsidy benefit did not ''pass through'' to the purchasing sawmills. Copies of the Issues and Decision Memorandum detailing our Section 129 determination are available online at *http://ia.ita.doc.gov/ia-highlights-and-news.html* as well as in the Central Records Unit in room B–099 of the main Department building.[2]

In accordance with section 129(c)(1)(B), we will instruct U.S. Customs and Border Protection to collect cash deposits of estimated countervailing duties of 18.62 percent ad valorem on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 10, 2004, *i.e.*, the date on which the U.S. Trade Representative directed the Department to implement the Section 129 Determination. These instructions will remain in effect until further notice.

This notice of implementation is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: December 10, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3683 Filed 12–15–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] Section 129 of the URAA is the provision governing administrative action following WTO panel and Appellate Body reports.

[2] All issues raised in the comments submitted by the parties concerning this Section 129 Determination are addressed in the Issues and Decision Memorandum.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121304A]

Proposed Information Collection; Comment Request; Southwest Region Vessel Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 14, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Alvin Katekaru, PacificIslands Regional Office, NMFS, 1601 Kapiolani Blvd., Honolulu, HI 96814 (phone 808-973-2937).

SUPPLEMENTARY INFORMATION:

I.Abstract

Regulations at 50 CFR part 660.16 require that all vessels with Federal permits to fish in the Southwest display the vessel's official number. Regulations at 50 CFR part 300.35 require that vessels in the South Pacific tuna purse seine fishery must display their international radio call sign on the hull, the deck, and on the sides of auxiliary equipment such as skiffs and helicopters. The numbers must be a specific size at specified locations. The display of the identifying number aids in fishery law enforcement.

II. Method of Collection

No information is collected.

III. Data

OMB Number: 0648–0361.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 1,481.

Estimated Time Per Response: 45 minutes (15 minutes for each of three markings) for non-purse seine vessels; and 1 hour and 15 minutes for purse seine vessels.

Estimated Total Annual Burden Hours: 1,130.

Estimated Total Annual Cost to Public: 17,000.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 9, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–27557 Filed 12–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120904B]

Pacific Fishery Management Council; Notice of Public Meeting

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

ACTION: Notice of Vessel Monitoring System public meetings.

SUMMARY: On November 4, 2003, a final rule implementing a pilot vessel monitoring system (VMS) Program for the Pacific Coast groundfish fishery was published in the **Federal Register** (68 FR 62374). The VMS requirements became effective January 1, 2004, for vessels registered to limited entry groundfish permits. The Pacific Fishery Management Council (Council) is considering expansion of the VMS program into the open access groundfish fisheries. VMS requirements are being considered for both directed open access groundfish vessels and vessels in other target fisheries that incidentally take and retain groundfish in Federal waters (seaward of 3 nm). VMS coverage for vessels that fish only in state waters is not being considered at this time.

DATES: For specific dates and times of the public meetings, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Becky Renko 206–526–6110, *becky.renko@noaa.gov*, or Dayna Mathews 360–753–4409 *dayna.mathews@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Dates, Times and Locations of Meetings

January 10, 2005, 7 p.m., Salmon Troller's Hall, 19292 South Harbor Drive, Fort Bragg, CA.

January 11, 2005, 7 p.m., Community Center Auditorium, 1001 Kennedy Way, Morro Bay. Morro Bay, CA.

January 12, 2005, 7 p.m. California Department of Fish and Game, Los Alamitos Field Office and Laboratory, 4665 Lampson Ave., Suite C, Los Alamitos, CA.

January 25, 2005 6 p.m., Ocasta High School, 2580 Montesano Street South, Westport, WA.

January 31, 2005, 6 p.m., Hatfield Marine Science Center, Room 32, 2040 SE Marine Science Drive, Newport, OR.

February 1, 2005, 6 p.m., Oregon State University, Seafood Laboratory, 2021 Marine Drive, Astoria, OR, and

February 7, 2005, 6 p.m., Gable Chambers at City Hall, 555 W. 20th St. Port Orford, OR.

In 2003, the Council began using depth-based management for commercial and recreational groundfish fishing in order to avoid harvest of overfished groundfish species. Depth-based management allows or disallows fishing in certain depth zones. Depth-based management can be difficult to enforce with limited state and Federal enforcement resources. To improve the enforceability of depth-based management areas, the NMFS implemented a vessel monitoring program on January 1, 2004.

Vessels registered to limited entry permits are currently required to carry and use a VMS transceiver unit and to provide declaration reports before fishing with allowed gear in areas with depth-based fishing regulations. At this time, open access exempted trawl and tribal trawl vessels are also required to provide declaration reports before fishing with allowed gear in areas with depth-based fishing regulations. While VMS creates additional costs and responsibilities for both managers and fishermen, it allows more fishing than would otherwise be possible using traditional enforcement tools. VMS uses electronic transmitters, placed on fishing vessels, to transmit information about a vessel's position to a communications provider via satellite, where it is relayed to NMFS enforcement. This allows someone on land, monitoring such transmissions, to determine if a vessel is in a closed area.

Issues related to the implementation of VMS include the variety of VMS equipment and associated costs, the vessels's physical ability to carry VMS, VMS operating requirements, vessel coverage (the portion of the fleet that is required to carry and use VMS), and coordination with traditional enforcement techniques. Because most of these issues were addressed during the initial implementation of VMS, they are not being addressed at this time. The only issue currently being considered is the level of coverage necessary for the open access fisheries.

VMS Implementation Timeline

Between September and December 2002, the Council's Enforcement Consultants group recommended VMS equipment requirements, identified approximate fleet sizes for fishing sectors likely to be considered for VMS units, and estimated the cost associated with purchase, installation, and operation of VMS. In November 2002, the Council made recommendations to NMFS regarding vessel coverage, costs, and gear regulations.

In 2003, NMFS prepared a proposed rule for a pilot VMS program for the limited entry fleet. The proposed rule was published in the **Federal Register** on May 22, 2003 (68 FR 27972). On November 4, 2003, the final rule implementing the pilot VMS program in 2004 was published in the **Federal Register** (68 FR 62374). A list of approved VMS units was published in the **Federal Register** on November 17, 2003 (68 FR 64860). At its November 2003 meeting the Council considered expansion of the VMS program into other sectors of the groundfish fishery. However, the Council delayed a decision about program expansion until the pilot program was fully implemented in 2004.

At the June 2004 Council meeting, NMFS reported on the successful implementation of the VMS program in the limited entry fisheries and the associated telephone declaration system. Nearly 300 VMS units have been activated, generating more than 1.6 million position reports in conjunction with over 800 declaration reports. At its September 2004 meeting, the Council reviewed a range of alternatives for program expansion. Incorporating comments from the Groundfish Advisory Subpanel and the public, the Council adopted a range of alternatives for expanding the VMS program into the open access groundfish fisheries. The alternatives being considered focus on directed open access groundfish vessel, but also include vessels in other target fisheries that incidentally take and retain groundfish in Federal waters (seaward of 3 nm). Vessels that only fish in state waters are not being considered for this program.

To allow time for public review of the alternatives, the Council has delayed action on expanding the VMS program until the April 2005 Council meeting, and has recommended an October 1, 2005 implementation date. The purpose of these public meetings is for NMFS to provide the interested public with information regarding the expansion of VMS into the open access fisheries in Federal waters.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Becky Renko (206) 526–6110 (voice) or (206) 526–6736 (fax), at least 5 working days prior to the scheduled meeting date.

Dated: December 10, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–27562 Filed 12–15–04; 8:45 am]

BILLING CODE 3510–22–S

THE COMMISSION OF FINE ARTS

2005 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Public Law 99–190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded for 2005 in the amount of $7,000,000.00. All requests for information and applications for grants should be received by 31 December 2004 and addressed to: Frederick J. Lindstrom, Acting Secretary/NCACA Program Administrator, Commission of Fine Arts, National Building Museum, Suite 312, 401 F Street, NW., Washington, DC 20001–2728. Phone: 202–504–2200.

Deadline for receipt of grant applications is March 1, 2005.

This program provides grants for general operating support of organizations whose primary purpose is performing, exhibiting, and/or presenting the arts. To be eligible for a grant, organizations must be located in the District of Columbia, must be non-profit, non-academic institutions of demonstrated national repute, and must have annual incomes, exclusive of federal funds, in excess of one million dollars for each of the past three years. Organizations seeking grants must provide a Dun and Bradstreet (D&S) Data Universal Numbering System (DUNS) number when applying.

Frederick J. Lindstrom,

Acting Secretary.

[FR Doc. 04–27524 Filed 12–15–04; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

This patent covers a wide variety of technical arts including: The detection and tracking of moving targets in a given video input stream for surveillance and reconnaissance purposes.

Under the authority of Section 11(a) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Moving Target Indication Algorithm for Video Surveillance Applications.

Inventors: Alex Chan.

Patent Number: Provisional Application, Registration No. 39,612.

Issued Date: Filed September 13, 2004.

FOR FURTHER INFORMATION CONTACT: Norma Cammarata, Technology Transfer Office, AMSRD–ARL–DP–T, Army Research Laboratory, Adelphi, MD 20783–1197, tel: (301) 394–2952, fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–27570 Filed 12–15–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Exclusively License U.S. Army Invention

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the intent to exclusively license a U.S. Army Invention entitled Moving Target Indication Algorithm for Video Surveillance Applications. The invention intended to be licensed has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory intends to exclusively or partially exclusively license the invention listed below to videoNEXT Network Solutions, LLC, a small business which is interested in manufacturing, using and/or selling devices or processes involved in this invention.

Title: Moving Target Indication Algorithm for Video Surveillance Applications.

Inventors: Alex Chan.

Patent Number: Provisional Application, Registration No. 39,612.

Issued Date: Filed September 13, 2004.

FOR FURTHER INFORMATION CONTACT: Norma Cammarata, Technology Transfer Office, AMSRD–ARL–DP–T, Army Research Laboratory, Adelphi, MD 20783–1197; tel: (301) 394–2952, fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–27572 Filed 12–15–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement, Lower Snake River Reservoirs Navigation Maintenance, in the States of Washington, and Idaho

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) intends to prepare an Environmental Impact Statement (EIS) for performing routine maintenance of the Federal navigation channel and certain public port facilities on the lower Snake and Clearwater Rivers in Washington and Idaho. The EIS will evaluate the actions the Corps could take to maintain the authorized navigation channel and port facilities in the short-term and will identify the preferred alternative.

The Environmental Protection Agency (EPA), Region 10, will be a cooperating agency for this EIS. The Corps will work with EPA during development of the EIS to consider and incorporate, as appropriate, the policies and procedures currently evolving for the Northwest Regional Dredging Team (RDT), as referred to in the April 26, 2002, policy letter jointly signed by Brigadier General David A. Tastabend, Corps of Engineers, Northwestern Division Commander, and L. John Iani, EPA Region 10 Administrator.

DATES: Submit comments by January 18, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Sands, Project Manager, Walla Walla District, Corps of Engineers, CENWW–PM–PPM, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7287, or Ms. Sandra Simmons, NEPA Coordinator, Walla Walla District, Corps of Engineers, CENWW–PD–EC, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7265.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers, Walla Walla District (Corps) has the responsibility to operate and maintain the congressionally authorized Federal navigation channel in the lower Snake River from McNary reservoir on the mid-Columbia River up the Snake River to Lewiston, Idaho at the confluence of the Snake and Clearwater Rivers. The Corps is authorized by Congress to maintain a channel 250 feet wide and 14 feet deep as measured at minimum regulated flows. Historically the Corps has routinely dredged accumulated sediments from the navigation channel to maintain its operational efficiency. The Corps has not performed maintenance dredging in the channel since the winter of 1998–1999.

Presently sediment has accumulated in the Federal navigation channel to the point that the channel is less than 14 feet deep at minimum pool at several locations. Sediment has also accumulated in port berthing facilities in the Lewiston-Clarkston area, reducing the water depth at those facilities to less than 14 feet. The shallow water depths in the Federal channel and port facilities are interfering with commercial navigation and creating a potentially hazardous situation. Barge companies and commercial vessels are having difficulty accessing port facilities and navigating the federal channel due to shallow conditions. In response to these conditions they have made costly operational changes. Additional sediment accumulation could render these operational changes ineffective and increase the potential for safety hazards and additional economic impact.

The Corps recognizes the need to restore the authorized depth of the navigation channel and port facilities, and that additional sediment is likely to accumulate with each successive spring runoff. Therefore, the Corps proposes to take action at the first opportunity following the spring 2005 runoff to address the accumulated sediment. The local ports will fund any actions the Corps takes within the port facilities. The Corps will consider both dredging and non-dredging measures, either separately or in combination. Measures identified to date include no action, sediment reduction, reservoir drawdown/flushing, dredging with traditional protocols, and dredging with beneficial use of dredged material.

At this time, the Corps does not plan to conduct public scoping meetings for this EIS. However, affected Federal, state, and local agencies; Indian tribess; and other interested organizations and individuals are invited to provide input to the Corps on the scope of this EIS. To ensure consideration, input on the scope should be provided to the Corps by comment date (*see* **DATES**). Additional opportunities for public input on the EIS will be provided during the normal review periods for the draft and final EIS.

The draft EIS is currently scheduled to be available for public review in early 2005.

Randy L. Glaeser,

LTC, EN, Commanding.

[FR Doc. 04–27573 Filed 12–15–04; 8:45 am]

BILLING CODE 3710–GC–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Coastal Engineering Research Board; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

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

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: 6–7 January 2005.

Place: Hyatt Regency DFW, DFW Airport, Texas.

Time: 1 p.m. to 5 p.m. (6 January 2005). 8 a.m. to 12 noon (7 January 2005).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Colonel James R. Rowan, Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* An Executive Session of the Board will meet to discuss action items from past meetings and ongoing initiatives.

This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–27571 Filed 12–15–04; 8:45 am]

BILLING CODE 3710–61–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7848–4]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology (NACEPT)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency invites nominations to fill vacancies on its National Advisory Council for Environmental Policy and Technology (NACEPT). The Agency seeks qualified senior-level decision makers from diverse sectors throughout the United States to be considered for appointments. EPA encourages interested applicants to send their resumes and qualifications as soon as possible. Additional avenues and resources may be utilized in the solicitation of nominees.

ADDRESSES: Submit nominations to: Ms. Sonia Altieri, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Background: NACEPT is a Federal advisory committee under the Federal Advisory Committee Act, Public Law 92463. The U.S. Environmental Protection Agency established NACEPT in 1988 to provide independent advice to the EPA Administrator on a broad range of environmental policy, technology and management issues. NACEPT consists of a representative cross-section of EPA's partners, stakeholders, and constituents who provide timely advice and recommendations on environmental issues, and serve as a sounding board for new strategies that EPA is developing.

We anticipate the Council addressing issues related to environmental technology, environmental foresight,

and collaborative approaches to environmental problems. NACEPT will provide advice in a timely manner and operate as a proactive and strategic body that will alert EPA to potential environmental challenges and issues that could impact the Agency's ability to protect public health and the environment, and options to address them.

Members are appointed by the Administrator of EPA for two year terms with the possibility of reappointment. The Council usually meets 3–4 times annually and the average workload for the members is approximately 10 to 15 hours per month. Members serve on the Council in a voluntary capacity; however, EPA does provide reimbursement for travel expenses associated with official government business.

Potential candidates should possess the following qualifications:

Occupy a senior position within their organization.

Broad experience outside of their current position.

Experience dealing with public policy issues.

Membership in broad-based networks.

Extensive experience in the environmental field.

Recognized expert in the subject matter to be addressed by NACEPT.

EPA is seeking nominees for representation from all sectors, in particular federal, state, local and tribal agencies, academia, industry, environmental justice, and non-governmental organizations. Nominations for membership must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency (1601E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 233–0061, e-mail: *altieri.sonia@epa.gov*.

Dated: December 7, 2004.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. 04–27553 Filed 12–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7847–3]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the MichCon Mercury Regulators Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment on proposed CERCLA 122(h)(1) agreement with Michigan Consolidated Gas Co., an operating subsidiary of DTE Energy Co., for the MichCon Mercury Regulators Superfund Site.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (''CERCLA''), notification is hereby given of a proposed administrative agreement concerning the MichCon Mercury Regulators hazardous waste site in and around Detroit, Michigan (the ''Site''). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by Michigan Consolidated Gas Co., an operating subsidiary of DTE Energy Co. (the ''Settling Party'').

Under the proposed agreement, the Settling Party will pay $160,000 to the Hazardous Substances Superfund to resolve EPA's claims against it for response costs incurred by EPA at the Site. EPA incurred response costs overseeing the Settling Party's response actions to investigate and mitigate potential imminent and substantial endangerments to human health or the environment presented or threatened by hazardous substances present at the Site.

For thirty days following the date of publication of this notice, the Environmental Protection Agency will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before January 18, 2005.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of MichCon Mercury Regulators Site, U.S. EPA Docket No. V–W–05C–804.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Thomas Mateer,

Acting Director, Superfund Division, Region 5.

[FR Doc. 04–27549 Filed 12–15–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7848–5]

Whitehouse Oil Pits Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), the Environmental Protection Agency proposes to enter into a settlement with Mrs. Eloise Gleaton concerning the Whitehouse Oil Pits Superfund Site near Jacksonville, Duval County, Florida. To resolve her potential liability at the Site, the Agreement requires Mrs. Gleaton to deed certain property and grant a temporary easement over other property to the City of Jacksonville that is needed for remediation of the Site. The Agreement also requires Mrs. Gleaton to place well drilling restrictions on certain property so as not to interfere with the integrity of the remedy being implemented at the Site. EPA will consider comments on the settlement until January 18, 2005. The Agency will consider all comments received and may modify or withdraw its consent to

the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from:

Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887, *Batchelor.Paula@EPA.GOV.*

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: December 1, 2004.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 04–27552 Filed 12–15–04; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–105; DA 04–3679]

Parties Asked To Refresh the Record Regarding Reconsideration of the Decision Applying the Numbering Utilization and Forecast Reports Requirements to Carriers Receiving Numbering Resources From the 500 and 900 Number Plan Areas

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: On July 12, 2001, Competitive Telecommunications Association and Personal Communications Industry Association jointly filed a petition for reconsideration insisting that 500 and 900 numbering plan areas were not included in the *Numbering Resource Optimization Report and Order and Further Notice of Proposed Rulemaking.* Because the petition for reconsideration was filed some time ago, the passage of time and intervening developments may have rendered the record developed for the petition stale. Moreover, some issues raised in the petition for reconsideration may have become moot or irrelevant in light of intervening events. For these reasons, the Wireline Competition Bureau requests that the petitioners identify issues from the petition that remain unresolved and supplement the petition, in writing, to indicate which findings they still wish to be reconsidered. To the extent that intervening events may have materially altered the circumstances surrounding the filed petition or the relief sought by filing parties, those entities may refresh the record with new information or arguments related to their original petition that they believe to be relevant to the issues. The previously filed petition will be deemed withdrawn and will be dismissed if parties do not indicate in writing an intent to pursue their petition for reconsideration.

DATES: Comments are due on or before December 30, 2004. Reply comments are due on or before January 6, 2005.

ADDRESSES: Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Karen Franklin, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Pursuant to the Commission's rules governing petitions for reconsideration, the Commission invites interested parties to update the record pertaining to the petition for reconsideration filed by the Competitive Telecommunications Association (CompTel) and Personal Communications Industry Association (PCIA). In the *Numbering Resource Optimization Report and Order and Further Notice of Proposed Rulemaking (NRO Order),* 65 FR 37703, June 16, 2000, the Commission, *inter alia*, adopted a mandatory utilization data reporting requirement, a uniform set of categories of numbers for which carriers must report their utilization, and a utilization threshold framework to increase carrier accountability and incentives to use numbers efficiently. Subsequent to the *NRO Order,* the Commission released a Public Notice stating that the reporting requirements established in the *NRO Order* apply to all carriers that receive numbering resources from the NANPA (*i.e.*, code holders), or that receive numbering resources from a Pooling Administrator in thousands blocks (*i.e.*, block holders), including the 500 and 900 numbering plan areas (NPAs).

On July 12, 2001, CompTel and PCIA jointly filed a petition for reconsideration insisting that 500 and 900 NPAs were not included in the *NRO Order.* Because the petition for reconsideration was filed some time ago, the passage of time and intervening developments may have rendered the records developed for those petitions stale. Moreover, some issues raised in the petition for reconsideration may have become moot or irrelevant in light of intervening events.

For these reasons, the Wireline Competition Bureau requests the petitioners identify issues from the petition that remain unresolved now and supplement the petition, in writing, to indicate which findings they still wish to be reconsidered. To the extent that intervening events may have materially altered the circumstances surrounding the filed petition or the relief sought by filing parties, those entities may refresh the record with new information or arguments related to their original petition that they believe to be relevant to the issues. The previously filed petition will be deemed withdrawn and will be dismissed if parties do not indicate in writing an intent to pursue their petition for reconsideration.

Petitioners may file supplemental comments updating their previously filed petition for reconsideration on or before December 30, 2004. Reply Comments are due on or before January 6, 2005. All pleadings are to reference CC Docket No. 99–200. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional

copies for each additional docket or rulemaking number.

One (1) courtesy copy should also be sent to Sheryl Todd, Wireline Competition Bureau, FCC, Room 5-B540, 445 12th Street, SW., Washington, DC 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The original petition for reconsideration that CompTel and PCIA jointly filed in 2001 is available for inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail *http://www.bcpiweb.com.*

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Federal Communications Commission.

Dated: December 10, 2004.

Narda M. Jones,

Chief, Telecommunications Access Policy Division.

[FR Doc. 04–27564 Filed 12–15–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–3828]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (''Bureau'') debars Mr. John Dotson from the schools and libraries universal service support mechanism for a period of three years.

DATES: Debarment commences on the date Mr. Dotson receives the debarment letter or whichever date comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–1420 or e-mail at *diana.lee@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has debarred Mr. John Dotson from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.521 and 47 CFR 0.111(a)(14). The Commission previously suspended Mr. John Dotson from the schools and libraries mechanism, pending debarment proceedings. *See 69 FR 62047,* October 22, 2004. Attached is the debarment letter, *Notice of Debarment; Schools and Libraries Universal Service Support Mechanism,* DA 04–3828, which was mailed to Mr. John Dotson and released on December 6, 2004, in turn attached the suspension letter, *Notice Of Suspension and of Proposed Debarment Proceedings,* DA 04–3209. The complete text of the debarment letter with attachment 1 is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text of this letter may be retrieved from the FCC's Web site at *www.fcc.gov.* The text may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The debarment letter, with attached suspension letter, follows:

VIA Certified Mail Return Receipt Requested

John Dotson, 2850 Webb Avenue, Apt. 4H, Bronx, NY 10468.

Re: Notice of Debarment, File No. EB–04–IH–0460.

Dear Mr. Dotson: Pursuant to section 54.521 of the rules of the Federal Communications Commission (the ''Commission''), by this Notice of Debarment you are hereby debarred from the schools and libraries universal service support mechanism for a period of three years.[1]

On October 7, 2004, the Enforcement Bureau (the ''Bureau'') sent you a Notice of Suspension and Proposed Debarment (the ''Notice of Suspension'').[2] That Notice of Suspension was published in the **Federal Register** on October 22, 2004.[3] The Notice of Suspension suspended you from the schools and libraries universal service support mechanism[4] and described the basis for your proposed debarment,[5] the applicable debarment procedures,[6] and the effect of debarment.[7]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the **Federal Register**.[8] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, on or about May 17, 2004, you were convicted of conspiracy to charge the E–Rate program 100 percent of the cost of E–Rate services provided through Connect2Interne Networks, Inc. (''Connect2'') to certain schools participating in the program, rather than requiring the schools to pay their designated ten percent of those costs, by: (1) Falsely representing to the schools that they

---

[1] *See* 47 CFR 0.111(a)(14), 54.521.

[2] Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to John Dotson, Notice of Suspension and Proposed Debarment, 19 FCC Rcd 19662 (2004).

[3] 69 FR 62047 (Oct. 22, 2004).

[4] *See* Notice of Suspension, 19 FCC Rcd at 19662–63 (imposing suspension pending the Bureau's final debarment determination) (Attachment 1).

[5] *See id.,* 18 FCC Rcd at 19663–64 (describing the basis for your proposed debarment).

[6] *See id.,* 18 FCC Rcd at 19664 (describing procedures to contest proposed debarment).

[7] *See id.* (describing effect of proposed debarment).

[8] *See* 47 CFR 54.521(e)(3) and (4). That date occurred no later than November 21, 2004. See supra note 3.

could participate in the program at no cost to them, and that their share of the costs would be covered by outside sources donated to Connect2 for that purpose; (2) requesting school officials to write checks payable to Connect2 while agreeing either not to cash them or to return those monies to the schools or their designees; and (3) creating back-dated phony billing documents that give the false appearance that Connect2 had billed the schools for their costs.[9] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.521(c) of the Commission's rules.[10] For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, *i.e.*, the earlier date of your receipt of this Notice of Debarment or its publication date in the **Federal Register**.[11] Debarment excludes you, for the debarment period, from activities ''associated with or related to the schools and libraries support mechanism,'' including ''the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.'' [12]

Sincerely yours,

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Philip L. Weinstein, Federal Defender Division Legal Aid Society
Kristy Carroll, USAC (Via Email)
David M. Siegal, Assistant United States Attorney, Southern District of New York (Via Email)

Attachment 1

VIA Certified Mail Return Receipt Requested

John Dotson, 2850 Webb Avenue, Apt. 4H, Bronx, NY 10468.

Re: Notice of Suspension and of Proposed Debarment, File No. EB–04–IH–0460.

Dear Mr. Dotson: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction on or about May 17, 2004 pursuant to 18 U.S.C. 371 for conspiracy to defraud the United States.[13] Specifically, you were convicted of conspiracy to violate the following laws of the United States: (1) 18 U.S.C. 287 (false, fictitious, and fraudulent claims); (2) 18 U.S.C. 1001 (false statements and entries generally); and (3) 18 U.S.C. 1343 (fraud by wire, radio, or television). Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the schools and libraries universal service support mechanism, also known as the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[14]

I. Notice of Suspension

Pursuant to section 54.521(a)(4) of the Commission's rules,[15] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[16] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[17]

Suspension is immediate pending the Bureau's final debarment determination. You may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[18] Such requests, however, will not ordinarily be granted.[19] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[20] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[21]

II. Notice of Proposed Debarment

A. Reasons for and Cause of Debarment

Commission rules establish procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[22] Based on your February 13, 2004 guilty plea, you were convicted on or about May 17, 2004 of conspiracy to defraud the Government by selling E-Rate services through Connect2Internet Networks, Inc. (''Connect2'') to certain schools participating in the E-Rate program but charging 100 percent of the costs to the program rather than requiring the schools to pay ten percent of the costs as required by the program rules.[23] In particular, you admitted to combining, conspiring and carrying out, with other co-conspirators, the following acts: (1) falsely representing to certain schools that they could participate in the E-Rate program at no cost to them, and that their share of the costs would be covered by outside sources donated to Connect2 for that purpose; (2) requesting certain school officials to write checks payable to Connect2 while agreeing either not to cash them or to return those monies to the schools or their designees; and (3) creating back-dated phony billing documents that give the false appearance that Connect2 had billed the schools for their costs.[24] These actions constitute the conduct or transactions upon which this debarment proceeding is based.[25] Moreover, your conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[26] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

B. Debarment Procedures

You may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[27] Absent extraordinary circumstances, the Bureau will debar you.[28] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[29] If the Bureau

[9] Notice of Suspension, 19 FCC Rcd at 19663–64.

[10] Notice of Suspension, 19 FCC Rcd at 19664; 47 CFR 54.521(c).

[11] *See* Notice of Suspension, 19 FCC Rcd at 19664.

[12] *See* 47 CFR 54.521(a)(1), 54.521(a)(5), 54.521(d); Notice of Suspension, 19 FCC Rcd at 19664.

[13] Any further reference in this letter to ''your conviction'' refers to your conviction on or about May 17, 2004 of this count based on your participation in a fraudulent scheme to obtain schools and libraries E-Rate program funds. *See United States* v. *Dotson,* Docket No. 1:03cr01113BSJ, Indictment (S.D.N.Y. filed September 17, 2003) (''Dotson Indictment''); *United States* v. *Dotson,* Docket No. 1:03cr01113BSJ, Judgment (S.D.N.Y. May 17, 2004) (''Dotson Judgment'').

[14] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[15] 47 CFR 54.521(a)(4). *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225–9227, ¶¶ 67–74 (2003) (''Second Report and Order'').

[16] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[17] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

[18] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[19] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70.

[20] 47 CFR 54.521(f).

[21] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[22] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 66.

[23] *See Dotson Indictment* at 2, 3; *Dotson Judgment.*

[24] *Dotson Indictment* at 4–5.

[25] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i).

[26] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 CFR 54.521(c). Such activities ''include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 CFR] § 54.500 *et seq.*).'' 47 CFR 54.521(a)(1).

[27] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i), 54.521(e)(3).

[28] *Second Report and Order,* 18 FCC Rcd at 9227, ¶ 74.

[29] *See id.,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of its decision in the **Federal Register**.[30]

C. Effect of Debarment

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[31] The Bureau may, if necessary to protect the public interest, extend the debarment period.[32]

Please direct any responses to the following address:

Diana Lee, Esq., Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A265, 445 12th Street, SW., Washington, DC 20554.

If you submit your response via hand-delivery or non-United States Postal Service delivery (*e.g.*, Federal Express, DHL, etc.), please send your response to Ms. Lee at the following address:

Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, MD 20743.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Eric Bash by telephone at (202) 418–1420 and by e-mail at *eric.bash@fcc.gov*.

Sincerely yours,

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Philip L. Weinstein, Federal Defender Division Legal Aid Society
Kristy Carroll, USAC (Via E-mail)
David M. Siegal, Assistant United States Attorney, Southern District of New York (Via E-mail)

[FR Doc. 04–27587 Filed 12–15–04; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 30, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Gerald L. Pennington Trust, Gerald Lee Pennington as trustee, Margaret A. Pennington Trust, and Margaret Angela Pennington as trustee, all of Osprey, Florida; to acquire additional voting shares of LandMark Financial Holding Company, and thereby indirectly acquire voting shares of LandMark Bank of Florida, both of Sarasota, Florida.

Board of Governors of the Federal Reserve System, December 10, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–27481 Filed 12–15–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 3, 2005.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Martin B. Rowe, Harrisburg, Illinois, individually and as a member of the Rowe Family Control Group, which consists of Martin B. Rowe, the Burt H. Rowe, Jr. Marital Trust and the Anne Rowe Family Trust, all of Harrisburg, Illinois; Marianna R. Deal, Rachelle L. Rowe, and Caroline C. Rowe, all of St. Louis, Missouri; and Anne Rowe, Destin, Florida; to acquire control of First Eldorado Bancshares, Inc., Eldorado, Illinois, and thereby indirectly acquire control of Dana Bancorp, Inc., Dana, Indiana, The First National Bank of Dana, Dana Indiana, and First State Bank of Eldorado, Eldorado, Illinois.

Board of Governors of the Federal Reserve System, December 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–27578 Filed 12–15–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 2005.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

[30] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[31] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

[32] *Id.*

1. FC Holdings, Inc., Houston, Texas, and First Community Holdings of Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First Community Bank San Antonio, National Association, San Antonio, Texas.

Board of Governors of the Federal Reserve System, December 10, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–27480 Filed 12–15–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 2005.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. GSB, MHC, Greenfield, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Greenfield Savings Bank, Greenfield, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. The South Financial Group, Inc., Greenville, South Carolina; to merge with Pointe Financial Corporation, Boca Raton, Florida, and thereby indirectly acquire Pointe Bank, Boca Raton, Florida.

Board of Governors of the Federal Reserve System, December 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–27577 Filed 12–15–04; 8:45 am]

BILLING CODE 6210–01–S

GOVERNMENT ACCOUNTABILITY OFFICE

Appointments to the Citizens' Health Care Working Group

ACTION: Notice of application period.

SUMMARY: The Comptroller General of the United States will appoint 14 individuals, including a Chairperson, to serve as members of the Citizens' Health Care Working Group as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). The Secretary of Health and Human Services also serves as a member of the Working Group and is required by the MMA to establish the Working Group. This group will help lead a nationwide public discussion and debate on ways to improve the health care system and provide every American with the ability to obtain quality and affordable health care coverage. The Working Group will make recommendations to the President and the Congress.

Individuals interested in serving for the two-year term may apply online by visiting

http://citizenshealthcarewg.gao.gov. Individuals unable to apply online may call 866–324–9219 (toll-free) to request an application form. The closing date for accepting applications will be January 14, 2005. The Comptroller General will announce his appointments by late February 2005.

Closing Date: Applications must be postmarked by January 14, 2005.

FOR FURTHER INFORMATION CONTACT: GAO 866–324–9219 (toll-free).

(Sec. 1014, Pub. L. 108–173, 117 Stat. 2066, 2441)

David M. Walker,

Comptroller General of the United States.

[FR Doc. 04–27482 Filed 12–15–04; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold its fifth meeting. The meeting will be open to the public.

DATES: The meeting will be held on Monday, January 31, 2005 from 8:30 a.m. to 5 p.m. and Tuesday, February 1, 2005 from 8:30 a.m. to 5 p.m.

ADDRESSES: The Radisson Hotel Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Bernard Schwetz, D.V.M., Ph.D., Director, Office for Human Research Protections (OHRP), or Catherine Slatinshek, Executive Director, Secretary's Advisory Committee on Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; (301) 496–7005; fax: (301) 496–0527; email address: *sachrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On January 31, 2005, SACHRP will receive and discuss reports from its three subcommittees, the Subpart C subcommittee (HHS regulations and policies for research involving prisoners); the Subcommittee on Research Involving Children; and the newly formed Subpart A Subcommittee. The first two subcommittees were established by SACHRP at its meeting held on July 22, 2003, and the Subpart

A Subcommittee was established at the SACHRP's fourth meeting on October 5, 2004, to provide assistance in addressing issues related to the specified topics.

On February 1, 2005, SACHRP will hear presentations from experts on the following topics: Adverse Events reporting and Compliance Oversight Issues.

Public attendance at the meeting is limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact persons. Members of the public will have the opportunity to provide comments on both days of the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed materials distributed to SACHRP members for this scheduled meeting should submit materials to the Executive Director, SACHRP, prior to the close of business on January 14, 2005.

Information about SACHRP and the draft meeting agenda will be posted on the SACHRP Web site at *http://www.dhhs.gov/ohrp/sachrp/index.html.*

Dated: December 10, 2004.

Bernard A. Schwetz,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 04–27490 Filed 12–15–04; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Reproductive Health Research, Request for Applications Number (RFA) DP–05–010

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 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): Reproductive Health Research, RFA DP–05–010.

Times and Dates: 8:30 a.m.–9 a.m., January 10, 2005 Panel A (Open). 9 a.m.–5 p.m., January 10, 2005 Panel A (Closed). 9 a.m.–2 p.m., January 11, 2005 Panel A (Closed). 8:30 a.m.–9 a.m., January 11, 2005 Panel B (Open). 9 a.m.–5 p.m., January 11, 2005 Panel B (Closed). 9 a.m.–2 p.m., January 12, 2005 Panel B (Closed). 8:30 a.m.–9 a.m., January 12, 2005 Panel C (Open). 9 a.m.–5 p.m., January 12, 2005 Panel C (Closed). 9 a.m.–5 p.m., January 13, 2005 Panel C (Closed).

Place: Sheraton Colony Square Hotel, 188 14th Street, NE., Atlanta, GA 30361, Telephone Number 404.892.6000.

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: Reproductive Health Research, RFA DP–05–010.

Contact Person for More Information: Antonia J. Spadaro, EdD, Centers for Disease Control and Prevention, National Center for Chronic Disease and Health Promotion, 4770 Buford Hwy, Mailstop K–92, Atlanta, GA 30341, Telephone 770.488.5809.

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: December 8, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–27516 Filed 12–15–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Procedures and Costs for Use of the Research Data Center; Amendment

In the notice document announcing the ''Procedures and Costs for Use of the Research Data Center,'' appearing on page 67584 in the **Federal Register** issue of Thursday, November 18, 2004, the notice is amended to extend the comment period as follows:

On page 67584 under the **DATES** heading, change ''December 9, 2004'', to ''March 1, 2005.''

All other information in the document remains unchanged.

Dated: December 8, 2004.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–27514 Filed 12–15–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of proposed modification or alteration to a system of records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, ''Unique Physician/Practitioner Identification Number (UPIN) (formerly known as the Medicare Physician Identification and Eligibility System),'' System No. 09–70–0525. We propose to delete published routine use number 1 authorizing disclosure to contractors for refining or processing records, and in connection with Automated Data Processing software or a telecommunication system containing or supporting records in the system, number 3 authorizing disclosure to the Railroad Retirement Board (RRB), number 6 authorizing disclosure to the Department of Justice (DOJ) for investigating and prosecuting violations of the Social Security Act (the Act), number 7 authorizing disclosure to state licensing boards for review of unethical practices or non-professional conduct, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA). Disclosures that were previously permitted under published routine use number 1 will now be authorized under proposed routine use number 2. Proposed routine use number 2 will release information to ''agency contractors or consultants'' who have been engaged by the agency to assist in accomplishment of a CMS function related to this system of records (SOR).

Disclosures previously permitted under published routine uses number 3, 7, and to the SSA will be authorized by proposed routine use number 3, which will release information to ''another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent.'' Disclosures authorizing release to DOJ for investigating and prosecuting violations of the Act will be carried out under proposed routine use number 9, which authorizes release of data to ''combat fraud and abuse.'' We propose to add 3 new routine uses to provide disclosure of records when all

requirements have been met: number 1, to provide beneficiaries and other individuals with the identification of each physician or non-physician practitioner assigned a UPIN and who are participating in the Medicare program; number 2, to provide records to contractors who need to have access to records in order to assist CMS; number 3, to provide records to fiscal intermediaries and state and Federal agencies to contribute to the accuracy of Medicare payments, enable CMS to administer benefits programs and/or comply with Federal statutes or regulations, and to assist Medicaid programs within the state. The language in previous routine uses numbered 2, 4, 5, and 8 has been modified. Routine uses previously numbered 2, 5, 8, 9, and 10 have been renumbered as 6, 7, 5, 8 and 9 respectively.

The security classification previously reported as ''None'' will be modified to reflect that the data in this system is considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by a recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to maintain unique identification of each physician, non-physician practitioner, or medical group practice requesting or receiving Medicare payment. Information retrieved from this SOR will be used to: (1) Provide beneficiaries and other individuals with the identification of each physician or non-physician practitioner assigned an unique identification number and who are participating in the Medicare program; (2) support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (3) assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (4) assist Quality Improvement Organizations; (5) provide the American Medical Association with information needed for them to assist us in identifying physicians; (6) support constituent requests made to a congressional representative; (7) support litigation involving the agency; and (8) combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed modifications to the routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

DATES: *Effective Dates:* CMS filed a modified system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 14, 2004. To ensure that all parties have adequate time in which to comment, the modified system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Kimberly Brandt, Acting, Director, Program Integrity Group, Office of Financial Management, CMS, 7500 Security Boulevard, C3–02–17, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–1909.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System of Records

A. Statutory and Regulatory Basis For System of Records

In 1988, CMS modified an SOR under the authority of sections 1842 (r)–(42 U.S.C. 1395u) of Public Law 101–508; 1861(s)(1)–(42 U.S.C. 1395x); sections 1833 (q)(1)–(42 U.S.C. 1395l); 1842(b)(18)–(42 U.S.C. 1395u); (1842 (h)(4) & (5)–(42 U.S.C. 1395u); and 4164 of Omnibus Budget Reconciliation Act of 1990 (OBRA). Section 1871 (a)(1)–(42 U.S.C. 1395hh) provides that the Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance program under Title XVIII. Section 1833 (d)–(42 U.S.C. 1395l), prohibits making payment under Part B for services which are payable under Part A. Notice for this system, ''Unique Physician/Practitioner Identification Number (UPIN),'' System No. 09–70–0525, was most recently published in full at 54 FR 28119 (July 5, 1989), an expanded function and purpose of system and name change are at 61 FR 20528, (May 7, 1996), an unnumbered routine use was added for the Social Security Administration (SSA) at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted. UPIN contains records of all physicians, non-physician practitioners and medical group practice as defined by section 1861(r)–(42 U.S.C. 1395x), 1877(h) (4)–(42 U.S.C. 1395) of Title XVIII of the Act, who provide services for which payment is made under Medicare. By uniquely identifying all Part B health professional and practitioners and groups, CMS believes we will eliminate the possibility of double payment.

Medicare carriers currently identify physicians, non-physician practitioners and groups using their own individual systems of assigned numbers. These individualized systems allow for Physician Identification Numbers (PIN) ranging from 4 to 16 alphabetic and/or numeric characters. Some carriers assign separate PINs to the same physician providing medical services in more than one locality, office or practice and lack the capability to cross reference the PIN and related physician data (e.g., group affiliation).

Other carriers maintain a single PIN or cross-referenced PIN for each physician practicing within the carrier's geographic area of responsibility. The assignment of a unique, nationwide identification number will help eliminate the possibility of double billing where physicians, non-physician practitioners, and groups can furnish medical services in, as well as bill for these services from several locations or states which are in different carrier jurisdictions. In addition, independent physicians who have been found to be ineligible for Medicare payments in one area, location or state are prevented from receiving inappropriate or illegal payment in one or more other areas, locations or states.

In order to rectify the problems inherent in these individualized identification systems, CMS proposed to expand the Registry under Congressional mandate (Section 9202 of the Consolidated Omnibus Reconciliation Act of 1985, Public Law 99272), that created a uniform record

system under UPIN. The proposed changes to this national system or Registry of Unique Physician/ Practitioner Identification Number will enable CMS to more readily identify all physicians, non-physician practitioners, and group practices deemed ineligible for Medicare payments and maintain more comprehensive data on physician credentials.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The records contain a UPIN for each physician, non-physician practitioner, and medical group practices defined by sections 1124(A)–(42 U.S.C. 1320A–3), 1861(r), 1842(b)(18)(ii)(iii)(iv)(v)(r), and 1877(h)(4) of the Act who request or receive Medicare reimbursement for medical services. The system contains a UPIN, tax identification, and social security number for each physician, non-physician practitioner and medical group. Also, the system contains information concerning a provider's birth date, place of residence, medical education, and eligibility information necessary for Medicare reimbursement.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release UPIN information that can be associated with each physician, non-physician practitioner and medical group practices as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with UPIN information and identifiers. Non-identifiable data includes individual records with UPIN information and masked identifiers or UPIN information with identifiers stripped out of the file.

We will only disclose the minimum personal data necessary to achieve the purpose of UPIN. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., assure accurate identification of each physician, non-physician practitioner, or medical group practice requesting or receiving Medicare payment.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. remove or destroy at the earliest time all patient-identifiable information; and

c. agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the UPIN without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To provide beneficiaries and other individuals, the identification of each physician or non-physician practitioner who have been assigned a Unique Physician/Practitioner Identification Number (UPIN) and who are participating in the Medicare program.

Beneficiaries and providers often request the help of Medicare contractors (carriers and intermediaries) in the proper identification of physicians and non-physician providers participating in the Medicare program. The Secretary of HHS is required under provision of section 1863 of the Act to provide to the public certain information maintained in this system that serves this purpose.

2. To support Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

Carriers and intermediaries occasionally work with contractors to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

3. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require UPIN information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state, to support evaluations and monitoring of Medicare claims information of beneficiaries, including

proper reimbursement for services provided.

RRB requires UPIN information to enable them to assist in the implementation and maintenance of the Medicare program.

SSA requires UPIN data to enable them to assist in the implementation and maintenance of the Medicare program.

The Internal Revenue Service may require UPIN data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y (b).

State and other governmental worker's compensation agencies working with CMS to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with HHS for administration of state supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Act, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, and XVIII of the Act, and for the complete administration of the Medicaid program.

Occasionally state licensing boards require access to the UPIN data for review of unethical practices or nonprofessional conduct.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require UPIN information for auditing of Medicaid eligibility considerations. Disclosure of physicians' customary charge data are made to state audit agencies in order to ascertain the correctness of Title XVIII charges and payments. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to the purposes for this SOR.

4. To assist Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

5. To provide the American Medical Association (AMA), for the purpose of assisting CMS to identify medical doctors when CMS is unable to establish an identity, provided the AMA agrees to:

a. Use the information provided by CMS solely to identify a medical doctor;

b. Make no copies of the information it receives from the CMS, except for one back-up copy;

c. Return such information to CMS upon completion of its matching operation, and erase the back-up copy;

d. Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the records; and,

e. Sign a written statement attesting to its understanding of, and willingness to abide by these provisions.

CMS exchanges information with the AMA for the purpose of attempting to identify medical doctors when the UPIN Registry is unable to establish identity after matching carrier-submitted data to the data extract provided by the AMA. The AMA would attempt to establish medical doctor identity by matching the UPIN data to data maintained in the AMA Physician Master File.

6. To support a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries and other individuals often request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

7. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

8. To support a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

9. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require UPIN information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This system contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164,

65 FR 82462 (12–28–00), Subparts A and E. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent NIST publications; the HHS Automated Information Systems Security Handbook and the CMS Information Security Handbook.

V. Effect of the Modified System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of UPIN data. UPIN information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of UPIN data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: October 14, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

System No. 09–70–0525

SYSTEM NAME:

Unique Physician/Practitioner Identification Number (UPIN), HHS/CMS/OFM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. The system is also located at CMS contractors and agents at various locations (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All physicians, non-practitioners and medical groups practices, defined by sections 1124(A), 1861(r), 1842(b)(I)(ii)(iii)(iv)(v)(r), and 1877(h)(4) of the Act who request or receive Medicare reimbursement for medical services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains a UPIN, tax identification, and social security number (SSN) for each physician, non-physician practitioner and medical group. Also, the system contains information concerning a provider's birth date, place of residence, medical education, and eligibility information for Medicare reimbursement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1842(r) of Pub. L. 101–508; sections 1833(q)(1), 1842(b)(18), (1842 (h)(4), and (5), 1861(s)(I), and 4146 of Title XVIII of the Act.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the SOR is to maintain unique identification of each physician, non-physician practitioner, or medical group practice requesting or receiving Medicare payment. Information retrieved from this SOR will be used to: (1) Provide beneficiaries and other individuals with the identification of each physician or non-physician practitioner assigned an unique identification number and who are participating in the Medicare program; (2) support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (3) assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (4) assist Quality Improvement Organizations; (5) provide the American Medical Association with information needed for them to assist us in identifying physicians; (6) support constituent requests made to a congressional representative; (7) support litigation involving the agency; and (8) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the UPIN without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (Dec. 28, 00), as amended by 66 FR 12434 (Feb. 26, 01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To provide beneficiaries and other individuals of the identification of each physician or non-physician practitioner who have been assigned a Unique Physician/Practitioner Identification Number (UPIN) and who are participating in the Medicare program.

2. To support agency contractors or consultants who have been engaged by the agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

3. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

4. To assist Quality Improvement Organizations in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

5. To provide the American Medical Association (AMA), for the purpose of assisting CMS to identify medical doctors when CMS is unable to establish an identity, provided the AMA agrees to:

a. Use the information provided by CMS solely to identify a medical doctor;

b. Make no copies of the information it receives from the CMS, except for one back-up copy;

c. Return such information to CMS upon completion of its matching operation, and erase the back-up copy;

d. Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the records; and

e. Sign a written statement attesting to its understanding of, and willingness to abide by these provisions.

6. To support a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

7. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

8. To support a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

9. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

The records are retrieved alphabetically by the provider name, social security number or by their assigned UPIN.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management Of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent NIST publications; the HHS Automated Information Systems Security Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS and the repository of the National Archive and Records Administration (NARA) will retain identifiable UPIN assessment data for a total period not to exceed fifteen (15) years.

SYSTEM MANAGER AND ADDRESS:

Director, Program Integrity Group, Office of Financial Management, CMS, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager, who will require the system name, health insurance claim number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay), address, date of birth, and sex.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

CMS obtains the identifying information in this system from carriers. Information in these records concerning the eligibility of physicians, practitioners, and medical groups for Medicare reimbursement is obtained either directly from such entities through Medicare Regional Offices, contractors, PRO, Department of Justice, state or local judicial systems, medical licensing and certification agencies or organizations, medical societies and medical associations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Claims

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations that share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Centers for Medicare & Medicaid Services and the Social Security Administration to perform specific task in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

1. Central Office Address

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

2. CMS Regional Offices

BOSTON REGION—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

NEW YORK REGION—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.

PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.

ATLANTA REGION—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.

CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A—824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

KANSAS CITY REGION—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

DENVER REGION—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

SEATTLE REGION—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

3. Intermediary Addresses (Hospital Insurance)

Medicare Coordinator, Assoc. Hospital Serv. Maine (ME BC), 2 Gannett Drive South Portland, ME 04106–6911.

Medicare Coordinator, Anthem New Hampshire, 300 Goffs Falls Road, Manchester, NH 03111–0001.

Medicare Coordinator, BC/BS Rhode Island (RI BC), 444 Westminster Street, Providence, RI 02903–3279.

Medicare Coordinator, Empire Medicare Services, 400 S. Salina Street, Syracuse, NY 13202.

Medicare Coordinator, Cooperativa, P.O. Box 363428, San Juan, PR 00936–3428.

Medicare Coordinator, Maryland B/C, P.O. Box 4368, 1946 Greenspring Ave., Timonium, MD 21093.

Medicare Coordinator, Highmark, P5103, 120 Fifth Avenue Place, Pittsburgh, PA 15222–3099.

Medicare Coordinator, United Government Services, 1515 N. Rivercenter Dr., Milwaukee, WI 53212.

Medicare Coordinator, Alabama B/C, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Florida B/C, 532 Riverside Ave., Jacksonville, FL 32202–4918.

Medicare Coordinator, Georgia B/C, P.O. Box 9048, 2357 Warm Springs Road, Columbus, GA 31908.

Medicare Coordinator, Mississippi B/C MS, P.O. Box 23035, 3545 Lakeland Drive, Jackson, MI 39225–3035.

Medicare Coordinator, North Carolina B/C, P.O. Box 2291, Durham, NC 27702–2291.

Medicare Coordinator, Palmetto GBA A/RHHI, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Tennessee B/C, 801 Pine Street, Chattanooga, TN 37402–2555.

Medicare Coordinator, Anthem Insurance Co. (Anthm IN), P.O. Box 50451, 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Arkansas B/C, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Group Health of Oklahoma, 1215 South Boulder, Tulsa, OK 74119–2827.

Medicare Coordinator, Trailblazer, P.O. Box 660156, Dallas, TX 75266–0156.

Medicare Coordinator, Cahaba GBA, Station 7, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/C, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Nebraska B/C, P.O. Box 3248, Main PO Station, Omaha, NE 68180–0001.

Medicare Coordinator, Mutual of Omaha, P.O. Box 1602, Omaha, NE 68101.

Medicare Coordinator, Montana B/C, P.O. Box 5017, Great Falls Div., Great Falls, MT 59403–5017.

Medicare Coordinator, Noridian, 4510 13th Avenue SW., Fargo, ND 58121–0001.

Medicare Coordinator, Utah B/C, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Wyoming B/C, 4000 House Avenue, Cheyenne, WY 82003.

Medicare Coordinator, Arizona B/C, P.O. Box 37700, Phoenix, AZ 85069.

Medicare Coordinator, UGS, P.O. Box 70000, Van Nuys, CA 91470–0000.

Medicare Coordinator, Regents BC, P.O. Box 8110 M/S D–4A, Portland, OR 97207–8110.

Medicare Coordinator, Premera BC, P.O. Box 2847, Seattle, WA 98111–2847.

4. Medicare Carriers

Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.

Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.
Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.
Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.
Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY, 10598.
Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.
Medicare Coordinator, Triple S, #1441 F.D., Roosevelt Ave., Guaynabo, PR 00968.
Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.
Medicare Coordinator, Highmark, P.O. Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.
Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.
Medicare Coordinator, Trailblazer Health Enterprises, Virginia, P.O. Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.
Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.
Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.
Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.
Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.
Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.
Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.
Medicare Coordinator, Railroad Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.
Medicare Coordinator, Cahaba GBA, Jackson, Miss, P.O. Box 22545, Jackson, MI 39225–2545.
Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.
Medicare Coordinator, Wisconsin Physicians Service, P.O. Box 8190, Madison, WI 53708–8190.
Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 16788, 1 Nationwide Plaza, Columbus, OH 43216–6788.
Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.
Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.
Medicare Coordinator, Palmetto GBA—DMERC, 17 Technology Circle, Columbia, SC 29203–0001.
Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.
Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.
Medicare Coordinator, Kansas B/S, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.
Medicare Coordinator, Kansas B/S—NE, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.
Medicare Coordinator, Montana B/S, P.O. Box 4309, Helena, MT 59601.
Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.
Medicare Coordinator, Noridian Bcbsnd (C0), 730 N. Simms #100, Golden, CO 80401–4730.
Medicare Coordinator, Noridian Bcbsnd (WY), 4305 13th Avenue South, Fargo, ND 58103–3373.
Medicare Coordinator, Utah B/S, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.
Medicare Coordinator, Transamerica Occidental, P.O. Box 54905, Los Angeles, CA 90054–4905.
Medicare Coordinator, NHIC—California, 450 W. East Avenue, Chico, CA 95926.
Medicare Coordinator, Cigna, Suite 254, 3150 Lakeharbor, Boise, ID 83703.
Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

Payment Safeguard Contractors

Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.
Medicare Coordinator, DynCorp Electronic Data Systems (EDS, 11710 Plaza America Drive 5400 Legacy Drive, Reston, VA 20190–6017.
Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co. 6601 Little River Turnpike, Suite 300 Mutual of Omaha Plaza, Omaha, NE 68175.
Medicare Coordinator, Reliance Safeguard Solutions, Inc., P.O. Box 30207 400 South Salina Street, 2890 East Cottonwood Pkwy. Syracuse, NY 13202.
Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd. P.O. Box 100282, Falls Church, VA.
Medicare Coordinator, California Medical Review, Inc. Integriguard Division Federal Sector Civil Group One Sansome Street, San Francisco, CA 94104–4448.
Medicare Coordinator, Computer Sciences Corporation Suite 600 3120 Timanus Lane, Baltimore, MD 21244.
Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive 5400 Legacy Drive, Plano, TX 75204.
Medicare Coordinator, TriCenturion, L.L.C., P.O. Box 100282, Columbia, SC 29202.

[FR Doc. 04–27529 Filed 12–15–04; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of modified or altered system of records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, ''Medicare Hearings and Appeals System (MHAS), System No. 09–70–5001.'' We propose to broaden the scope of this system to support additional levels of claim determination appeals administered by CMS pursuant to Title XVIII of the Social Security Act (the Act). We propose to change the name of the system from MHAS to the ''Medicare Appeals System'' (MAS) to more closely reflect the new and broadened scope of activities that will become a part of this system. We propose to further broaden the scope of this system with the inclusions of support for appeals processes for both the Medicare Fee-for-Service (FFS) appeals at the Qualified Independent Contractors (QIC) and Medicare Advantage appeals at the Independent Review Entity (IRE) Second Level Appeal. As an orderly timetable will permit, CMS will explore the possibility of extending the scope of MAS to include all five appeal levels:

Affiliated Contractors (Carriers and Fiscal Intermediaries) and Medicare Advantage Organizations (MAO)—the First Level Appeal; QIC and IRE—the Second Level Appeal; ALJ Hearing—the Third Level Appeal; Medicare Departmental Appeals Board (DAB) Hearing—the Fourth Level Appeal; and Federal District Court Judicial Review—the Fifth Level Appeal.

In the interim, before deployment of the MAS, CMS has developed a mid-tier, client server-based system known as the Medicare Case Tracking System (MCATS). MCATS will be utilized if the MAS is not available to collect and track appeals data, including status, timelines, and decision data. It has the capability to provide summary reports for data analysis, and will comply with applicable security and privacy rules, regulations, and policies.

We propose to broaden the scope of activities covered by this system with the inclusion of related activities presented in the 2 published CMS systems identified below: (1) ''Reconsideration and Hearing Case Files (Part A)—Hospital Insurance Program,'' System No. 09–70–0508 (published 47 FR 45725 (Oct. 13, 1982)), and (2) ''Review and Fair Hearing Case Files (Part B)—Supplementary Medical Insurance Program,'' System No. 09–70–0512 (47 FR 45727 (Oct. 13, 1982)). These 2 systems will be discontinued with the completion of this proposed

modification to MAS since they will duplicate many of the same functions.

We propose to delete published routine use number 4 authorizing disclosure to the Department of Justice (DOJ), and an unnumbered routine use authorizing disclosure to SSA. Access to the data for these activities will be accomplished by the addition of a new routine use authorizing release of information in this system to ''another Federal agency.'' In addition, we propose to add a new routine use for QIO to ensure that payment is only made for medically necessary services and to investigate beneficiary complaints about quality of care. We will also add 2 new routine uses to combat fraud and abuse in certain health care programs.

The security classification previously reported as ''None'' will be modified to reflect that the data in this system is considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the language in the remaining routine uses to provide an easy to read format and to increase uniformity where appropriate to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purposes of the system is to collect and maintain information necessary to: (1) Process the initial, organization, and reconsidered determination requests, ''Request For Hearing or Appeal,'' made by an appellant or appealing party, as required for the review of determinations by FFS and MAOs; (2) track appeal data, including status, timeliness, and decisions; and (3) reply to future correspondence related to the case. Information in this system will also be disclosed to: support regulatory and policy functions performed within the Agency or by a contractor or consultant; assist another Federal agency; assist QIO; support constituent requests made to a congressional representative; support litigation involving the agency related to this SOR; and, combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

DATES: *Effective Dates:* CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 1, 2004. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development, Enterprises Databases Group, Office of Information Services, CMS, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Michael Crochunis, Director, Division of Appeals Operations, Health Plan Policy Group, Center for Beneficiary Choices, CMS, Room S1–05–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–3203.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

Statutory and Regulatory Basis for SOR

In 1987, CMS established this SOR under the authority of sections 205, 1155, 1156, 1869, and 1872 of the Act. Notice of this system, ''Medicare Hearings and Appeals Systems (MHAS), System No. 09–70–5001,'' was published at 52 FR 34846 (Sept. 15, 1987), and an unnumbered routine use for disclosure to SSA was added at 61 FR 6645 (Feb. 21, 1996). Additional authority for the maintenance of this system is given under of sections 205 of Title II, sections 1155 and 1156 of Title XI, sections 1812, 1814, 1816, 1842, 1869, and 1872 of Title XVIII of the Act, as amended (42 United States Code (U.S.C.) sections 405, 1320c–4, 1320c–5, 1395d, 1395f, 1395h, 1395u, 1395ff, and 1395ii).

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information concerning Medicare beneficiaries, physicians, providers, and other persons involved in furnishing services to health insurance beneficiaries. Information on beneficiaries consist of name, address, social security numbers (SSN), health insurance claims numbers (HICN), medical services, equipment and supplies for which Medicare reimbursement is requested, and materials used to determine amount of benefits allowable under Medicare. Information on appellants, physicians, and other persons consist of name, work address, work phone number, an assigned provider identification number, specialty, medical services for which Medicare reimbursement is requested, and materials used to determine amounts of benefits allowable under Medicare.

B. Agency Policies, Procedures, and Restrictions on the Routine Uses

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MAS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of MAS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, collecting and maintaining information used in processing the appellant's hearing or appeal, to track a particular case, and information necessary to reply to future correspondence.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient

importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose (s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest, legally permissible-time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MAS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To support agency contractors, or consultants who have been engaged by the agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant all information that is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To assist another Federal agency in the accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to support CMS.

DOJ may require MAS data to assist them in investigating and prosecuting violations of the Act to which criminal penalties attach, or other criminal statutes as they pertain to certain programs authorized by the Act, and for representing the Secretary of the Department of Health and Human Services.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with another Federal agency to assist in accomplishing CMS functions relating to purposes for this SOR.

3. To assist Quality Improvement Organizations in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to ensure that payment is only made for medically necessary services. QIOs will assist in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, investigate beneficiary complaints about quality of care, and prepare summary information for release to CMS.

4. To support a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

5. To support the Department of Justice (DOJ), court or adjudicatory body when

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To support a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To support another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct,

remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require MAS information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This system contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00), Subparts A and E. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on data where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary.

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management Of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent NIST publications; the HHS Automated Information Systems Security Handbook and the CMS Information Security Handbook.

V. Effect of the Modified System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of MAS. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information in this system to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: October 1, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

System No. 09–70–5001

SYSTEM NAME:

''Medicare Appeals System (MAS),'' HHS/CMS/CBC.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. This system is also located in locations listed in appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information concerning Medicare beneficiaries, and physicians and other persons involved in furnishing services to health insurance beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system include beneficiary's name, address, social security number (SSN), health insurance claims number (HICN), medical services, equipment, and supplies for which Medicare reimbursement is requested, and materials used to determine amount of benefits allowable under Medicare. Information on physicians and other persons consists of name, work address, work phone number, an assigned provider identification number, specialty, medical services for which Medicare reimbursement is requested, materials used to determine amounts of benefits allowable under Medicare.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this SOR is given under section 205 of Title II, sections 1155 and 1156 of Title XI, sections 1812, 1814, 1816, 1842, 1869, and 1872 of Title XVIII of the Social Security Act (the Act), as amended (42 United States Code (U.S.C.) sections 405, 1320c–4, 1320c–5, 1395d, 1395f, 1395h, 1395u, 1395ff, and 1395ii).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to collect and maintain information necessary to: (1) Process the initial, organization, and reconsidered determination requests, ''Request For Hearing or Appeal,'' made by an appellant or appealing party, as required for the review of determinations by Fee-for-Service and Medicare Advantage Organizations; (2) track appeal data, including status, timeliness, and decisions; and (3) reply to future correspondence related to the case. Information in this system will also be disclosed to: support regulatory and policy functions performed within the Agency or by a contractor or consultant; assist another Federal agency; assist QIO; support constituent requests made to a congressional representative; support litigation involving the agency related to this SOR; and, combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES

A. ENTITIES WHO MAY RECEIVE DISCLOSURES UNDER ROUTINE USE

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MAS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To support Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To assist another Federal agency in the accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to support CMS.

3. To assist Quality Improvement Organizations in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

4. To assist a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

5. To assist the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

6. To assist a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. ADDITIONAL CIRCUMSTANCES AFFECTING ROUTINE USE DISCLOSURES

This system contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00)), Subparts A and E. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on data where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the name, SSN, HICN, and assigned provider number.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management Of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent NIST publications; the HHS Automated Information Systems Security Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Disposal occurs ten years after the final determination of the case is completed.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Appeals Operations, Health Plan Policy Group, Center for Beneficiary Choices, CMS, Room S1–05–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HICN, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from the individual on the completed form requesting a Medicare hearing or appeal. In addition, information contained in this SOR may be obtained from Medicare carriers or intermediaries and Quality Improvement Organizations records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Claims

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations that share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Centers for Medicare & Medicaid Services to perform specific task in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

1. Central Office Address

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

2. CMS Regional Offices

- BOSTON REGION—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.
- NEW YORK REGION—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.
- PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.
- ATLANTA REGION—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.
- CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A—824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.
- DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.
- KANSAS CITY REGION—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.
- DENVER REGION—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.
- SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.
- SEATTLE REGION—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours: 8 a.m.–4:30 p.m.

3. Intermediary Addresses (Hospital Insurance)

- Medicare Coordinator, Assoc. Hospital Serv. Maine (ME BC), 2 Gannett Drive South Portland, ME 04106–6911.
- Medicare Coordinator, Anthem New Hampshire, 300 Goffs Falls Road, Manchester, NH 03111–0001.
- Medicare Coordinator, BC/BS Rhode Island (RI BC), 444 Westminster Street, Providence, RI 02903–3279.
- Medicare Coordinator, Empire Medicare Services, 400 S. Salina Street, Syracuse, NY 13202.
- Medicare Coordinator, Cooperativa, P.O. Box 363428, San Juan, PR 00936–3428.
- Medicare Coordinator, Maryland B/C, P.O. Box 4368, 1946 Greenspring Ave., Timonium, MD 21093.
- Medicare Coordinator, Highmark, P5103, 120 Fifth Avenue Place, Pittsburgh, PA 15222–3099.
- Medicare Coordinator, United Government Services, 1515 N. Rivercenter Dr., Milwaukee, WI 53212.
- Medicare Coordinator, Alabama B/C, 450 Riverchase Parkway East, Birmingham, AL 35298.
- Medicare Coordinator, Florida B/C, 532 Riverside Ave., Jacksonville, FL 32202–4918.
- Medicare Coordinator, Georgia B/C, P.O. Box 9048, 2357 Warm Springs Road, Columbus, GA 31908.
- Medicare Coordinator, Mississippi B/C B MS, P.O. Box 23035, 3545 Lakeland Drive, Jackson, MI 9225–3035.
- Medicare Coordinator, North Carolina B/C, P.O. Box 2291, Durham, NC 27702–2291.
- Medicare Coordinator, Palmetto GBA A/RHHI, 17 Technology Circle, Columbia, SC 29203–0001.
- Medicare Coordinator, Tennessee B/C, 801 Pine Street, Chattanooga, TN 37402–2555.
- Medicare Coordinator, Anthem Insurance Co. (Anthm IN), P.O. Box 50451, 8115 Knue Road, Indianapolis, IN 46250–1936.
- Medicare Coordinator, Arkansas B/C, 601 Gaines Street, Little Rock, AR 72203.
- Medicare Coordinator, Group Health of Oklahoma, 1215 South Boulder, Tulsa, OK 74119–2827.
- Medicare Coordinator, TrailBlazer, P.O. Box 660156, Dallas, TX 75266–0156.
- Medicare Coordinator, Cahaba GBA, Station 7, 636 Grand Avenue, Des Moines, IA 50309–2551.
- Medicare Coordinator, Kansas B/C, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.
- Medicare Coordinator, Nebraska B/C, P.O. Box 3248, Main PO Station, Omaha, NE 68180–0001.
- Medicare Coordinator, Mutual of Omaha, P.O. Box 1602, Omaha, NE 68101.
- Medicare Coordinator, Montana B/C, P.O. Box 5017, Great Falls Div., Great Falls, MT 59403–5017.
- Medicare Coordinator, Noridian, 4510 13th Avenue S.W., Fargo, ND 58121–0001.
- Medicare Coordinator, Utah B/C, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.
- Medicare Coordinator, Wyoming B/C, 4000 House Avenue, Cheyenne, WY 82003.
- Medicare Coordinator, Arizona B/C, P.O. Box 37700, Phoenix, AZ 85069.
- Medicare Coordinator, UGS, P.O. Box 70000, Van Nuys, CA 91470–0000.
- Medicare Coordinator, Regents BC, P.O. Box 8110 M/S D–4A, Portland, OR 97207–8110.
- Medicare Coordinator, Premera BC, P.O. Box 2847, Seattle, WA 98111–2847.

4. Medicare Carriers

- Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.
- Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.
- Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.
- Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.
- Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY 10598.
- Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.
- Medicare Coordinator, Triple S, #1441 F.D., Roosevelt Ave., Guaynabo, PR 00968.
- Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.
- Medicare Coordinator, Highmark, P.O. Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.
- Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.

• Medicare Coordinator, Trailblazer Health Enterprises, Virginia, P.O. Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.
• Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.
• Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.
• Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.
• Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.
• Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.
• Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.
• Medicare Coordinator, Railroad Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.
• Medicare Coordinator, Cahaba GBA, Jackson Miss, P.O. Box 22545, Jackson, MI 39225–2545.
• Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.
• Medicare Coordinator, Wisconsin Physicians Service, P.O. Box 8190, Madison, WI 53708–8190.
• Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 16788, 1 Nationwide Plaza, Columbus, Oh 3216–6788.
• Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.
• Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.
• Medicare Coordinator, Palmetto GBA—DMERC, 17 Technology Circle, Columbia, SC 29203–0001.
• Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.
• Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.
• Medicare Coordinator, Kansas B/S, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.
• Medicare Coordinator, Kansas B/S—NE, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.
• Medicare Coordinator, Montana B/S, P.O. Box 4309, Helena, MT 59601.
• Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.
• Medicare Coordinator, Noridian BCBSND (CO), 730 N. Simms #100, Golden, CO 80401–4730.
• Medicare Coordinator, Noridian BCBSND (WY), 4305 13th Avenue South, Fargo, ND 58103–3373.
• Medicare Coordinator, Utah B/S, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.
• Medicare Coordinator, Transamerica Occidental, P.O. Box 54905, Los Angeles, CA 90054–4905.
• Medicare Coordinator, NHIC—California, 450 W. East Avenue, Chico, CA 95926.
• Medicare Coordinator, Cigna, Suite 254, 3150 Lakeharbor, Boise, ID 83703.
• Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

5. Payment Safeguard Contractors

• Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.
• Medicare Coordinator, DynCorp Electronic Data Systems (EDS), 11710 Plaza America Drive 5400 Legacy Drive, Reston, VA 20190–6017.
• Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co. 6601 Little River Turnpike, Suite 300 Mutual of Omaha Plaza, Omaha, NE 68175.
• Medicare Coordinator, Reliance Safeguard Solutions, Inc., P. O. Box 30207 400 South Salina Street, 2890 East Cottonwood Pkwy. Syracuse, NY 13202.
• Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd. P. O. Box 100282, Falls Church, VA.
• Medicare Coordinator, California Medical Review, Inc. Integriguard Division Federal Sector Civil Group One Sansome Street, San Francisco, CA 94104–4448.
• Medicare Coordinator, Computer Sciences Corporation Suite 600 3120 Timanus Lane, Baltimore, MD 21244.
• Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive 5400 Legacy Drive, Plano, TX 75204.
• Medicare Coordinator, TriCenturion, L.L.C., P. O. Box 100282, Columbia, SC 29202.

[FR Doc. 04–27530 Filed 12–15–04; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SEER Expansion Renewals.
Date: January 4, 2005.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone conference call.)
Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329. (301) 496–7421. *kerwinm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: December 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27494 Filed 12–15–04; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel.
Date: February 10–11, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Marriott Washington Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.
Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer

Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405. (301) 496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 39.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: December 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27497 Filed 12–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Heatlh

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language intepretation or other reasonable accomodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: January 24, 2005.

Time: 1 p.m. to 4:30 p.m.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601. (301) 435–3732.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: December 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27495 Filed 12–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: January 24, 2005.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director and a presentation by a representative of the Centers for Disease Control and Prevention.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610. (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: January 24, 2005.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: John J. McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610. (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transportation Subcommittee.

Date: January 24, 2005.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610. (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 24, 2005.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville MD 20892–7610. (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: May 23, 2005.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director and the Director, Vaccine Research Center.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville MD 20892–7610. (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: May 23, 2005.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville MD 20892–7610. (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: May 23, 2005.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610. (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: May 23, 2005.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610. (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 26, 2005.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director and the Institute's Director of Intramural Research.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610. (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: September 26, 2005.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: John J. McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: September 26, 2005.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: John J. McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: September 26, 2005.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to ajournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, (301) 496–7291.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-governement employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.niaid.nih.gov/facts/facts.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: December 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27496 Filed 12–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–36, Review of R25s

Date: January 6, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, Associate SRA, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4827.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–34, Review of R01s.

Date: January 12, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–33, Review of R21s.

Date: January 13, 2005.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–28, Review PAR03–059, International Collaborative.

Date: January 26, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–29, Review of R21s.

Date: February 2, 2005.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27498 Filed 12–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee 05–35, Review of R03s, Fs, Ks

Date: February 17–18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lynn Mertens King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–32F, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–5006, *lynn.king@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27499 Filed 12–04–15; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of meetings of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: January 27–28, 2005.

Open: January 27, 2005, 3 p.m. to 4:30 p.m.

Agenda: Presentations by the Institute Director and Executive Secretary.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: January 28, 2005, 8 a.m. to 12:15 p.m.

Agenda: Reports from institute officials.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: January 28, 2005, 1:15 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Arlene Y Chiu, PhD, Associate Director, Office of Research Administration, Office of Science Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Plaza, Suite 200, MSC–5477, Bethesda, MD 20892–5477, (301) 435–9218, *chiua@mail.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering Strategic Plan Development Subcommittee.

Date: January 27, 2005.

Open: 1 p.m. to 3 p.m.

Agenda: Discussions of implementation of strategic plan and quantum grants.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Arlene Y Chiu, PhD, Associate Director, Office of Research Administration, Office of Science Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Plaza, Suite 200, MSC–5477, Bethesda, MD 20892–5477, (301) 435–9218, *chiua@mail.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering Training and Career Development Subcommittee.

Date: January 27, 2005.

Open: 4:30 p.m. to 5:45 p.m.

Agenda: Discussion of subcommittee programs.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Arlene Y Chiu, PhD, Associate Director, Office of Research Administration Office of Science Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Plaza, Suite 200, MSC–5477, Bethesda, MD 20892–5477, (301) 435–9218, *chiua@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: December 9, 2004.

Laverne Y. Stringfield

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27500 Filed 12–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: January 13–14, 2005.

Closed: January 13, 2005, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 9000 Rockville Pike, Bethesda, MD 20852.

Open: January 13, 2005, 10:30 a.m. to 5 p.m.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 9000 Rockville Pike, Bethesda, MD 20852.

Closed: January 14, 2005, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 9000 Rockville Pike, Bethesda, MD 20852.

Contact Person: Ann A. Hagan, PhD, Associate Director, Division of Extramural Activities, 45 Center Drive, Room 2AN24G, MSC6200, Bethesda, MD 20892–6200, (301) 594–3910, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27501 Filed 12–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Institutes of Health Peer Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institutes of Health Peer Review Advisory Committee.

Date: January 24–25, 2005.

Time: 8:30 a.m. to 12 p.m.

Agenda: Provide technical and scientific advice to the Director, National Institutes of

Health (NIH), the Deputy Director for Extramural Research, NIH and the Director, Center for Scientific Review (CSR), on matters relating broadly to review procedures and policies for the evaluation of scientific and technical merit of applications for grants and awards.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Karl Malik, PhD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7776, Bethesda, MD 20892, (301) 594–6806, *malikk@csr.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 09, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27502 Filed 12–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, February 1, 2005.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on February 1, 2005 at 7 p.m. at the Whitinsville Town Hall at 7 Main Street, Whitinsville, MA 01588 for the following reasons:

1. Approval of minutes.
2. Chairman's report.
3. Executive Director's report.
4. Financial budget.
5. Public input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director. John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director, BRVNHCC.

[FR Doc. 04–27518 Filed 12–15–04; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Final Comprehensive Conservation Plan and Environmental Impact Statement for Rocky Flats National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Final Comprehensive Conservation Plan and Environmental Impact Statement (Final CCP/EIS) for the Rocky Flats National Wildlife Refuge (Refuge) is available. This Final CCP/EIS was prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act (NEPA). The Final CCP/EIS describes the Service's proposal for management of the Refuge for 15 years, beginning at Refuge establishment, which is anticipated to occur sometime between 2006 and 2008. Four alternatives for management of the Refuge are considered in the CCP/EIS.

DATES: A Record of Decision will be signed no sooner than 30 days after publication of this notice.

ADDRESSES: To request a copy of the Final CCP/EIS, contact Laurie Shannon, Planning Team Leader, Rocky Flats National Wildlife Refuge, Rocky Mountain Arsenal—Building 121, Commerce City, Colorado 80222. Additionally, copies of the Final CCP/EIS may be downloaded from the project Web site: *http://rockyflats.fws.gov.* The Final CCP/EIS will be available for reading at the following main branch libraries: Arvada Public Library, Boulder Public Library, Daniels Library, Golden Public Library, Westminster Public Library, Front Range Community College, Louisville Public Library, Thornton Public Library, and Mamie Dowd Eisenhower Library in Broomfield.

FOR FURTHER INFORMATION CONTACT: Laurie Shannon, Planning Team Leader at the above address or at 303–289–0980.

SUPPLEMENTARY INFORMATION: The 6,240-acre Rocky Flats National Wildlife Refuge site is in northern Jefferson County and southern Boulder County, Colorado. The Rocky Flats site was used as a nuclear weapons production facility until 1992, when the mission of Rocky Flats changed to environmental cleanup and closure. The majority of the site has remained undisturbed for over 50 years and provides habitat for many wildlife species, including the federally threatened Preble's meadow jumping mouse, and several rare plant communities. Under the Rocky Flats National Wildlife Refuge Act of 2001, most of the site will become a National Wildlife Refuge once cleanup and closure has been completed. The Refuge will likely be established sometime between 2006 and 2008.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge Improvement Act of 1997, requires the Service to develop a CCP for the Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, wildlife observation and photography, and environmental education and interpretation. The CCP is intended to be a dynamic document that will be adaptable to changing resource and management conditions.

Significant issues addressed in the Final CCP/EIS include: Vegetation management, wildlife management, public use, cultural resources, property, infrastructure, and refuge operations. The Service developed four alternatives for management of the Refuge: Alternative A—No Action; Alternative B—Wildlife, Habitat, and Public Use; Alternative C—Ecological Restoration; and Alternative D—Public Use. All four alternatives outline specific

management objectives and strategies related to wildlife and habitat management; public use, education, and interpretation; safety; open and effective communication; working with others; and refuge operations.

Alternative B, the Service's Proposed Action, emphasizes wildlife and habitat conservation with a moderate amount of wildlife-dependent public use. Refuge-wide habitat conservation would include management of native plant communities, weeds, restoration tools, removal and revegetation of unused roads and stream crossings, management of deer and elk populations, prairie dogs, and protection of Preble's meadow jumping mouse habitat. Visitor use facilities would include about 16 miles of trails, a seasonally staffed visitor contact station, trailheads with parking, and developed overlooks. Most of the trails would use existing roads and public access would be by foot, bicycle, horse, or car. A limited public hunting program would be developed.

Public comments were requested, considered, and incorporated throughout the planning process in numerous ways. Some of the changes from the Draft CCP/EIS that resulted from public comments included changes to trail alignments, more flexible trail implementation, changes to the types of weaponry allowed for hunting, more discussion about issues related to cleanup and contamination, and additional discussion about potential impacts from transportation improvements. Public outreach has included public open houses, public hearings, individual outreach activities, planning update mailings, and **Federal Register** notices. Two previous notices were published in the **Federal Register** concerning this CCP/EIS (67 FR 54667, August 23, 2002; and 69 FR 7789, February 19, 2004).

During the Draft CCP/EIS comment period that occurred from February 19, 2004 to April 25, 2004, the Service received over 5,000 comments from about 1,000 individuals, agencies, and organizations. Comments were received through public hearing testimony, letters, emails, form letters, and petitions. All substantive issues raised in the comments were addressed in the Final CCP/EIS. Public comments will be available for review at the Front Range Community College Library, Rocky Flats Reading Room or at the Rocky Mountain Arsenal National Wildlife Refuge Visitor Center on weekends. Responses to comments will be included as a companion document with the Final CCP/EIS.

Dated: September 29, 2004.

Linda H. Kelsey,

Acting Deputy Regional Director, Region 6, Denver, Colorado.

[FR Doc. 04–27510 Filed 12–15–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–1990–EX]

Notice of Availability of the Draft Supplemental Environmental Impact Statement (SEIS) for the Golden Sunlight Mine, Jefferson County, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) a Draft Supplemental Environmental Impact Statement (SEIS) has been prepared for the Golden Sunlight Mine administered by the Bureau of Land Management's Butte Field Office (BLM) and the Montana Department of Environmental Quality (DEQ). The SEIS addresses alternatives and potential impacts and mitigating measures associated with Golden Sunlight Mine's proposed pit backfill.

DATES: We will accept written comments on the Draft SEIS for 60 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. We will announce future meetings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings. The Draft SEIS will be posted on the Montana DEQ Web site (*http://www.deq.state.mt.us*).

ADDRESSES: Send your written comments concerning this notice to: Greg Hallsten, Montana Department of Environmental Quality, PO Box 200901, Helena, MT 59620–0901. Submit electronic comments to: *ghallsten@state.mt.us*.

FOR FURTHER INFORMATION CONTACT: For further information and/or to request a copy of the document, contact: Greg Hallsten, Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620–0901 or David Williams, Bureau of Land Management, Butte Field Office, 106 N. Parkmont, Butte, MT 59701.

SUPPLEMENTARY INFORMATION: The proposed Golden Sunlight Mine pit backfill and reclamation is in response to a District Court order stipulating that reclamation of the open pit be carried out in accordance with the Montana Metal Mine Reclamation Act. The public is invited to review and comment on the range and adequacy of the alternatives, potential environmental impacts, and proposed mitigation of impacts in the SEIS. For comments to be most helpful, they should be specific in identifying any concerns or conflicts the reviewer may have with the analysis in the SEIS.

Individual respondents may request confidentiality. If you wish to withhold your name or street 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. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Richard M. Hotaling,

Field Manager.

[FR Doc. 04–27297 Filed 12–15–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–EU]

Notice of Availability of the Final Environmental Impact Statement for the Las Vegas Valley Disposal Area

AGENCY: Bureau of Land Management, Interior.

Cooperating Agencies: U.S. Air Force, Nellis Air Force Base; U.S. Fish and Wildlife Service, Desert National Wildlife Refuge Complex; Clark County Regional Flood Control District; Clark County Comprehensive Planning; City of Henderson; City of Las Vegas; City of North Las Vegas.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 and the Federal Land Policy and Management Act (FLPMA) of 1976, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (FEIS) with the specific purpose to enable BLM to transfer title or authorize uses of public land in the Las Vegas Valley. The project area consists of public lands identified for disposal within the boundary established by the Southern Nevada Public Lands Management Act

(SNPLMA) (Pub. L. 105–263), and as expanded/amended by the Clark County Conservation of Public Land and Natural Resources Act of 2002 (Clark County Act) (Pub. L. 107–282).

DATES: BLM will sign the Record of Decision (ROD) for the FEIS the same day the Notice of Availability for the FEIS is published by the Environmental Protection Agency (EPA) in the **Federal Register**. The ROD will be provided with the FEIS and the signed copy of the ROD will be posted on the official Web site on the day of signature. Therefore, the 30-day period of availability will also serve as the appeal period for the entire FEIS, as provided for by 40 CFR 1506.10(b)(2). Appeal rights will be explained in the ROD as well as the cover page of the FEIS. No actions can occur until the 30-day period expires.

ADDRESSES: You may submit comments on the FEIS for the official record to: E-mail: *jsteinme@nv.blm.gov*. Fax: (702) 515–5155. Mail: Bureau of Land Management, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301. Individual respondents may request confidentiality. If you wish to withhold your name or street 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. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. Copies of the FEIS are available in the BLM Las Vegas Field Office at the above address during office hours (7:30 to 4:15 p.m., Monday through Friday, except holidays). Interested persons may also review the FEIS on the Internet at *http://www.nv.blm.gov/lvdiseis*.

FOR FURTHER INFORMATION CONTACT: Jeff Steinmetz, BLM Las Vegas Field Office, telephone (702) 515–5097; e-mail *jsteinme@nv.blm.gov*.

SUPPLEMENTARY INFORMATION: The FEIS complies with NEPA, FLPMA, and BLM management policies as defined in the Las Vegas RMP of 1998. The FEIS contains a summary of the alternatives and resulting impacts of implementing land disposal actions, identifies the preferred alternative (Conservation Transfer), and contains a summary of written and verbal comments received during the 60-day public review period for the Draft Environmental Impact Statement (DEIS) and responses to the substantive issues raised during the review. The DEIS was released for public review on September 10, 2004.

Shortly after approval of SNPLMA, the BLM received a rapid increase in the requests for public land disposal. The Clark County Act significantly increased the amount of land available for disposal by adding approximately 22,000 acres to the Las Vegas Valley Disposal Area by amending the boundary defined and approved in SNPLMA. The rapid disposal rate and additional lands created the need to augment the impact analysis conducted for the Las Vegas Resource Management Plan (RMP), signed October 5, 1998. The FEIS addresses the intent of Congress, as manifested in the SNPLMA and the Clark County Act, to provide public land for local community development. This does not preclude other authorized uses of public lands such as applications for Rights-of-Way, Leases, and Recreation and Public Purpose uses pending disposal of public lands located in Clark County, Nevada.

The FEIS analyzes three alternatives. The alternatives include complete disposal, a disposal implementation option (Conservation Transfer) that addresses sensitive environmental resources, and a no action alternative as required by NEPA. The no action alternative to land disposal is a continuation of realty management as specified in the RMP. Comments that were received on the DEIS from the public and internal BLM review comments were incorporated into the FEIS where appropriate. Major resource issues addressed in the FEIS include air quality, surface water hydrology and water quality, water supply and demand, protected and sensitive plant and wildlife species, archaeological and historic sites, paleontological resources, socio-economics, recreation opportunities, and visual characteristics.

BLM intends to proceed with the land sale scheduled for February 2, 2005 (*see* Notice of Realty Action, **Federal Register**, Vol. 69, No. 218, Friday, November 12, 2004, Notices, pages 65450–65454), based in part on the Record of Decision for the Land Disposal FEIS. Copies of the Las Vegas Valley Disposal FEIS have been sent to affected Federal, State and local government agencies and to interested parties.

Mark T. Morse,

Field Manager, Las Vegas.

[FR Doc. 04–27487 Filed 12–15–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–070–05–1310–EJ]

Notice of Intent To Prepare an Environmental Assessment and Possible Plan Amendment Concerning Oil and Gas Leasing in the Buffalo Field Office, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Assessment (EA) to evaluate the continued implementation of the oil and gas leasing decisions in the 1985 Buffalo Resource Management Plan (RMP), as amended in 2003. This may lead to further amendment of the RMP for the Bureau of Land Management (BLM) Buffalo Field Office in Campbell, Sheridan, and Johnson Counties, Wyoming.

SUMMARY: This Notice is intended to satisfy the requirements at 43 CFR 1610.2(c) for amending an RMP (if deemed necessary) pursuant to the Federal Land Policy and Management Act (FLPMA), and initiates scoping under the National Environmental Policy Act (NEPA).

The purpose of this EA is to examine land use allocations for oil and gas leasing and lease stipulations in light of new information, including new development scenarios since 1985, in the Buffalo Field Office (BFO). This action has been prompted by recent rulings of the Interior Board of Land Appeals (IBLA) and the Tenth Circuit Court of Appeals (the Court) which upheld the IBLA's April 26, 2002, determination that the 1985 Buffalo RMP/EIS and the Wyodak EIS were insufficient to support certain leasing decisions because the RMP did not discuss the impacts to air and water of coal bed natural gas (CBNG) extraction and production. See *Pennaco Energy* v. *DOI*, 377 F.3d 1147 (10th Cir., August 10, 2004).

DATES: The public is invited to comment on this proposed action, the scope of the EA, alternatives to be considered, and planning criteria. The BLM can best use comments and resource information that are submitted within 30 days of publication of this notice in the **Federal Register**. BLM does not plan to hold scoping meetings at this time.

ADDRESSES: Please send written comments or questions to the BLM Buffalo Field Office, 1425 Fort Street, Buffalo, Wyoming 82834. Written comments must have the Environmental Assessment number 070–05–070 written

on the front page of the comments. Written comments, or resource information, may also be hand-delivered to the BLM Buffalo Field Office. Comments or questions may also be sent electronically to *BFOPro_WYMail@blm.gov.* The scoping notice and other information regarding this project are posted on the Wyoming BLM Web site at *http://www.wy.blm.gov/nepa/bfo/.* Members of the public may examine documents pertinent to this proposal by visiting the BFO during business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Your response is important and will be considered in the environmental analysis process. If you do respond, we will keep you informed of the availability of environmental documents that address impacts that occur from this proposal. Please note that comments and information submitted regarding this project, including names, e-mail addresses, and street addresses of the respondents, will be available for public review and disclosure at the above address. Individual respondents may request confidentiality. If you wish to withhold your name, e-mail address, or street address from public view 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 the law. 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.

FOR FURTHER INFORMATION CONTACT: Paul Beels, Project Manager, Buffalo Field Office, 1425 Fort Street, Buffalo, Wyoming 82401. Mr. Beels may also be reached by telephone at (307) 684–1168.

SUPPLEMENTARY INFORMATION: This action has been prompted by recent rulings of the IBLA and the Court concerning the adequacy of the 1985 Buffalo RMP EIS to support leasing in areas with CBNG potential. The ruling also considered the adequacy of developmental NEPA documents, such as the Wyodak EIS, to support leasing decisions since they do not consider ''not issuing the leases at all'' as leasing alternatives. The Powder River Basin Oil and Gas EIS Resource Management Plan Amendment Record of Decision (ROD) was signed on April 30, 2003. That ROD amended the 1985 Buffalo RMP to expand the anticipated level of use of the resource area for oil and gas and to develop appropriate resource use restrictions to mitigate impacts to other resources. These restrictions were designed to be implemented at the development stage through site-specific Conditions of Approval (COA) on permits. The PRB EIS analyzed the effects on air, water and other resources of the potential for development of 51,000 CBNG wells. This EA will substantially incorporate by reference the impact analysis from the PRB EIS.

This document will also analyze any other new information pertaining to oil and gas leasing in the BFO area. This analysis will tier to the 1985 BFO RMP EIS and may amend the current BFO RMP. Should BLM at any time during the process determine that it will be unable to make a finding of no significant impact, it will commence preparation of an environmental impact statement.

During the preparation of this EA, BLM does not intend to offer parcels in coal bearing areas (generally considered the Fort Union Formation) for oil and gas leasing, these being the areas currently productive for CBNG.

In response to the Court's decision, the BLM is initiating a separate EA to examine its leasing decisions between February 2000 and August 2004 in the coal bearing areas of the BFO area.

In the PRB EIS, BLM carefully reviewed the 1985 land use objectives for the BFO and determined that with the leasing stipulations in the 1985 Buffalo RMP and new mitigation measures approved in the PRB EIS, the 51,000 wells would not result in any social, environmental or economic effects that would preclude accomplishment of one or more of the Buffalo RMP objectives, as long as appropriate mitigation measures are required and applied in site-specific authorizations.

Given the extensive analyses of development stage impacts that have already been prepared to support the increase in the level of use for CBNG and establish the necessary protective measures to be applied at the project level, the purpose of this document will be to take a hard look at oil and gas land use allocations and lease stipulations. This EA will consider options open to the BLM prior to lease issuance and identify those practices that should be applied to leases as stipulations. The options include closing an area to leasing or applying lease stipulations beyond the standard lease stipulations applicable to every lease. Any new restrictions would be applied to the extent lawful and appropriate through the use of Conditions of Approval (COAs) on future development for new leases. An interdisciplinary team approach will be used to develop the EA. At a minimum, the following key disciplines will be represented: air quality, hydrology and ground water, and fluid minerals specialist or petroleum engineer (or both).

Existing land use plan decisions that will be evaluated, and may be amended, include the following:

- Areas to be open, closed, or ''open subject to protective stipulations or restrictions to future oil and gas leasing.''
- The necessary level of program constraints, management intensity, and management practices (such as lease stipulations) sufficient to mitigate the impacts of CBNG development and ensure that other resource programs will continue to meet the goals and objectives in the RMP.
- Other decisions as appropriate.

Potential Alternatives: The BLM invites scoping comments on seven potential alternatives:

1. The No Action alternative: Maintain existing land use allocations and leasing decisions based on the 1985 RMP, as amended in 2003.

2. Open the entire Field Office area to leasing while applying standard lease terms and conditions; *i.e.*, standard environmental and resource protections.

3. Maintain existing land use allocations for areas to be open or closed to consideration for leasing. Develop and consider a new mix of management constraints such as protective stipulations (see the examples below) to be attached as terms of use at lease issuance based on new information, current development scenarios (*i.e.*, PRB Reasonably Foreseeable Development scenario) and new technologies. For example:

—Develop stipulations that can be attached to new leases for some management practices adopted in the 2003 EIS that are currently applied only on a site-specific basis as COAs on development, such as water management practices and best available control technology for air emissions.

—No surface occupancy stipulations on slopes greater than 10 percent and on highly erosive soils.

—No surface occupancy in six areas proposed as Areas of Critical Environmental Concern (ACEC) as described in Appendix R to the PRB EIS.

—New stipulations that provide additional protection for greater sage-grouse from development-related threats, including practices favorable to the spread of West Nile virus.

4. Modify areas currently designated as open to leasing with a special lease

stipulation that precludes development of CBNG until the planned Buffalo RMP revision, scheduled to begin in FY 2008, is completed. Upon revision of the Buffalo RMP, lessees subject to this restriction may seek modification or waiver pursuant to the terms of the revised RMP following a 30-day public review period.

5. Maintain existing land use allocations and leasing decisions, but close to leasing areas within the six proposed ACECs.

6. Adopt a moratorium on lease sales until completion of the Buffalo RMP revision.

7. Close the BFO to oil and gas leasing.

Planning Criteria: Criteria proposed will include:

—Balancing the level of land use restrictions or other management practices needed at the leasing stage to protect resources, while keeping the public lands and resources available for public use under FLPMA principles of multiple use and sustained yield.

—The potential for the occurrence and development of mineral resources, including conventional oil and gas and coalbed natural gas production.

—Consistency with the land use plans, programs, and policies of other Federal agencies, State and local governments, and Native American tribes.

—Compliance with all Federal laws including the Clean Air Act, Clean Water Act, National Historic Preservation Act, and the Endangered Species Act.

—Balancing the requirements of FLPMA and the Mineral Leasing Act.

—Because this effort focuses on planning-level use restrictions such as stipulations that are applied at the lease issuance stage, the re-examination of site-specific development stage conditions of approval for CBNG development and production is beyond the scope of this EA. Those site-specific mitigation issues were examined in detail in the PRB EIS which resulted in the 2003 BFO plan amendment.

—Those ACECs proposed for designation in the PRB EIS will not be designated through this analysis. Only the measures necessary to protect their eligibility will be considered. Designation will be deferred until the planned Buffalo RMP revision. BLM projects that this revision will commence in FY 2008.

Dated: November 30, 2004.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 04–27579 Filed 12–15–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–070–05–1310–EJ]

Notice of Intent To Prepare an Environmental Assessment Concerning Oil and Gas Leasing in the Buffalo Field Office, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Assessment that would evaluate the leasing for oil and gas of 421 identified parcels in the Buffalo Resource Area leased since February 2000.

SUMMARY: The Bureau of Land Management (BLM) is commencing preparation of an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA). The purpose of the analysis is to examine particular environmental effects of the oil and gas lease issuance decisions made since February 2000. This EA responds to rulings of the Interior Board of Land Appeals (IBLA) and the Tenth Circuit Court of Appeals (the Court), which held that certain effects of coal bed natural gas (CBNG) development were not analyzed, or contemplated, in the 1985 Bureau of Land Management (BLM) Buffalo Resource Management Plan (RMP) Final Environmental Impact Statement (EIS). *See Pennaco Energy* v. *DOI,* 377 F.3d 1147 (10th Cir., filed August 10, 2004).

DATES: The public is invited to comment on this proposed action, the scope of the EA, and alternatives to be considered. The BLM can best use comments and resource information that are submitted within 30 days of publication of this notice in the **Federal Register**. BLM does not plan to hold scoping meetings at this time.

ADDRESSES: Please send written comments or questions to the BLM Buffalo Field Office, 1425 Fort Street, Buffalo, Wyoming 82834. Written comments, or resource information, may also be hand-delivered to the BLM Buffalo Field Office. Written comments must have the Environmental Assessment number 070–05–064 written on the front page of the comments. Comments or questions may also be sent electronically to *BFORet_WYMail@blm.gov.* The scoping notice and other information regarding this project are posted on the Wyoming BLM Web site at *http://www.wy.blm.gov/nepa/bfo/*. Members of the public may examine documents pertinent to this proposal by visiting the Buffalo Field Office during business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Your response is important and will be considered in the environmental analysis process. If you respond, we will keep you informed of the availability of environmental documents that address impacts that occur from this proposal. Please note that comments and information submitted regarding this project, including names, e-mail addresses, and street addresses of the respondents, will be available for public review and disclosure at the above address. Individual respondents may request confidentiality. If you wish to withhold your name, e-mail address, or street address from public view 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 the law. 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.

FOR FURTHER INFORMATION CONTACT: Paul Beels, Project Manager, BLM, Buffalo Field Office, 1425 Fort Street, Buffalo, Wyoming 82401. Mr. Beels may also be reached by telephone at (307) 684–1168.

SUPPLEMENTARY INFORMATION: This action has been prompted by a recent ruling of the IBLA and the Court concerning the adequacy of the 1985 Buffalo RMP EIS and developmental NEPA documents, such as the Wyodak EIS, to support certain oil and gas leasing decisions. In August 2004, the Court reversed a Federal District court and affirmed the decision of the IBLA that concluded that BLM had insufficient NEPA analysis to make a decision in February 2000 to issue three leases for oil and gas in an area where CBNG was likely to be produced. The Court reinstated IBLA's remand of the issuance of these three leases to BLM for ''additional appropriate action.''

In the course of its opinion, the Court stated that the NEPA analysis upon which the BLM relied in issuing three leases ''did not consider pre-leasing options, such as not issuing leases at all.'' Accordingly, the BLM will evaluate whether to affirm, modify, or cancel the

leases, which include the right to develop CBNG. Recognizing that the leases have been issued, the alternatives to be considered in the EA will analyze whether to modify the leasing decisions in light of the remedial issue analysis (*i.e.*, after consideration of the appropriate environmental issues foreseeable at the time the leases were offered for sale.)

The rationale of the Court ruling requires that BLM consider those environmental issues found to have been inadequately considered in the 1985 Buffalo RMP EIS. This EA may, however, examine a broader array of environmental issues associated with CBNG leasing decisions that were reasonably foreseeable prior to the issuance of these leases. An array of environmental issues was subject to in-depth re-examination in the Powder River Basin Oil and Gas Project (PRB) EIS and RMP Amendment Record of Decision (ROD) that was signed April 30, 2003. The ROD amended the 1985 Buffalo RMP to raise the anticipated level of use of the resource area for oil and gas and to develop appropriate resource use restrictions to mitigate impacts to other resources.

In the PRB EIS, the BLM carefully analyzed the cumulative effects on air, water, and other resources of the potential development of 51,000 CBNG wells. The BLM determined that with the leasing stipulations in the 1985 Buffalo RMP and new mitigation measures approved in the PRB EIS, the 51,000 wells would not result in any social, environmental, or economic effects that would preclude accomplishment of one or more of the 1985 Buffalo RMP objectives as long as appropriate conditions of use are required. This EA may substantially incorporate by reference impact analyses from the PRB EIS.

BLM is including in the scope of the EA the three leases that were the subject of the Court and IBLA's decisions, as well as 418 additional oil and gas leases that have been issued since February 2000 within the Buffalo Field Office administrative area. BLM will take a ''hard look'' at the environmental consequence of each alternative and has not foreclosed, simply because of the difficulty of implemention, choosing to implement any of the alternatives under review.

In addition to this EA, BLM is preparing an EA to consider continued implementation of the leasing decisions in the Buffalo RMP in future years.

Potential Alternatives: For the purposes of analysis, the BLM has developed the following reasonable range of comprehensive alternatives, and will analyze particular environmental issues that were foreseeable at the time the leases were offered for sale:

1. No Action Alternative: Affirm the issuance of 421 leases on the terms prescribed in the 1985 RMP, as amended.
2. Modify leases to add stipulations to address issues such as water disposal, use of diesel engines, slopes, erosive soils, and proposed Areas of Critical Environmental Concern (ACEC).
3. Modify leases to subject them to less restrictive stipulations consistent with the 1985 RMP, as amended.
4. Modify leases to preclude development of CBNG. We believe that this is what the Court meant by ''not issuing the leases at all,'' since the Court found no problems with the adequacy of existing NEPA analyses to support leasing for conventional oil and gas.

Dated: November 30, 2004.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 04–27580 Filed 12–15–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–05–1610–DF]

Notice of Public Meetings, Southwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Southwest Colorado RAC meetings will be held January 21, 2005; March 4, 2005; May 6, 2005; and July 22, 2005.

ADDRESSES: The Southwest Colorado RAC meetings will be held January 21, 2005, at the Bill Heddles Recreation Center, located at 530 Gunnison River Dr., Delta, CO; March 4, 2005, at the Holiday Inn Express, located at 1391 S. Townsend Ave., in Montrose, CO; May 6, 2005, at the Gunnison County Fairgrounds, Multipurpose Building, 275 S. Spruce St., in Gunnison, CO; and July 22, 2004, at the Avon Hotel, 144 E. 10 St., in Silverton, CO.

The Southwest Colorado RAC meetings will begin at 8 a.m. and adjourn at approximately 3 p.m. Public comment periods regarding matters on the agenda will be at 2 p.m.

FOR FURTHER INFORMATION CONTACT: Barbara Sharrow, BLM Uncompahgre field office manager, 2505 S. Townsend Ave., Montrose, CO; telephone 970–240–5300; or Melodie Lloyd, Public Affairs Specialist, 2815 H Rd., Grand Junction, CO, telephone 970–244–3097.

SUPPLEMENTARY INFORMATION: The Southwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

Topics of discussion for all Southwest Colorado RAC meetings may include the BLM National Sage Grouse Conservation Strategy, committee reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, land exchange proposals, cultural resource management, and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: December 8, 2004.

Barbara Sharrow,

Uncompahgre Field Office Manager, Designated Federal Official for the Southwest Colorado RAC.

[FR Doc. 04–27515 Filed 12–15–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Potential for Oil Shale Development, Extension of Public Comment Period

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The BLM published a **Federal Register** on November 22, 2004 seeking public input on the terms to be included in leases of small tracts for oil shale research and development within the Piceance Creek Basin, northwestern Colorado; the Uinta Basin, southeastern Utah: and the Green River and Washakie Basins, western Wyoming. BLM received a request to extend the

comment period and have agreed to extend the period to January 31, 2005.

DATES: Please send your comments no later than January 31, 2005.

ADDRESSES: Please hand-deliver written comments: To Nick Douglas, Suite 700, 1620 L Street, NW., Washington, DC. This is also the FedEx address. Mail written comments to BLM (Attention: Nick Douglas), Minerals, Realty and Resource Protection, Mail Stop: LS 700, 1849 C Street, NW., Washington, DC 20240. Electronic Mail: You may send comments through the Internet to BLM at: *Nick_Douglas@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Nick Douglas, Senior Policy Advisor, Minerals, Realty and Resource Protection, Bureau of Land Management, Mail Stop: LS 700, 1849 C Street, NW., Washington, DC 20240 at (202) 452–0374.

SUPPLEMENTARY INFORMATION: BLM published a Notice of Request for Comments on Potential for Oil Shale Development on November 22, 2004; see 69 FR 67935. The purpose of this notice is to extend the comment period from December 22, 2004 to January 31, 2005. The United States holds over 50 percent of the world's oil shale resources, which contain 2.6 trillion barrels of oil. These resources include the oil shale deposits in the Green River formation in the Western United States.

Dated: December 9, 2004.

Thomas P. Lonnie,

Assistant Director, Minerals Realty, and Resource Protection.

[FR Doc. 04–27533 Filed 12–15–04; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4489, ES–052572, Group No. 37, Missouri]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Missouri.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the U.S. Army Corps of Engineers.

The lands we surveyed are:

Fifth Principal Meridian, Missouri,

T. 49 and 50 N., Rs. 2 and 3 E.

The plat of survey represents the dependent resurvey of portions of the township boundaries, portions of the subdivisional lines and portions of various U.S. Surveys and the survey of the Lock and Dam No. 25 acquisition boundary, in Townships 49 and 50 North, Ranges 2 and 3 East, of the Fifth Principal Meridian, in the State of Missouri, and was accepted on November 30, 2004.

We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: November 30, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–27517 Filed 12–15–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Closure Order Establishing Prohibitions at Keswick Lake, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of closure.

SUMMARY: *Purpose Of Closure Order:* This closure order is issued to provide for the protection of federal property and to ensure public safety at Reclamation facilities.

Closure Areas: The following facilities, lands, and waters are closed to the public: Keswick Dam Road crossing the crest of Keswick Dam, and adjacent property, buildings, and facilities under the control of Reclamation. The closure area includes the area within 500 feet upstream and 600 feet downstream of Keswick Dam for the entire width of the reservoir surface at high mean water upstream, and 600 feet on either side of the entire width of the dam downstream.

DATES: The entire closure area is to remain closed effective December 31, 2004, and remain closed indefinitely except as permitted as described below.

ADDRESSES: A map is available for inspection at Reclamation's Northern Area Office, located at 16349 Shasta Dam Blvd., Shasta Lake, California, 96019.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Mid-Pacific Region Public Affairs Office at 916–978–5100.

SUPPLEMENTARY INFORMATION:

Prohibited Acts: The following acts are prohibited in the closure area.

A. Operating a motorized vehicle of any kind, including stopping, standing, or parking in the closure area.

Limited Exceptions: Motor vehicles may be operated across the crest of Keswick Dam 24 hours a day in compliance with all signs and other directions posted or disclosed. This limited exception to the closure order may be revoked at any time to meet operational, security, or safety concerns as determined by the area manager or his/her designee.

General Exception: Reclamation employees acting within the scope of their employment; operations, maintenance, and construction personnel that have express written authorization from Reclamation; law enforcement and fire department officials; ambulances and others who have received express written authorization to enter the closure area.

B. Entering the closure area on foot, on bicycle, or by any other means.

Limited Exceptions: Pedestrians and bicyclist may enter that portion of the closure area that crosses the crest of Keswick Dam on the roadway or walkway across the dam. All persons shall comply with all signs and other directions as posted or disclosed. This limited exception to the closure order may be revoked at any time to meet operational, security, or safety concerns as determined by the area manager or his/her designee. Reclamation employees acting within the scope of their employment; operations, maintenance, and construction personnel that have express authorization from Reclamation; law enforcement and fire department officials; and others who have received express written authorization from Reclamation to enter the closure area.

C. Operating a vessel or watercraft of any kind, swimming, or scuba diving.

Limited Exceptions: Reclamation employees acting within the scope of their employment; operations, maintenance, and construction personnel that have express authorization from Reclamation; law enforcement and fire department officials; and other who have received express written authorization from Reclamation to enter the closure area.

D. Carrying or discharging firearms.

Exceptions: Law Enforcement, *i.e.* Federal, state, and local agencies and

others who have received express written authorization from Reclamation to enter the closure area.

E. Carrying or using any other type of weapons, including explosives of any kind.

F. Fires.

G. Vandalism or destroying, injuring, defacing, or damaging property or real property that is not under one's lawful control or possession.

This order is posted in accordance with 43 CFR 423.3(b). Violation of the prohibition or any prohibition listed in 43 CFR part 423 is punishable by fine or imprisonment for not more then 6 months, or both.

Dated: November 10, 2004.

Michael J. Ryan,

Area Manager, Northern California Area Office, Mid-Pacific Region.

[FR Doc. 04–27522 Filed 12–15–04; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES 04–53]

Sacramento River Settlement Contractors

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the Sacramento River Settlement Contractors (SRSC) have prepared a Final EIS for the Renewal of the Sacramento River Settlement Contracts. The proposed renewal of long-term contracts provides for delivery of water from the Central Valley Project (CVP) to the Sacramento River Settlement Contractors and the diversion of Base Supply water.

A Notice of Availability of the Draft EIS was published in the **Federal Register** on Friday, October 1, 2004 (69 FR 58947). The comment period on the Draft EIS closed Monday, November 15, 2004. The Final EIS contains responses to all substantive comments received on the Draft EIS and those comments, or summaries thereof. Additional information received during the period was reviewed and responses are provided stating how the information was addressed.

DATES: Reclamation will not make a decision on the proposed action until at least 30 days after release of the Final EIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: A compact disk or a copy of the Final EIS may be requested from Ms. Sammie Cervantes, Public Affairs Office, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, at 916–978–5104. The Final EIS and ROD are available online at *www.usbr.gov/mp/cvpia/3404c/index.html,* scroll to Final EISs.

See **SUPPLEMENTARY INFORMATION** for locations where copies of the Final EIS are also available.

FOR FUTHER INFORMATION CONTACT: Mr. Buford Holt, Bureau of Reclamation, Northern California Office, 16349 Shasta Dam Blvd., Shasta Lake, CA 96019, at 530–275–1554 or e-mail *bholt@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: The CVP was first authorized as a Federal project in 1935 and includes facilities on the Sacramento River. Prior to the authorization of the CVP, individuals and entities along the Sacramento River were diverting water for irrigation and municipal and industrial (M&I) uses under various claims of right. Construction of CVP dams on the Sacramento River and the Trinity River modified the flows of the Sacramento River. To settle controversy over assertions of rights, the United States, acting through the Bureau of Reclamation, negotiated the Settlement Contracts to provide agreement on diversion of the natural flow of the Sacramento River and stored CVP water. Using jointly conducted studies, the parties negotiated to arrive at agreed amounts of Base Supply and Project Water. Base Supply is water the Settlement Contractors divert during the period of April through October each year, free of charge in recognition of their unquantified water rights, which existed prior to the construction of the CVP. In addition, Reclamation agreed to provide the Settlement Contractors with certain designated monthly quantities of CVP water, referred to as Project Water, primarily in the months of July, August, and/or September. Project Water is subject to all requirements of the Federal Reclamation Law, including pricing regulations. Base Supply water is subject only to the provisions of the Settlement Contracts and applicable State law. The term of the initial Sacramento River Settlement contracts was not to exceed 40 years, and the contracts were set to expire on March 31, 2004; however, Congress has granted a 2-year extension of the contracts.

The EIS addresses impacts related to the proposed March 2005 renewal of up to 145 Sacramento River Settlement contracts to continue delivery of supplemental Project Water for agricultural and M&I uses and the renewal of a contract with the Colusa Basin Drain Mutual Water Company for Project Water to replace the drain water that is consumptively used. Water would continue to be delivered through existing CVP facilities, with no new construction required. With the exception of Sutter Mutual Water Company and the Anderson-Cottonwood Irrigation District, the proposed Settlement contracts provide for the continued delivery of the same quantities of Project Water provided for under the expiring Settlement contracts. In addition, the Colusa Basin Drain Mutual Water Company's project water allocation is being reduced from 100,000 to 70,000 acre-feet.

Under the proposed action, the Sacramento River Settlement Contractors would divert up to 1.8 million acre-feet of Base Supply per year from the Sacramento River, and up to 380,000 acre-feet of Project Water per year from the Sacramento River. Twenty of the 145 Settlement Contractors account for approximately 94 percent of the total Settlement contract amount. The proposed contract renewal amounts range in size from 10 to 825,000 acre-feet per year. Contracts would be renewed for a 40-year term. The renewal contracts provide for continued delivery of CVP water to the same lands and for the same purposes of use, with exception of Natomas Central Municipal Water Company which has requested a change from agricultural use to M&I use in the Metro Air Park portion of its service area. The EIS describes and analyzes the effects of the proposed contract renewals on fish resources, vegetation, and wildlife, hydrology, and water quality, recreation, cultural resources, land use, geology and soils, and air quality.

A public hearing was held on Wednesday, October 27, 2004, in Willows, California.

Copies of the Final EIS and ROD are available for public inspection and review at the following locations:

- Bureau of Reclamation, Northern California Area Office, 16349 Shasta Dam Boulevard, Shasta Lake, CA 96019–8400 (Shasta County); telephone 530–275–1554
- Bureau of Reclamation, Mid Pacific Construction Office, 1140 West Wood Street, Willows, CA 95988–0988 (Glenn County); telephone 530–934–7066

- Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630; telephone 916–988–1707
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone 303–445–2072
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone 916–978–5100
- Bureau of Reclamation, Red Bluff Field Office, 22500 Altube Road, Red Bluff, CA 96080 (Tehama County); telephone 530–529–3890
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001

It is Reclamation's policy to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which a respondent's identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. 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 disclosure in their entirety.

Dated: November 29, 2004.

Susan Ramos,

Assistant Regional Director, Mid-Pacific Region.

[FR Doc. 04–27479 Filed 12–15–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–522]

In the Matter of Certain Ink Markers and Packaging Thereof; Notice of Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add Three Additional Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') (Order. No. 5) amending the complaint and notice of investigation to add three additional respondents.

FOR FURTHER INFORMATION CONTACT: Irene H. Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3112. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 18, 2004, based on a complaint filed on behalf of Sanford, L.P. of Freeport, Illinois (''complainant''). 69 FR 52029. The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink markers and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 807,818 and 2,721,523 and also by reason of infringement of trade dress. The notice of investigation identified 12 respondents.

On October 27, 2004, the complainant filed a motion to amend the complaint and notice of investigation, pursuant to Commission rule 210.14(b), to add three additional respondents: (1) Big Lots Stores, Inc. of Columbus, Ohio; (2) Big Lots, Inc. of Columbus, Ohio; and (3) Two Powers Enterprise Co., Ltd. of Taipei, Taiwan.

On November 4, 2004, the Commission investigative attorney filed a response supporting the motion. No other party responded to the motion.

On November 10, 2004, the ALJ issued the subject ID granting the motion to amend the complaint and notice of investigation. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: December 13, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–27554 Filed 12–15–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–498]

In the Matter of Certain Insect Traps; Notice of Commission Issuance of a Limited Exclusion Order and a Cease and Desist Order Against a Respondent Found in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order against a respondent found in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by American Biophysics Corporation (''ABC'') of Greenwich, Rhode Island. 68 FR 53752 (September 12, 2003). ABC alleged violations of section 337 of the Tariff Act of 1930 in the importation into the

United States, the sale for importation, and the sale within the United States after importation of certain insect traps by reason of infringement of various claims of U.S. Patent Nos. 6,145,243 (hereinafter ''the '243 patent'') and 6,286,249 (hereinafter ''the '249 patent''). The complaint named Ferrellgas, LP, of Liberty, Missouri as a respondent.[1]

On December 8, 2003, the administrative law judge (''ALJ'') issued an initial determination (''ID'') amending the complaint and notice of investigation to add Blue Rhino Global Sourcing, LLC, of Winston-Salem, North Carolina, Guangdon Dong Fang Imp. & Exp. Corp. of Shenzhen, China, and Lentek International, Inc. of Kissimmee, Florida (''Lentek'') as respondents. This ID was not reviewed by the Commission (Order No. 5).

On April 19, 2004, the ALJ issued an ID, which was not reviewed by the Commission, finding respondent Lentek in default (Order No. 11). On April 27, 2004, ABC filed a declaration for immediate relief against Lentek based on both patents at issue. On May 24, 2004, ABC filed a motion to amend its request for immediate relief against Lentek by withdrawing its request for relief with respect to the '243 patent.

On September 10, 2004, the ALJ issued his final ID finding no violation of section 337 based on a finding of no infringement of claims 1 and 32 of the '243 patent by the remaining respondents, Ferrellgas, LP, Blue Rhino Consumer Products, LLC, Blue Rhino Global Sourcing, LLC, and Guangdon Dong Fang Imp. & Exp. Corp. (collectively ''Ferrellgas/BlueRhino/GDF''). (On April 9, 2004, the ALJ had issued an unreviewed ID effectively terminating the investigation as to the '249 patent with respect to these respondents.)

On September 30, 2004, ABC and respondents, Ferrellgas/Blue Rhino/GDF, filed a joint motion to terminate the investigation as to all issues based upon a settlement agreement. On October 25, 2004, the Commission granted the joint motion to terminate the investigation against Ferrellgas/BlueRhino/GDF and further requested written submissions on the issues of remedy, the public interest and, bonding relating to the default finding of unlawful importation and sale of infringing products by Lentek. The Commission investigative attorney submitted his brief on remedy, the public interest and bonding on November 2, 2004. ABC submitted its briefing on remedy, the public interest and bonding on November 8, 2004. No reply submissions were filed.

The Commission found that each of the statutory requirements of section 337(g)(1)(A)–(E), 19 U.S.C. 1337(g)(1)(A)–(E), has been met with respect to defaulting respondent Lentek. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission rule 210.16(c) 19 CFR 210.16(c), the Commission presumed the facts alleged in the amended complaint to be true. The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of insect traps covered by claims 1–6, 8, 13–15, 17, 18, 29, 31, 34, 36–41 and 44 of the '249 patent. The order covers insect traps that are manufactured abroad by or on behalf of, or imported by or on behalf of, Lentek, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission also determined to issue a cease and desist order prohibiting Lentek from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for insect traps covered by the above-mentioned claims of the '249 patent. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles. The Commission's orders were delivered to the President on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.16(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c)).

By order of the Commission.

Issued: December 10, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–27558 Filed 12–15–04; 8:45 am]

BILLING CODE 7020–02–P

[1] On April 16, 2004, CPD Associates, Inc. merged with Blue Rhino Corp. On April 20, 2004, Blue Rhino Corp. converted into a Delaware limited liability company called Blue Rhino, LLC. Immediately thereafter, on April 21, 2004, Blue Rhino, LLC merged into Ferrellgas, LP.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on November 16, 2004, a proposed consent decree in *United States* v. *Cabot Corporation, et al.,* Civil Action No. 2:04–cv–5317, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States sought cost recovery for costs incurred in connection with the Revere Chemical Superfund Site located in Nockamixon Township, Bucks County, Pennsylvania (the ''Site''). Under the terms of the consent decree, the proposed settling defendants would pay $929,530.92 to EPA to cover past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Cabot Corporation, et al.,* Civil Action No. 2:04–cv–5317, D.J. Ref. 90–11–2–943/3.

The consent decree may be examined at the Office of the United States Attorney, Suite 1250, 615 Chestnut Street, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the consent decree without appendices, please enclose a check, in the amount of $5.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. For the appendices, please add $63.75.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–27483 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed Consent Decree in *United States of America and the State of Alabama* v. *Knoxville Utilities Board,* Civ. No. 3:04–CV–568, and *Tennessee Clean Water Network.* v. *Knoxville Utilities Board,* Civ. No. 3:03–CV–497, was lodged on December 1, 2004, with the United States District Court for the Eastern District of Tennessee, Northern Division.

The proposed Consent Decree would resolve certain claims under Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1251, *et seq.,* against the Knoxville Utilities Board (''KUB''), through the performance of injunctive measures, the payment of a civil penalty, and the performance of Supplemental Environmental Projects (''SEPs''). The United States, the State of Tennessee and Tennessee Clean Water Network, allege that KUB is liable as a person who has discharged a pollutant from a point source to navigable waters of the United States without a permit and, in some cases, in excess of permit limitations.

The proposed Consent Decree would resolve the liability of KUB for the violations alleged in the complaints filed in these matters. To resolve these claims, KUB would perform the injunctive measures valued at over $500 million and described in the proposed Consent Decree; would pay a civil penalty of $334,000 ($167,000 to the United States Treasury and $167,000 to the State of Tennessee in the form of an environmental project); and would perform a SEP valued at $2 million, which involves the installation of new private sewer laterals in low- and middle-income households within KUB's service area. The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044 and should refer to *United States* v. *Knoxville Utilities Board,* DJ No. 90–5–1–1–08186.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Tennessee, 800 Market Street, Knoxville, TN 37901, and at the Region 4 Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta GA 30303. During the public comment period, the decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $29.00 (25 cents per page reproduction cost) payable to the U.S. Treasury. The check should refer to *United States* v. *Knoxville Utilities Board,* DJ No. 90–5–1–1–08186.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–27485 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 6, 2004, an electronic version of a proposed consent decree was lodged in *United States* v. *Marzone, Inc., et al.*, No. 7:02–CV–43 (M.D. Ga.). In the civil action, the United States alleges claims on behalf of the Administrator of the Environmental Protection Agency (''EPA'') against Defendants Chevron U.S.A., Inc.; Chevron Environmental Management Company; Kova Fertilizers, Inc.; Kova of Georgia, Inc.; Hercules Incorporated; Gold-Kist, Inc.; United States Steel Corporation (formerly USX Corporation); Velsicol Chemical Corporation; Universal Cooperative, Inc.; Traylor Chemical & Supply Company; Uniroyal Chemical Company, Inc.; Air Products and Chemicals, Inc.; Boise Cascade Corporation; El Paso Corporation; El Paso Tennessee Pipeline Company; EPEC Polymers, Inc.; Exxon Mobil Corporation; Estech, Inc.; Mr. Charles Ray Taylor and Harper Enterprises, Inc. under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, in connection with the Marzone, Inc./Chevron Chemical Company Superfund Site in Tifton, Georgia (the ''Site'').

Under the consent decree, the defendants will pay $3.3 million, which will be placed into a Superfund special account for the site. The covenant not to sue will apply to past costs and certain remedial action for operable unit 2 of the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Marzone, Inc., et al.*, No. 7:02–CV–43 (M.D. Ga.), DOJ # 90–11–3–274/1.

The Consent Decree may be examined at the Office of the United States Attorney for the Middle District of Georgia, 433 Cherry St., Macon, Georgia 31202. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov*, Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–27484 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Alliance for Telecommunications Industry Solutions

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Alliance for Telecommunications Industry Solutions (''ATIS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of

business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Alliance for Telecommunications Industry Solutions, Washington, DC. The nature and scope of ARIS' standards development activities are: To develop and promote technical and operations standards for the communications and related information technologies industry worldwide using a pragmatic, flexible and open approach.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27538 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 ANSI Accredited Standards Committee ''C18''

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ANSI Accredited Standards Committee ''C18'' (''C18 Committee''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ANSI Accredited Standards Committee ''C18'', Rosslyn, VA. The nature and scope of C18 Committee's standards development activities are: related to dry cells and batteries. Currently, C18 Committee maintains 11 standards relating to general specifications and safety for portable lithium and portable non-lithium batteries as well as portable rechargeable batteries. The standards developed by C18 Committee are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27543 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ANSI Accredited Standards Committee ''C119''

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ANSI Accredited Standards Committee ''C119'' (''C119 Committee''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ANSI Accredited Standards Committee ''C119'', Rosslyn, VA. The nature and scope of C119 Committee's standards development activities are: related to electrical connectors for electric utility applications. C119 Committee currently maintains four standards relating to electrical connectors used by the electric utility industry. The standards developed by C119 Committee are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27544 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ANSI Accredited Standards Committee ''Z535''

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ANSI Accredited Standards Committee ''Z535'' (''Z535 Committee''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ANSI Accredited Standards Committee ''Z535'', Rosslyn, VA. The nature and scope of Z535 Committee's standards development activities are: To develop and maintain American National Standards related to safety signs and colors. Z535 Committee currently maintains six standards relating to the format of safety signs, labels and tags and the symbols and colors used on those signs. The standards developed by Z535 Committee are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27542 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Data Interchange Standards Association, Secretariat for ANSI ASC X12

Notice is hereby given that, on September 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Data Interchange Standards Association,

Secretariat for ANSI ASC X12 (''X12'') has filed written notifications simultaneously with the Attorney General and the Federal Trade commission disclosing (1) the same and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the propose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Data Interchange Standards Association, Secretariat for ANSI ASC X12, Falls Church, VA. The nature and scope of X12's standards development activities are: to develop, maintain, interpret, publish and promote the proper use of electronic business interchange standards, which may be based on, but are not limited to, the Electronic Data Interchange (''EDI'') or the Extensible Markup Language (''XML'') syntaxes. Standards activities undertaken by X12 may encompass any subject area for which electronic business interchange standards can be developed. Subject areas include, but are not limited to, order processing, shipping and receiving, invoicing, payment and cash application data, transportation, product development, manufacturing, quality, marketing, and data to and from entities involved in finance, insurance, education, and state and federal governments. This includes activities leading to both American National Standards and international standards.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27539 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Information Technology Industry Council, Inc./The InterNational Committee for Information Technology Standards

Notice is hereby given that, on September 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Information Technology Industry Council, Inc./The InterNational Committee for Information Technology Standards (''ITI/INCITS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: The Information Technology Industry Council, Inc./The InterNational Committee for Information Technology Standards, Washington, DC. The nature and scope of ITI/INCITS' standards development activities are: development of standards in the field of Information and Communications Technologies (ICT), encompassing storage, processing, transfer, display, management, organization, and retrieval of information.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27545 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International 2–Up ATV Manufacturers' Association

Notice is hereby given that, on September 28, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International 2-Up ATV Manufacturers' Association (''I2AMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: International 2-Up ATV Manufacturers' Association, Prior Lake, MN. The nature and scope of I2AMA's standards development activities are: to develop proposed American National Standards for four-wheeled, two person tandem, all terrain vehicles (*i.e.* 2-Up ATV) based on knowledge, design, safety and testing of such vehicles.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27541 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Electrotechnical Commission Technical Committee Subcommittee 15C

Notice is hereby given that, on September 17, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International Electrotechnical Commission Technical Committee Subcommittee 15C (''IEC TC SC 15C''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: International Electrotechnical Commission Technical Committee Subcommittee 15C, Rosslyn, VA. The nature and scope of IEC TC SC 15C's standards development activities are: Related to international specifications for electrical insulation. The standards of IEC TC SC 15C are IEC Standards developed pursuant to ''ISO/IEC Directives Part 1: Procedures for the Technical Work'' and are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27548 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Mortgage Industry Standards Maintenance Organization

Notice is hereby given that, on September 30, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Mortgage Industry Standards Maintenance Organization (''MISMO'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: The Mortgage Industry Standards Maintenance Organization, Washington, DC. The nature and scope of MISMO's standards development activities are: to develop, promote, and maintain voluntary electronic commerce standards for electronic mortgages and for the electronic exchange of data within the commercial/multifamily and residential mortgage industries.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27547 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Optical Internetworking Forum

Notice is hereby given that, on September 22, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Optical Internetworking Forum (''OIF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Optical Internetworking Forum, Fremont, CA. The nature and scope of OIF's standards development activities are: (1) To support the rapid advancement of an efficient and compatible technology base that promotes a competitive marketplace; (2) to promote global development of optical internetworking technology; (3) to identify optical internetworking applications; (4) to provide educational services; (5) to promote worldwide compatibility and interoperability; (6) to encourage input to appropriate national and international standards bodies; (7) to identify, select, augment as appropriate, and publish optical internetworking implementation agreements drawn from appropriate national and international standards; and (8) to foster the development and deployment of interoperable products and services for data switching and routing using optical networking technologies.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27546 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Secure Identity Services Accreditation Corporation

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Secure Identity Services Accreditation Corporation (''SISAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: The Secure Identity Services Accreditation Corporation, Washington, DC. The nature and scope of SISAC's standards development activities are: to adopt voluntary standards for the real estate finance industry in cooperation with mortgage lenders, government-sponsored enterprises (''GSEs''), and other organizations to set minimum standards for Public Key Infrastructure (''PKI''), other electronic authentication methods and secure identity providers.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27540 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–11–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act; Notice of a Meeting

December 8, 2004.

TIME AND DATE: 10 a.m., Thursday, December 16, 2004.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session:

Secretary of Labor v. *Colorado Lava, Inc.,* Docket No. EAJ 2001–2. (Issues include whether Colorado Lava, as a prevailing party in an administrative proceeding, is entitled to a fee award under the 1996 amendments to the Equal Access to Justice Act, 5 U.S.C. 504(a)(4), and the implementing regulations of the Federal Mine Safety and Health Review Commission, 20 CFR 2704.105(b).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 04–27641 Filed 12–14–04; 12:30 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (04–146)]

Public Meeting of United States Study Group 7

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: There will be a meeting of United States Study Group 7 to discuss the status of the United States Study Group 7 Working Parties and preparations for the Fall 2004 meeting of International Telecommunications Union Study Group 7.

DATES: The meeting will be held Monday, February 28, 2005, at 10 a.m.

ADDRESSES: The meeting will be held at the National Science Foundation, room 320, located at 4201 Wilson Blvd, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Shayla Taylor, 540–659–7222.

Dated: December 13, 2004.

David P. Struba,

Chairman, U.S. Study Group 7, NASA Director Spectrum Policy and Planning, Office of Space Operations.

[FR Doc. 04–27559 Filed 12–15–04; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 04–147]

Notice: Correction

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: In the **Federal Register** issue of Friday, May 7, 2004 (Volume 69, No. 89), pgs. 25613–25615, Notice [04–060], make the following corrections: ''Security Classification: Some of the material contained in the system has been classified in the interests of national security pursuant to Executive Order 11652.'' should read ''Security Classification: Some of the material contained in the system has been classified in the Interests of national security pursuant to Executive Order 12958, as amended.''

FOR FURTHER INFORMATION CONTACT: Elizabeth Richardson, Associate Counsel to the Inspector General, (202) 358–2548.

Patti F. Stockman,

NASA Privacy Act Officer.

[FR Doc. 04–27560 Filed 12–15–04; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection consisting of National Archives Trust Fund (NATF) Order Forms for Genealogical Research in the National Archives. The NATF forms included in this information collection are: NATF 81, National Archives Order for Copies of Ship Passenger Arrival Records; NATF 82, National Archives Order of Copies of Census Schedules; NATF 83, National Archives Order for Copies of Eastern Cherokee Applications; NATF 84, National Archives Order for Copies of Land Entry Files; NATF 85, National Archives Order for Copies of Pension or Bounty Land Warrant Applications; and NATF 86, National Archives Order for Copies of Military Service Records. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 14, 2005 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 all respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

Title: Order Forms for Genealogical Research in the National Archives.

OMB number: 3095–0027.

Agency form numbers: NATF Forms 81, 82, 83, 84. 85, and 86.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 97,600.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 16,267 (rounded up).

Abstract: Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 12,000 per year for the NATF 81, approximately 600 per year for the NATF 82, approximately 1,000 per year for the NATF 83, approximately 6,000 per year for the NATF 84, approximately 46,000 per year for the NATF 85, and approximately 32,000 per year for the NATF 86) and the need to obtain specific information from the researcher to search for the records sought. The form is printed on carbonless paper as a multi-part form to allow the researcher to retain a copy of his request and NARA to respond to the researcher on the results of the search or to bill for copies if the researcher wishes to order the copies. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies. You can also use Order Online! (*http://www.archives.gov/research_room/obtain_copies/military_and_genealogy_order_forms.html*) to complete the forms and order the copies.

Dated: December 10, 2004.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 04–27525 Filed 12–15–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 31, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means: *Mail:* NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001. *E-mail: records.mgt@nara.gov. FAX:* 301–837–3698. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Office of Acquisition Management (N1–40–05–1, 1 item, 1 temporary item).

Information concerning agency employees responsible for acquiring and managing goods and services. Records, which are maintained in a web-based system, include data concerning employees' education, training, contract warrants, certifications, and contact information.

2. Department of Labor, Bureau of International Labor Affairs (N1–174–02–4, 44 items, 16 temporary items). Program records of the Bureau, including files relating to such matters as international visitor programs, cooperative activities, technical assistance to foreign countries, grant programs, and immigration policy. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as significant management and policy files, program files for major Bureau components, publications, international and advisory committee files, trade policy files, and research project files.

3. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–19, 3 items, 3 temporary items). Records relating to the publication of notices in the **Federal Register**, including such records as drafts, final notices, newspaper clippings, and press releases. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–20, 3 items, 3 temporary items). Records relating to the agency's responses to internal and external audits, evaluations, and investigations. Included are such records as correspondence, position papers, work plans, studies, and tracking documents. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–23, 12 items, 12 temporary items). Reports filed by domestic air carriers regarding such matters as finances, freight losses, scheduled arrival performance, unaccommodated passengers, discounts, and credit extended to political candidates. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed

disposition instructions to any recordkeeping medium.

6. Department of Transportation, Federal Highway Administration (N1–406–04–5, 5 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with planning, numbering, and designating interstate highways. Also included are duplicate copies of these records. Recordkeeping copies of these files are proposed for permanent retention.

7. National Archives and Records Administration, Government-wide (N1–GRS–04–4, 9 items, 9 temporary items). Addition to the General Records Schedules covering records accumulated by Chief Information Officers. Included are records relating to such matters as information technology program planning, enterprise architecture, IT capital investments, legal and regulatory compliance, the activities of committees, and schedules of daily activities. Also included are electronic copies of records created using electronic mail and word processing.

8. National Archives and Records Administration, Office of Human Resources and Information Services (N1–64–05–2, 4 items, 4 temporary items). Case files relating to information technology projects, including records documenting various stages of the project such as concept development, system testing, and approvals. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

9. National Archives and Records Administration, Office of the **Federal Register** (N1–64–05–3, 4 items, 4 temporary items). Inquiries from researchers and the general public concerning publications, policies, and procedures of the **Federal Register** and other Government publications. Also included are electronic copies of records created using electronic mail and word processing.

10. Small Business Administration, Office of Capital Access (N1–309–04–1, 8 items, 8 temporary items). Inputs, outputs, master files, and documentation associated with an electronic system which contains information concerning the Small Business Investment Company interim funding process and the New Markets Venture Capital Program. Also included are electronic copies of documents created using word processing and electronic mail.

Dated: December 9, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–27537 Filed 12–15–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

Security and Management Control Outsourcing Standards

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Notice.

SUMMARY: Pursuant to the publication requirement in title 42, United States Code, 14616, Article VI(e), the Compact Council, established by the National Crime Prevention and Privacy Compact (Compact) Act of 1998, is providing public notice of the attached Security and Management Control Outsourcing Standards (Outsourcing Standards) established by the Compact Council.

DATES: All comments must be received on or before February 14, 2005.

ADDRESSES: Send all written comments concerning these Outsourcing Standards to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Todd C. Commodore. Comments may also be submitted by fax at (304) 625–5388 or via electronic mail at *tcommodore@leo.gov*. To ensure proper handling, please reference Noncriminal Justice Outsourcing Standards'' on your correspondence.

FOR FURTHER INFORMATION CONTACT: Todd C. Commodore, FBI CJIS Division, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; telephone (304) 625–2803; e-mail *tcommodo@leo.gov*; fax number (304) 625–5388.

SUPPLEMENTARY INFORMATION: The National Crime Prevention and Privacy Compact (Compact), 42 U.S.C. 14616, establishes uniform standards and processes for the interstate and Federal-State exchange of criminal history records for noncriminal justice purposes. The Compact was approved by the Congress on October 9, 1998 (Pub. L. 105–251), and became effective on April 28, 1999, when ratified by the second state. Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes. The III is the system of Federal and State criminal history records maintained by the Federal Bureau of Investigation (FBI).

The Compact Council has adopted an interim final rule, ''Outsourcing of Noncriminal Justice Administrative Functions'' (Outsourcing Rule), published elsewhere in today's edition of the **Federal Register** and to be codified at 28 CFR part 906, to permit the outsourcing of noncriminal justice administrative functions involving access to criminal history record information (CHRI) from the III System. This interim rule will permit a third party to perform noncriminal justice administrative functions relating to the processing of CHRI maintained in the III System, subject to appropriate controls, when acting as an agent for a governmental agency or other authorized recipient of CHRI. Among other things, the interim rule provides that contracts or agreements providing for the outsourcing authorized by the rule ''shall incorporate by reference a security and management control outsourcing standard approved by the Compact Council after consultation with the United States Attorney General.'' *See* 28 CFR 906.2(c). The attached Security and Management Control Outsourcing Standards (Outsourcing Standards), are the standards referenced in the Outsourcing Rule. The Outsourcing Standards were developed by the Compact Council in coordination with the FBI's Criminal Justice Information Services (CJIS) Division and relevant subcommittees of the CJIS Advisory Policy Board (APB). The APB is an advisory committee with representatives of State, local, and Federal contributors and users of the FBI's National Crime Information Center information systems, including the III.

The Compact Council developed two Outsourcing Standards—one for Contractors having access to CHRI on behalf of an authorized recipient for noncriminal justice purposes and one for Contractors serving as channelers of noncriminal justice criminal history record check requests and results. The first Outsourcing Standard (''Security and Management Control Outsourcing Standard for Contractors Having Access to CHRI on Behalf of an Authorized Recipient for Noncriminal Justice Purposes'') will be used by Contractors authorized to perform noncriminal justice administrative functions requiring access to CHRI without a direct connection to the FBI's CJIS Wide Area Network (WAN). The second Outsourcing Standard (''Security and Management Control Outsourcing Standard for Channelers Only'') will be used by Contractors authorized access to CHRI through a direct connection to the

FBI's CJIS WAN. The two Outsourcing Standards are printed below. Hereafter, prior to utilizing the Outsourcing Standards, interested parties should request the most current version by contacting the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306, Attention: FBI Compact Officer.

The Outsourcing Standards were discussed at public Compact Council meetings held in May and November of 2004 and the Outsourcing Standards were adopted by the Compact Council at its November 2004 meeting. The meetings were attended by many interested stakeholders, but in order to facilitate more broad-based public comment, written comments on the Outsourcing Standards are invited.

Dated: November 29, 2004.

Donna M. Uzzell,

Compact Council Chairman.

Attachment: Security and Management Control Outsourcing Standard for Contractors Having Access to Criminal History Record Information on Behalf of an Authorized Recipient for Noncriminal Justice Purposes

The goal of this document is to provide adequate security and integrity for criminal history record information (CHRI) while under the control or management of an outsourced third party, the Contractor. Adequate security is defined in Office of Management and Budget Circular A–130 as ''security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information.''

The intent of this Security and Management Control Outsourcing Standard (Outsourcing Standard) is to require that the Contractor maintain a security program consistent with Federal and State laws, regulations, and standards (including the FBI Criminal Justice Information Services (CJIS) Security Policy) as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

This Outsourcing Standard identifies the duties and responsibilities with respect to adequate internal controls within the contractual relationship so that the security and integrity of the Interstate Identification Index (III) System and CHRI are not compromised. The standard security program shall include consideration of site security, dissemination restrictions, personnel security, system security, and data security.

The provisions of this Outsourcing Standard are established by the Compact Council pursuant to 28 CFR part 906 and are subject to the scope of that rule. They apply to all personnel, systems, networks, and facilities supporting and/or acting on behalf of the Authorized Recipient of CHRI.

1.0 Definitions

1.01 *Access to CHRI* means to use, exchange, retain/store, or view CHRI obtained from the III System but excludes direct access to the III System by computer terminal or other automated means by Contractors other than those that may be contracted by the FBI or state criminal history record repositories or as provided by title 42, United States Code, section 14614(b).

1.02 *Authorized Recipient* means (1) a nongovernmental entity authorized by Federal statute or Federal executive order to receive CHRI for noncriminal justice purposes, or (2) a government agency authorized by Federal statute, Federal executive order, or State statute which has been approved by the United States Attorney General to receive CHRI for noncriminal justice purposes.

1.03 *Chief Administrator,* as referred to in Article I(2)(B) of the Compact, means the primary administrator of a Nonparty State's criminal history record repository or a designee of such administrator who is a regular full-time employee of the repository.

1.04 *CHRI,* as referred to in Article I(4) of the Compact, means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; but does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

1.05 *Criminal History Record Check, for purposes of this Outsourcing Standard only,* means an authorized noncriminal justice fingerprint-based search of a state criminal history record repository and/or the FBI system.

1.06 *Compact Officer,* as provided in Article I(2) of the Compact, means (A) with respect to the Federal Government, an official [FBI Compact Officer] so designated by the Director of the FBI [to administer and enforce the compact among Federal agencies], or (B) with respect to a Party State, the chief administrator of the State's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

1.07 *Contractor* means a government agency, a private business, non-profit organization or individual, that is not itself an Authorized Recipient with respect to the particular noncriminal justice purpose, who has entered into a contract with an Authorized Recipient to perform noncriminal justice administrative functions requiring access to CHRI.

1.08 *Dissemination* means the disclosure of III CHRI by an Authorized Recipient to an authorized Contractor, or by the Contractor to another Authorized Recipient consistent with the Contractor's responsibilities and with limitations imposed by Federal and State laws, regulations, and standards as well as rules, procedures, and standards established by the Compact Council and the United States Attorney General.

1.09 *Noncriminal Justice Administrative Functions* means the routine noncriminal justice administrative functions relating to the processing of CHRI, to include but not limited to the following:

1. Making fitness determinations/recommendations.
2. Obtaining missing dispositions.
3. Disseminating CHRI as authorized by Federal statute, Federal Executive Order, or State statute approved by the United States Attorney General.
4. Other authorized activities relating to the general handling, use, and storage of CHRI.

1.10 *Noncriminal Justice Purposes,* as provided in Article I(18) of the Compact, means uses of criminal history records for purposes authorized by Federal or State law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

1.11 *Outsourcing Standard* means a document approved by the Compact Council after consultation with the United States Attorney General which is to be incorporated by reference into a contract between an Authorized Recipient and a Contractor. The Outsourcing Standard authorizes access to CHRI, limits the use of the information to the purposes for which it is provided, prohibits retention and/or dissemination except as specifically authorized, ensures the security and confidentiality of the information, provides for audits and sanctions, provides conditions for termination of the contract, and contains such other provisions as the Compact Council may require.

1.12 *Physically Secure Location* means a location where access to CHRI can be obtained, and adequate protection is provided to prevent any unauthorized access to CHRI.

1.13 *Positive Identification,* as provided in Article I(20) of the Compact, means a determination, based upon a comparison of fingerprints [1] or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

1.14 *Public Carrier Network* means a telecommunications infrastructure consisting of network components that are not owned, operated, and managed solely by the agency using that network, *i.e.*, any telecommunications infrastructure which supports public users other than those of the agency using that network. Examples of a public carrier network include but are not limited to the following: dial-up and Internet connections, network connections to Verizon, network connections to AT&T, ATM Frame Relay clouds, wireless networks, wireless links, and cellular telephones. A public carrier network provides network services to the public; not just to the single agency using that network.

[1] The Compact Council currently defines positive identification for noncriminal justice purposes as identification based upon a qualifying ten-rolled or qualifying ten-flat fingerprint submission. Further information concerning qualifying fingerprint submissions may be obtained from the FBI Compact Council office.

1.15 *Security Violation* means the failure to prevent or failure to institute safeguards to prevent access, use, retention, or dissemination of CHRI in violation of: (A) federal or state law, regulation, or Executive Order; or (B) a rule, procedure, or standard established by the Compact Council and the United States Attorney General.

2.0 Responsibilities of the Authorized Recipient

2.01 Prior to engaging in outsourcing any noncriminal justice functions, the Authorized Recipient shall request and receive written permission from (A) the State Compact Officer/Chief Administrator [2] or (B) the FBI Compact Officer.[3] The Authorized Recipient shall provide the Compact Officer/Chief Administrator copies of the specific authority for the outsourced work, criminal history record check requirements, and/or a copy of the contract as requested. The Authorized Recipient shall inquire whether a prospective Contractor has any security violations (See Section 8.04) and report those findings to the Compact Officer/Chief Administrator prior to outsourcing noncriminal justice administrative functions.

2.02 The Authorized Recipient shall execute a contract prior to providing a Contractor access to CHRI. The contract shall, at a minimum, incorporate by reference and have appended thereto this Outsourcing Standard.

2.03 The Authorized Recipient shall, in those instances when the Contractor is to perform duties requiring access to CHRI, specify the terms and conditions of such access; limit the use of such information to the purposes for which it is provided; limit retention of the information to a period of time not to exceed that period of time the Authorized Recipient is permitted to retain such information; prohibit dissemination of the information except as specifically authorized by federal and state laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General; ensure the security and confidentiality of the information to include confirmation that the intended recipient is authorized to receive CHRI; provide for audits and sanctions; provide conditions for termination of the contract; maintain up-to-date records of Contractor personnel who have access to CHRI; and ensure that Contractor personnel comply with this Outsourcing Standard.

a. The Authorized Recipient shall conduct criminal history record checks of Contractor personnel having access to CHRI if such checks are required of the Authorized Recipient's personnel having similar access.[4]

b. The Authorized Recipient shall ensure that the Contractor maintains site security.

c. The Authorized Recipient shall ensure that the most current version of both the Outsourcing Standard and the CJIS Security Policy are incorporated by reference at the time of contract and/or Option renewal.

2.04 The Authorized Recipient is responsible for the actions of the Contractor and shall monitor the Contractor's compliance to the terms and conditions of the Outsourcing Standard. The Authorized Recipient shall certify to the Compact Officer/Chief Administrator that a compliance review was conducted with the Contractor within 90 days of execution of the contract.

2.05 The Authorized Recipient shall provide written notice of any early voluntary termination of the contract to the Compact Officer/Chief Administrator or the FBI Compact Officer.

3.0 Responsibilities of the Contractor

3.01 The Contractor and its employees shall comply with all Federal and State laws, regulations, and standards (including the CJIS Security Policy) as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

3.02 The Contractor shall develop and document a security program to comply with the current Outsourcing Standard and any revised or successor Outsourcing Standard. The Security Program shall describe the implementation of the security requirements described in this Outsourcing Standard, the associated Security Training Program, and the reporting guidelines for documenting and communicating security violations and corrective actions to the Authorized Recipient. The Security Program shall be subject to the approval of the Authorized Recipient.

3.03 The Contractor shall be accountable for the management of the Security Program. The Contractor shall be responsible for reporting all security violations of this Outsourcing Standard to the Authorized Recipient.

3.04 Except when the training requirement is retained by the Authorized Recipient, the Contractor shall develop a Security Training Program for all Contractor personnel with access to CHRI prior to their appointment/assignment. Immediate training shall be provided upon receipt of notice on any changes to Federal and State laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General. Annual refresher training shall also be provided. The Contractor shall certify to the Authorized Recipient that the annual refresher training was completed for those Contractor personnel with access to CHRI. The Security Training Program shall be subject to the approval of the Authorized Recipient.

3.05 The Contractor shall make its facilities available for announced and unannounced security inspections performed by the Authorized Recipient, the State, or the FBI on behalf of the Compact Council. Such facilities are also subject to triennial audits by the State and the FBI on behalf of the Compact Council. An audit may also be conducted on a more frequent basis.

3.06 The Contractor's Security Program is subject to review by the Authorized Recipient, the Compact Officer/Chief Administrator, and the FBI CJIS Division. During this review, provision will be made to update the Security Program to address security violations and to ensure changes in policies and standards as well as changes in Federal and State law are incorporated.

3.07 The Contractor shall maintain CHRI only for the period of time necessary to fulfill their contractual obligations but not to exceed the period of time that the Authorized Recipient is authorized to maintain and does maintain the CHRI.

3.08 The Contractor shall maintain a log of any dissemination of CHRI.

4.0 Site Security

4.01 The Authorized Recipient shall ensure that the Contractor site is a physically secure location at all times to protect against any unauthorized access to CHRI.

5.0 Dissemination

5.01 The Contractor shall not disseminate CHRI without the consent of the Authorized Recipient, and as specifically authorized by Federal and State laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

5.02 An up-to-date log concerning dissemination of CHRI shall be maintained by the Contractor for a minimum one year retention period. This log must clearly identify: (A) the Authorized Recipient and the secondary recipient with unique identifiers, (B) the record disseminated, (C) the date of dissemination, (D) the statutory authority for dissemination, and (E) the means of dissemination.

6.0 Personnel Security

6.01 If a local, State, or Federal written standard requires a criminal history record check of the Authorized Recipient's personnel with access to CHRI, then a criminal history record check shall be required of the Contractor's employees having access to CHRI. The criminal history record check of Contractor employees at a minimum will be no less stringent than the criminal history record check that is performed on the Authorized Recipient's personnel performing similar functions. Criminal history record checks must be completed prior to performing work under the contract.

6.02 If a local, State, or Federal written standard requires a criminal history record

[2] The Compact Officer/Chief Administrator may not grant such permission unless he/she has implemented a combined state/federal audit program to triennially audit each Contractor and Authorized Recipient engaging in outsourcing with the first of such audits to be conducted within one year of the signing of the contract.

[3] State or local Authorized Recipients based on State or Federal Statutes shall contact the State Compact Officer/Chief Administrator. Federal or Regulatory Agency Authorized Recipients shall contact the FBI Compact Officer.

[4] If a national criminal history record check of government personnel having access to CHRI is mandated by a state statute approved by the Attorney General under Public Law 92–544, the State Compact Officer/Chief Administrator must ensure Contractor personnel having similar access are either covered by the existing law or that the existing law is amended to include such Contractor personnel prior to authorizing outsourcing initiatives.

check for support personnel, contractors, and custodial workers who work in a physically secure location, then a criminal history record check shall be required for these individuals, unless these individuals are escorted by authorized personnel at all times. The criminal history record check for these individuals at a minimum will be no less stringent than the criminal history record check that is performed on the Authorized Recipient's support personnel, contractors, and custodial workers performing similar functions. Criminal history record checks must be completed prior to performing work under the contract.

6.03 The Contractor shall ensure that each employee performing work under the contract is aware of the requirements of the Outsourcing Standard and the State and Federal laws governing the security and integrity of CHRI. The Contractor shall confirm that each employee understands the Outsourcing Standard requirements and laws that apply to his/her responsibilities.

6.04 If a criminal history record check is required, the Contractor shall maintain a list of personnel who successfully completed the criminal history record check.

7.0 System Security

7.01 The Contractor's security system shall comply with the CJIS Security Policy in effect at the time the Outsourcing Standard is incorporated into the contract and with successor versions of the CJIS Security Policy as they are made known to the Contractor by the Authorized Recipient.

a. If CHRI can be accessed by unauthorized personnel via Wide Area Network/Local Area Network or the Internet, then the Contractor shall protect the CHRI with firewall-type devices to prevent such unauthorized access. These devices shall implement a minimum firewall profile as specified by the CJIS Security Policy in order to provide a point of defense and a controlled and audited access to CHRI, both from inside and outside the networks.

b. Data encryption shall be required throughout the network, passing CHRI through a shared public carrier network.

7.02 The Contractor shall provide for the secure storage and disposal of all hard copy and media associated with the system to prevent access by unauthorized personnel.

a. CHRI shall be stored in a physically secure location.

b. The Authorized Recipient shall ensure that a procedure is in place for sanitizing all fixed storage media (*e.g.*, disks, drives, backup storage) at the completion of the contract and/or before it is returned for maintenance, disposal, or reuse. Sanitization procedures include overwriting the media and/or degaussing the media.

7.03 To prevent and/or detect unauthorized access to CHRI in transmission or storage, each Authorized Recipient must be identified by an Originating Agency Identifier (ORI) or state assigned identifier, and each Contractor or sub-Contractor must be uniquely identified.

8.0 Security Violations

8.01 *Duties of the Authorized Recipient and Contractor.* a. The Contractor shall develop and maintain a written policy for discipline of Contractor employees who violate the security provisions of the contract, which includes this Outsourcing Standard that is incorporated by reference.

b. Pending investigation, the Contractor shall immediately suspend any employee who commits a security violation from assignments in which he/she has access to CHRI under the contract.

c. The Contractor shall immediately notify the Authorized Recipient of any security violation or termination of the contract, to include unauthorized access to CHRI made available pursuant to the contract. Within five calendar days of such notification, the Contractor shall provide the Authorized Recipient a written report documenting such security violation, any corrective actions taken by the Contractor to resolve such violation, and the date, time, and summary of the prior notification.

d. The Authorized Recipient shall immediately notify the State Compact Officer/Chief Administrator and the FBI Compact Officer of any security violation or termination of the contract, to include unauthorized access to CHRI made available pursuant to the contract. The Authorized Recipient shall provide a written report of any security violation (to include unauthorized access to CHRI by the Contractor) to the State Compact Officer/Chief Administrator, if applicable, and the FBI Compact Officer, within five calendar days of receipt of the written report from the Contractor. The written report must include any corrective actions taken by the Contractor and the Authorized Recipient to resolve such security violation.

8.02 *Termination of the contract by the Authorized Recipient for security violations.*

a. The contract is subject to termination by the Authorized Recipient for security violations involving CHRI obtained pursuant to the contract.

b. The contract is subject to termination by the Authorized Recipient for the Contractor's failure to notify the Authorized Recipient of any security violation or to provide a written report concerning such violation.

c. If the Contractor refuses to or is incapable of taking corrective actions to successfully resolve a security violation, the Authorized Recipient shall terminate the contract.

8.03 *Suspension or termination of the exchange of CHRI for security violations.* a. Notwithstanding the actions taken by the State Compact Officer, if the Authorized Recipient fails to provide a written report notifying the State Compact Officer/Chief Administrator or the FBI Compact Officer of a security violation, or refuses to or is incapable of taking corrective action to successfully resolve a security violation, the Compact Council or the United States Attorney General may suspend or terminate the exchange of CHRI with the Authorized Recipient pursuant to 28 CFR 906.2(d).

b. If the exchange of CHRI is suspended, it may be reinstated after satisfactory written assurances have been provided to the Compact Council Chairman or the United States Attorney General by the Compact Officer/Chief Administrator, the Authorized Recipient and the Contractor that the security violation has been resolved. If the exchange of CHRI is terminated, the Contractor's records (including media) containing CHRI shall be immediately deleted or returned as specified by the Authorized Recipient.

8.04 The Authorized Recipient shall provide written notice (through the State Compact Officer/Chief Administrator if applicable) to the FBI Compact Officer of the following:

a. The termination of a contract for security violations.

b. Security violations involving the unauthorized access to CHRI.

c. The Contractor's name and unique identification number, the nature of the security violation, whether the violation was intentional, and the number of times the violation occurred.

8.05 The Compact Officer/Chief Administrator, Compact Council and the United States Attorney General reserve the right to investigate or decline to investigate any report of unauthorized access to CHRI.

8.06 The Compact Officer/Chief Administrator, Compact Council, and the United States Attorney General reserve the right to audit the Authorized Recipient and the Contractor's operations and procedures at scheduled or unscheduled times. The Compact Council, the United States Attorney General, and the state are authorized to perform a final audit of the Contractor's systems after termination of the contract.

9.0 Miscellaneous Provisions

9.01 This Outsourcing Standard does not confer, grant, or authorize any rights, privileges, or obligations to any persons other than the Contractor, the Authorized Recipient, Compact Officer/Chief Administrator (where applicable), and the FBI.

9.02 The following document is incorporated by reference and made part of this Outsourcing Standard: (1) The CJIS Security Policy.

9.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they provide a minimum basis for the security of the system and the CHRI accessed therefrom and it is understood that there may be terms and conditions of the appended contract which impose more stringent requirements upon the Contractor.[5]

9.04 The minimum security measures as outlined in this Outsourcing Standard may only be modified by the Compact Council. Conformance to such security measures may not be less stringent than stated in this Outsourcing Standard without the consent of the Compact Council in consultation with the United States Attorney General.

9.05 This Outsourcing Standard may only be modified by the Compact Council and may not be modified by the parties to the appended contract without the consent of the Compact Council.

9.06 Appropriate notices, assurances, and correspondence to the FBI Compact Officer, Compact Council, and the United States

[5] Such conditions could include additional audits, fees, or security requirements.

Attorney General required by Section 8.0 of this Outsourcing Standard shall be forwarded by First Class Mail to: FBI Compact Officer, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306.

Security and Management Control Outsourcing Standard for Channelers Only

The goal of this document is to provide adequate security and integrity for criminal history record information (CHRI) while under the control or management of an outsourced third party, the Contractor. Adequate security is defined in Office of Management and Budget Circular A–130 as ''security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information.''

The intent of this Security and Management Control Outsourcing Standard (Outsourcing Standard) is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the FBI Criminal Justice Information Services (CJIS) Security Policy) as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

This Outsourcing Standard identifies the duties and responsibilities with respect to adequate internal controls within the contractual relationship so that the security and integrity of the Interstate Identification Index (III) System and CHRI are not compromised. The standard security program shall include consideration of site security, dissemination restrictions, personnel security, system security, and data security.

The provisions of this Outsourcing Standard are established by the Compact Council pursuant to 28 CFR part 906 and are subject to the scope of that rule. They apply to all personnel, systems, networks, and facilities supporting and/or acting on behalf of the Authorized Recipient of CHRI.

1.0 Definitions

1.01 *Access to CHRI* means to use, exchange, retain/store, or view CHRI obtained from the III System but excludes direct access to the III System by computer terminal or other automated means by Contractors other than those that may be contracted by the FBI or State criminal history record repositories or as provided by title 42, United States Code, section 14614(b).

1.02 *Authorized Recipient* means (1) a nongovernmental entity authorized by Federal statute or Federal executive order to receive CHRI for noncriminal justice purposes, or (2) a government agency authorized by Federal statute, Federal executive order, or State statute which has been approved by the United States Attorney General to receive CHRI for noncriminal justice purposes.

1.03 *Authorized Recipient's Information Security Officer* means the individual who shall ensure technical compliance with all applicable elements of this Outsourcing Standard.

1.04 *Chief Administrator*, as referred to in Article I(2)(B) of the Compact, means the primary administrator of a Nonparty State's criminal history record repository or a designee of such administrator who is a regular full-time employee of the repository.

1.05 *CHRI*, as referred in Article I(4) of the Compact, means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; but does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

1.06 *Criminal History Record Check*, for purposes of this Outsourcing Standard only, means an authorized noncriminal justice fingerprint-based search of a State criminal history record repository and/or the FBI system.

1.07 *CJIS Systems Agency*, as provided in Section 1.4 of the FBI Criminal Justice Information Services (CJIS) Division's Advisory Policy Board Bylaws, means a criminal justice agency which has overall responsibility for the administration and usage of CJIS Division Programs within a State, district, territory, or foreign country. This includes any Federal agency that meets the definition and provides services to other Federal agencies and/or whose users reside in multiple states or territories.

1.08 *CJIS Systems Officer*, as provided in Section 1.5 of the CJIS Advisory Policy Board Bylaws, means the individual employed by the CJIS Systems Agency who is responsible for monitoring system use, enforcing system discipline and security, and assuring that CJIS operating procedures are followed by all users as well as other related duties outlined by the user agreements with the FBI's CJIS Division. (This title was formerly referred to as the Control Terminal Officer or the Federal Service Coordinator).

1.09 *Compact Officer,* as provided in Article I(2) of the Compact, means (A) with respect to the Federal Government, an official [FBI Compact Officer] so designated by the Director of the FBI [to administer and enforce the compact among Federal agencies], or (B) with respect to a Party State, the chief administrator of the State's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

1.10 *Contractor* means a government agency, a private business, non-profit organization or individual, that is not itself an Authorized Recipient with respect to the particular noncriminal justice purpose, who has entered into a contract with an Authorized Recipient to perform noncriminal justice administrative functions requiring access to CHRI. Under this Outsourcing Standard applicable to channelers, a Contractor includes one who has direct connectivity to the CJIS Wide Area Network (WAN) for the purpose of electronic submission of fingerprints to and the receipt of CHRI from the FBI on behalf of an Authorized Recipient.

1.11 *Contractor's Security Officer* means the individual accountable for the management of the Contractor's security program.

1.12 *Dissemination* means the disclosure of III CHRI by an Authorized Recipient to an authorized Contractor, or by the Contractor to another Authorized Recipient consistent with the Contractor's responsibilities and with limitations imposed by Federal and State laws, regulations, and standards as well as rules, procedures, and standards established by the Compact Council and the United States Attorney General.

1.13 *Noncriminal Justice Administrative Functions* means the routine noncriminal justice administrative functions relating to the processing of CHRI, to include but not limited to the following:

1. Making fitness determinations/recommendations.
2. Obtaining missing dispositions.
3. Disseminating CHRI as authorized by Federal statute, Federal Executive Order, or State statute approved by the United States Attorney General.
4. Other authorized activities relating to the general handling, use, and storage of CHRI.

1.14 *Noncriminal Justice Purposes,* as provided in Article I(18) of the Compact, means uses of criminal history records for purposes authorized by Federal or State law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

1.15 *Outsourcing Standard* means a document approved by the Compact Council after consultation with the United States Attorney General which is to be incorporated by reference into a contract between an Authorized Recipient and a Contractor. The Outsourcing Standard authorizes access to CHRI, limits the use of the information to the purposes for which it is provided, prohibits retention and/or dissemination except as specifically authorized, ensures the security and confidentiality of the information, provides for audits and sanctions, provides conditions for termination of the contract, and contains such other provisions as the Compact Council may require.

1.16 *Physically Secure Location* means a location where access to CHRI can be obtained, and adequate protection is provided to prevent any unauthorized access to CHRI.

1.17 *Positive Identification,* as provided in Article I(20) of the Compact, means a determination, based upon a comparison of fingerprints[6] or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

1.18 *Public Carrier Network* means a telecommunications infrastructure consisting

[6] The Compact Council currently defines positive identification for noncriminal justice purposes as identification based upon a qualifying ten-rolled or qualifying ten-flat fingerprint submission. Further information concerning qualifying fingerprint submissions may be obtained from the FBI Compact Council office.

of network components that are not owned, operated, and managed solely by the agency using that network, *i.e.*, any telecommunications infrastructure which supports public users other than those of the agency using that network. Examples of a public carrier network include but are not limited to the following: dial-up and Internet connections, network connections to Verizon, network connections to AT&T, ATM Frame Relay clouds, wireless networks, wireless links, and cellular telephones. A public carrier network provides network services to the public; not just to the single agency using that network.

1.19 *Security Violation* means the failure to prevent or failure to institute safeguards to prevent access, use, retention, or dissemination of CHRI in violation of: (A) Federal or State law, regulation, or Executive Order; or (B) a rule, procedure, or standard established by the Compact Council and the United States Attorney General.

2.0 Responsibilities of the Authorized Recipient

2.01 Prior to engaging in outsourcing any noncriminal justice functions, the Authorized Recipient shall request and receive written permission from (A) the State Compact Officer/Chief Administrator [7] or (B) the FBI Compact Officer.[8] The Authorized Recipient shall provide the Compact Officer/Chief Administrator copies of the specific authority for the outsourced work, criminal history record check requirements, and/or a copy of the contract as requested. The Authorized Recipient shall inquire whether a prospective Contractor has any security violations (see Section 8.04) and report those findings to the Compact Officer/Chief Administrator prior to outsourcing noncriminal justice administrative functions.

2.02 The Authorized Recipient shall execute a contract prior to providing a Contractor access to CHRI. The contract shall, at a minimum, incorporate by reference and have appended thereto this Outsourcing Standard.

2.03 The Authorized Recipient shall, in those instances when the Contractor is to perform duties requiring access to CHRI, specify the terms and conditions of such access; limit the use of such information to the purposes for which it is provided; limit retention of the information to a period of time not to exceed that period of time the Authorized Recipient is permitted to retain such information; prohibit dissemination of the information except as specifically authorized by Federal and State laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General; ensure the security and confidentiality of the information to include confirmation that the intended recipient is authorized to receive CHRI; provide for audits and sanctions; provide conditions for termination of the contract; maintain up-to-date records of Contractor personnel who have access to CHRI; and ensure that Contractor personnel comply with this Outsourcing Standard.

a. The Authorized Recipient shall conduct criminal history record checks of Contractor personnel having access to CHRI if such checks are required of the Authorized Recipient's personnel having similar access.[9]

b. The Authorized Recipient shall ensure that the Contractor maintains site security.

c. The Authorized Recipient shall ensure that the most current version of both the Outsourcing Standard and the CJIS Security Policy are incorporated by reference at the time of contract and/or Option renewal.

d. The Authorized Recipient shall ensure that the Contractor establishes and administers an Information Technology (IT) Security Program.

e. The Authorized Recipient shall allow the FBI to periodically test the ability to penetrate the FBI's network through the external network connection or system.

2.04 The Authorized Recipient shall understand the communications and record capabilities of the Contractor which has access to federal or state records through, or because of, its outsourcing relationship with the Authorized Recipient. The Authorized Recipient shall maintain an updated topological drawing which depicts the interconnectivity of the Contractor's network configuration.

2.05 The Authorized Recipient is responsible for the actions of the Contractor and shall monitor the Contractor's compliance to the terms and conditions of the Outsourcing Standard. The Authorized Recipient shall certify to the Compact Officer/Chief Administrator that a compliance review was conducted with the Contractor within 90 days of execution of the contract.

2.06 The Authorized Recipient shall provide written notice of any early voluntary termination of the contract to the Compact Officer/Chief Administrator or the FBI Compact Officer.

2.07 The Authorized Recipient shall appoint an Information Security Officer. The Authorized Recipient's Information Security Officer shall:

a. Serve as the security POC for the FBI CJIS Division Information Security Officer;

b. Document technical compliance with this Outsourcing Standard; and

c. Establish a security incident response and reporting procedure to discover, investigate, document, and report on major incidents that significantly endanger the security or integrity of the noncriminal justice agency systems to the CJIS Systems Officer and the FBI CJIS Division Information Security Officer.

3.0 Responsibilities of the Contractor

3.01 The Contractor and its employees shall comply with all federal and state laws, regulations, and standards (including the CJIS Security Policy) as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

3.02 The Contractor shall develop and maintain an IT security program. The Contractor is therefore responsible to set, maintain, and enforce the following:

a. Standards for the selection, supervision, and separation of personnel who have access to CHRI.

b. Policy governing the operation of computers, access devices, circuits, hubs, routers, firewalls, and other components that comprise and support a telecommunications network and related CJIS systems used to process, store, or transmit CHRI.

3.03 The Contractor shall develop and document a security program to comply with the current Outsourcing Standard and any revised or successor Outsourcing Standard. The Security Program shall describe the implementation of the security requirements described in this Outsourcing Standard, the associated Security Training Program, and the reporting guidelines for documenting and communicating security violations and corrective actions to the Authorized Recipient. The Security Program shall be subject to the approval of the Authorized Recipient.

3.04 The Contractor shall be accountable for the management of the Security Program. The Contractor shall be responsible for reporting all security violations of this Outsourcing Standard to the Authorized Recipient.

3.05 Except when the training requirement is retained by the Authorized Recipient, the Contractor shall develop a Security Training Program for all Contractor personnel with access to CHRI prior to their appointment/assignment. Immediate training shall be provided upon receipt of notice on any changes to Federal and State laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General. Annual refresher training shall also be provided. The Contractor shall certify to the Authorized Recipient that the annual refresher training was completed for those Contractor personnel with access to CHRI. The Security Training Program shall be subject to the approval of the Authorized Recipient.

3.06 The Contractor shall make its facilities available for announced and unannounced security inspections performed by the Authorized Recipient, the State, or the FBI on behalf of the Compact Council. Such facilities are also subject to triennial audits by the state and the FBI on behalf of the Compact Council. An audit may also be conducted on a more frequent basis.

3.07 The Contractor's Security Program is subject to review by the Authorized

[7] The Compact Officer/Chief Administrator may not grant such permission unless he/she has implemented a combined state/federal audit program to triennially audit each Contractor and Authorized Recipient engaging in outsourcing with the first of such audits to be conducted within one year of the signing of the contract.

[8] State or local Authorized Recipients based on State or Federal Statutes shall contact the State Compact Officer/Chief Administrator. Federal or Regulatory Agency Authorized Recipients shall contact the FBI Compact Officer.

[9] If a national criminal history record check of government personnel having access to CHRI is mandated by a state statute approved by the Attorney General under Public Law 92–544, the State Compact Officer/Chief Administrator must ensure Contractor personnel having similar access are either covered by the existing law or that the existing law is amended to include such Contractor personnel prior to authorizing outsourcing initiatives.

Recipient, the Compact Officer/Chief Administrator, and the FBI CJIS Division. During this review, provision will be made to update the Security Program to address security violations and to ensure changes in policies and standards as well as changes in Federal and State law are incorporated.

3.08 The Contractor shall maintain CHRI only for the period of time necessary to fulfill their contractual obligations but not to exceed the period of time that the Authorized Recipient is authorized to maintain and does maintain the CHRI.

3.09 The Contractor shall maintain a log of any dissemination of CHRI.

4.0 Site Security

4.01 The Authorized Recipient shall ensure that the Contractor site is a physically secure location at all times to protect against any unauthorized access to CHRI.

4.02 All visitors to computer centers and/or terminal areas shall be escorted by authorized personnel at all times.

5.0 Dissemination

5.01 Only employees of the Contractor, employees of the Authorized Recipient, and such other persons as may be granted authorization by the Authorized Recipient shall be permitted access to the system.

5.02 The Contractor shall maintain appropriate and reasonable quality assurance procedures.

5.03 Access to the system shall be available only for official purposes consistent with the appended contract. Any dissemination of CHRI data to authorized employees of the Contractor is to be for official purposes only.

5.04 Information contained in or about the system will not be provided to agencies other than the Authorized Recipient or another entity which is specifically designated in the contract.

5.05 The Contractor shall not disseminate CHRI without the consent of the Authorized Recipient, and as specifically authorized by federal and state laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

5.06 An up-to-date log concerning dissemination of CHRI shall be maintained by the Contractor for a minimum one year retention period. This log must clearly identify: (A) The Authorized Recipient and the secondary recipient with unique identifiers, (B) the record disseminated, (C) the date of dissemination, (D) the statutory authority for dissemination, and (E) the means of dissemination.

5.07 The Contractor shall protect against any unauthorized persons gaining access to the equipment, any of the data, or the operational documentation for the system. In no event shall copies of messages or CHRI be disseminated other than as contracted and governed by this Outsourcing Standard.

5.08 All access attempts are subject to recording and routine review for detection of inappropriate or illegal activity.

5.09 The Contractor's system shall be supported by a well-written contingency plan.

6.0 Personnel Security

6.01 If a local, State, or Federal written standard requires a criminal history record check of the Authorized Recipient's personnel with access to CHRI, then a criminal history record check shall be required of the Contractor's employees having access to CHRI. The criminal history record check of Contractor employees at a minimum will be no less stringent than the criminal history record check that is performed on the Authorized Recipient's personnel performing similar functions. Criminal history record checks must be completed prior to performing work under the contract.

6.02 If a local, State, or Federal written standard requires a criminal history record check for support personnel, contractors, and custodial workers who work in a physically secure location, then a criminal history record check shall be required for these individuals, unless these individuals are escorted by authorized personnel at all times. The criminal history record check for these individuals at a minimum will be no less stringent than the criminal history record check that is performed on the Authorized Recipient's support personnel, contractors, and custodial workers performing similar functions. Criminal history record checks must be completed prior to performing work under the contract.

6.03 The Contractor shall ensure that each employee performing work under the contract is aware of the requirements of the Outsourcing Standard and the State and Federal laws governing the security and integrity of CHRI. The Contractor shall confirm that each employee understands the Outsourcing Standard requirements and laws that apply to his/her responsibilities.

6.04 If a criminal history record check is required, the Contractor shall maintain a list of personnel who successfully completed the criminal history record check.

7.0 System Security

7.01 The Contractor's security system shall comply with the CJIS Security Policy in effect at the time the Outsourcing Standard is incorporated into the contract and with successor versions of the CJIS Security Policy as they are made known to the Contractor by the Authorized Recipient.

a. If CHRI can be accessed by unauthorized personnel via Wide Area Network/Local Area Network or the Internet, then the Contractor shall protect the CHRI with firewall-type devices to prevent such unauthorized access. These devices shall implement a minimum firewall profile as specified by the CJIS Security Policy in order to provide a point of defense and a controlled and audited access to CHRI, both from inside and outside the networks.

b. Data encryption shall be required throughout the network, passing CHRI through a shared public carrier network.

7.02 The Contractor shall provide for the secure storage and disposal of all hard copy and media associated with the system to prevent access by unauthorized personnel.

a. CHRI shall be stored in a physically secure location.

b. The Authorized Recipient shall ensure that a procedure is in place for sanitizing all fixed storage media (*e.g.*, disks, drives, backup storage) at the completion of the contract and/or before it is returned for maintenance, disposal, or reuse. Sanitization procedures include overwriting the media and/or degaussing the media.

7.03 To prevent and/or detect unauthorized access to CHRI in transmission or storage, each Authorized Recipient must be identified by an Originating Agency Identifier (ORI) or state assigned identifier, and each Contractor or sub-Contractor must be uniquely identified.

8.0 Security Violations

8.01 *Duties of the Authorized Recipient and Contractor.* a. The Contractor shall develop and maintain a written policy for discipline of Contractor employees who violate the security provisions of the contract, which includes this Outsourcing Standard that is incorporated by reference.

b. Pending investigation, the Contractor shall immediately suspend any employee who commits a security violation from assignments in which he/she has access to CHRI under the contract.

c. The Contractor shall immediately notify the Authorized Recipient of any security violation or termination of the contract, to include unauthorized access to CHRI made available pursuant to the contract. Within five calendar days of such notification, the Contractor shall provide the Authorized Recipient a written report documenting such security violation, any corrective actions taken by the Contractor to resolve such violation, and the date, time, and summary of the prior notification.

d. The Authorized Recipient shall immediately notify the State Compact Officer/Chief Administrator and the FBI Compact Officer of any security violation or termination of the contract, to include unauthorized access to CHRI made available pursuant to the contract. The Authorized Recipient shall provide a written report of any security violation (to include unauthorized access to CHRI by the Contractor) to the State Compact Officer/Chief Administrator, if applicable, and the FBI Compact Officer, within five calendar days of receipt of the written report from the Contractor. The written report must include any corrective actions taken by the Contractor and the Authorized Recipient to resolve such security violation.

8.02 *Termination of the contract by the Authorized Recipient for security violations.*

a. The contract is subject to termination by the Authorized Recipient for security violations involving CHRI obtained pursuant to the contract.

b. The contract is subject to termination by the Authorized Recipient for the Contractor's failure to notify the Authorized Recipient of any security violation or to provide a written report concerning such violation.

c. If the Contractor refuses to or is incapable of taking corrective actions to successfully resolve a security violation, the Authorized Recipient shall terminate the contract.

8.03 *Suspension or termination of the exchange of CHRI for security violations.* a. Notwithstanding the actions taken by the

State Compact Officer, if the Authorized Recipient fails to provide a written report notifying the State Compact Officer/Chief Administrator or the FBI Compact Officer of a security violation, or refuses to or is incapable of taking corrective action to successfully resolve a security violation, the Compact Council or the United States Attorney General may suspend or terminate the exchange of CHRI with the Authorized Recipient pursuant to 28 CFR 906.2(d).

b. If the exchange of CHRI is suspended, it may be reinstated after satisfactory written assurances have been provided to the Compact Council Chairman or the United States Attorney General by the Compact Officer/Chief Administrator, the Authorized Recipient and the Contractor that the security violation has been resolved. If the exchange of CHRI is terminated, the Contractor's records (including media) containing CHRI shall be immediately deleted or returned as specified by the Authorized Recipient.

8.04 The Authorized Recipient shall provide written notice (through the State Compact Officer/Chief Administrator if applicable) to the FBI Compact Officer of the following:

a. The termination of a contract for security violations.

b. Security violations involving the unauthorized access to CHRI.

c. The Contractor's name and unique identification number, the nature of the security violation, whether the violation was intentional, and the number of times the violation occurred.

8.05 The Compact Officer/Chief Administrator, Compact Council and the United States Attorney General reserve the right to investigate or decline to investigate any report of unauthorized access to CHRI.

8.06 The Compact Officer/Chief Administrator, Compact Council, and the United States Attorney General reserve the right to audit the Authorized Recipient and the Contractor's operations and procedures at scheduled or unscheduled times. The Compact Council, the United States Attorney General, and the state are authorized to perform a final audit of the Contractor's systems after termination of the contract.

9.0 Miscellaneous Provisions

9.01 This Outsourcing Standard does not confer, grant, or authorize any rights, privileges, or obligations to any persons other than the Contractor, the Authorized Recipient, Compact Officer/Chief Administrator (where applicable), CJIS Systems Agency, and the FBI.

9.02 The following document is incorporated by reference and made part of this Outsourcing Standard: (1) The CJIS Security Policy.

9.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they provide a minimum basis for the security of the system and the CHRI accessed therefrom and it is understood that there may be terms and conditions of the appended contract which impose more stringent requirements upon the Contractor.[10]

[10] Such conditions could include additional audits, fees, or security requirements.

9.04 The minimum security measures as outlined in this Outsourcing Standard may only be modified by the Compact Council. Conformance to such security measures may not be less stringent than stated in this Outsourcing Standard without the consent of the Compact Council in consultation with the United States Attorney General.

9.05 This Outsourcing Standard may only be modified by the Compact Council and may not be modified by the parties to the appended contract without the consent of the Compact Council.

9.06 Appropriate notices, assurances, and correspondence to the FBI Compact Officer, Compact Council, and the United States Attorney General required by Section 8.0 of this Outsourcing Standard shall be forwarded by First Class Mail to: FBI Compact Officer, 1000 Custer Hollow Road, Module C 3, Clarksburg, WV 26306.

[FR Doc. 04–27489 Filed 12–15–04; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL WOMEN'S BUSINESS COUNCIL

Sunshine Act; Notice of Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming Council meeting. The meeting will introduce the National Women's Business Council's agenda and action items for fiscal year 2005, included and not limited to procurement, access to capital, access to training and technical assistance, access to markets and affordable health care.

DATE: Tuesday, January 18, 2005.

ADDRESS: The Small Business Administration, Eisenhower Conference Room, 409 3rd Street, SW., 2nd Floor, Washington, DC.

TIME: 9 a.m. to 1 p.m.

STATUS: Open to the public. Attendance by RSVP only.

CONTACT: National Women's Business Council, (202) 205–3850—Katherine Stanley.

Anyone wishing to attend or would like to make an oral presentation at the meeting must contact Katherine Stanley, at (202) 205–6695, no later than Monday, January 10, 2005.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 04–27616 Filed 12–14–04; 10:23 am]

BILLING CODE 8025–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9022]

Notice of Consideration of an Amendment Request Transferring the License for Hartley and Hartley Landfill Site, Kawkawlin Township, Michigan, From SCA Services to SC Holdings, Inc., and Opportunity to Provide Comments and Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice and opportunity to provide comments and request a hearing.

DATES: Comments must be provided by January 18, 2005. Requests for a hearing must be provided by January 5, 2005.

FOR FURTHER INFORMATION CONTACT: David Nelson, Project Manager, Materials Decommissioning Section, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–3017; fax number: (301) 415–5397; e-mail: *jbh@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Material License No. SUC–1565 issued to SCA Services (the licensee), to authorize transfer of its license to SC Holdings, Inc. License No. SUC–1565 was issued on June 14, 1995, to SCA Services under Title 10 of the Code of Federal Regulations (10 CFR) part 40 and authorizes SCA Services to possess radioactive materials on site leading to decommissioning of the site.

Pursuant to 10 CFR 40.44, no license issued or granted under the regulations in part 40 shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the Commission shall, after securing full information that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended (AEA), and shall give its consent in writing. Therefore, before the issuance of an amendment, the NRC will have made the findings required by the AEA, and NRC's regulations. These findings will be documented in a Safety Evaluation Report. An Environmental Assessment (EA) will not be performed because, pursuant to 10 CFR 51.22(c)(21), this action is categorically

excluded from the requirement to perform an EA.

II. Opportunity To Provide Written Comments

The NRC hereby provides notice that this is a proceeding regarding an application for a license amendment regarding the transfer of NRC License No. SUC–1565 from SCA Services to SC Holdings, Inc. In accordance with 10 CFR 2.1305, any person may submit written comments regarding this license transfer to the NRC as an alternative to requests for hearings and petitions to intervene. Comments with respect to this action should be provided in writing by January 18, 2005. Comments should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Written comments should also be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101, or by e-mail to *SECY@nrc.gov.* Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding the transfer of NRC License No. SUC–1565 from SCA Services to SC Holdings, Inc. In accordance with the general requirements in subpart C of 10 CFR part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302 (b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, by delivery to Waste Management, Inc., 700 56th Avenue, Zeeland, MI, 49464, Attention: Philip M. Mazor, and,

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted 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.*

The formal requirements for documents contained in 10 CFR 2.304 (b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304 (f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309 (b), a request for a hearing must be filed by January 5, 2005.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Atomic Energy Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and,

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and,

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed

after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. Miscellaneous—does not fall into one of the categories outlined above.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice is the August 9, 2004, letter requesting that the license be amended, ADAMS Accession No. ML042510430. If you do not have access to ADAMS or if there are problems accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Please note that on October 25, 2004, the NRC suspended public access to ADAMS, and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's Web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at 800–397–4209 or 301–415–4737 or *pdr@nrc.gov.*

Dated in Rockville, Maryland this 9th day of December, 2004.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–27492 Filed 12–15–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft Revision 2 of Regulatory Guide 1.152, entitled ''Criteria for Use of Computers in Safety Systems of Nuclear Power Plants,'' is temporarily identified by its task number, DG–1130, which should be mentioned in all related correspondence. The regulatory guide describes a method that is acceptable to the NRC staff for complying with the NRC's regulations for promoting high functional reliability and design quality for the use of computers in safety systems of nuclear plants. For the purposes of DG–1130, the term ''computer'' means a system that includes computer hardware, software, firmware, and interfaces.

The guidance provided in DG–1130 is consistent with General Design Criterion (GDC) 21, ''Protection System Reliability and Testability,'' of appendix A, ''General Design Criteria for Nuclear Power Plants,'' to title 10, part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of the Code of Federal Regulations (10 CFR part 50). Among other things, GDC 21 requires that protection systems (or safety systems) must be designed for high functional reliability, commensurate with the safety functions to be performed. In addition, Criterion III, ''Design Control,'' of appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' to 10 CFR part 50 requires, among other things, that quality standards must be specified, and design control measures must be provided, for verifying or checking the adequacy of design.

The new draft regulatory guide DG–1130 also contains the staff's regulatory position on the ''Standard Criteria for Digital Computers in Safety Systems of Nuclear Power Generating Stations,'' [1] which the Nuclear Power Engineering Committee of the Institute of Electrical and Electronics Engineers (IEEE) has promulgated as IEEE Std 7–4.3.2–2003. The NRC staff has collaborated in the development of IEEE Std 7–4.3.2–2003 to ensure that the guidance provided by the consensus standard is consistent with the NRC's regulations. This standard evolved from IEEE Std 7–4.3.2–1993 and reflects advances in digital technology. It also represents a continued effort by IEEE to support the specification, design, and implementation of computers in safety systems of nuclear power plants. In addition, IEEE Std 7–4.3.2–2003 specifies computer-specific requirements to supplement the criteria and requirements of IEEE Std 603–1998, ''Standard Criteria for Safety Systems for Nuclear Power Generating Stations.''

It is the staff's intent to endorse IEEE Std 7–4.3.2–2003, with certain exceptions, in the final regulatory guide as an acceptable method for satisfying the NRC's regulations with respect to (1) high functional reliability and design requirements for computers used in safety systems of nuclear power plants,

[1] IEEE publications may be purchased from the IEEE Service Center, 445 Hoes Lane, Piscataway, NJ 08854.

and (2) independence between safety software and nonsafety software residing on the same computer.

The NRC staff is soliciting comments on draft regulatory guide DG–1130, and comments may be accompanied by relevant information or supporting data. Please mention DG–1130 in the subject line of your comments. Comments on this draft regulatory guide submitted in writing or in electronic form will be made available to the public in their entirety on the NRC's rulemaking Web site. Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: *NRCREP@nrc.gov.* You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415–5905; email *CAG@nrc.gov.*

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about draft regulatory guide DG–1130 may be directed to Satish Aggarwal, Senior Program Manager, at (301) 415–6005 or via email to *SKA@nrc.gov.*

Comments would be most helpful if received by February 11, 2005. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of the draft regulatory guide are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* under Accession No. ML043170314. Note, however, that the NRC has temporarily suspended public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548; and by email to *PDR@nrc.gov.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by email to *DISTRIBUTION@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 9th day of December, 2004.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 04–27493 Filed 12–15–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 20, 2004:

A Closed Meeting will be held on Tuesday, December 21, 2004 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (4), (5), (6), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (4), (5), (6), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting. Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, December 21, 2004 will be:

Formal orders of investigations;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
A regulatory matter regarding a financial institution; and
An adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 14, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–27696 Filed 12–14–04; 3:59 pm]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0456]

HorizonVentures Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Horizon Ventures Fund II, L.P. proposes to provide equity/debt security financing to Venturi Wireless, Inc. The financing is contemplated for operating expenses and for general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the

Regulations because Horizon Ventures Fund I, L.P. and Horizon Ventures Advisors Fund I, L.P., both Associates of Horizon Ventures Fund II, L.P., own more than ten percent of Venturi Wireless, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Jaime Guzman-Fournier,

Acting Associate Administrator for Investment.

[FR Doc. 04–27478 Filed 12–15–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0455]

Rembrandt Venture Partners II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Rembrandt Venture Partners II, L.P., 2200 Sand Hill Road, Suite 160, Menlo Park, CA 94025, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Rembrandt Venture Partners II, L.P. proposes to provide equity/debt security financing to MetaLINCS Corporation. The financing is contemplated for operating expenses and for general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Jerry Casilli, Richard Ling and Greg Eaton, all Associates of Rembrandt Venture Partners II, L.P., own more than ten percent of MetaLINCS Corporation.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated:

Jaime Guzman-Fournier,

Acting Associate Administrator for Investment.

[FR Doc. 04–27477 Filed 12–15–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4924]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Arts Exchanges on International Issues Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/CU–05–16.

Catalog of Federal Domestic Assistance Number: 19.409.

Key Dates:

Application Deadline: Tuesday, February 15, 2005.

Executive Summary: The Cultural Programs Division of the Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs announces an open competition for grants that support exchanges and build relationships between U.S. non-profit arts, educational and cultural organizations and their counterparts overseas. U.S. public and non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501 (c)(3) may submit proposals that support the goals of the Arts Exchanges on International Issues Program: to promote mutual understanding and partnerships between key professionals in the arts and arts management and their organizations in the United States and in other countries through multi-phased exchange projects taking place over one to three years. An applicant may work with other U.S. non-profit partners to combine the strengths of their organizations and submit a joint project proposal. Please note, that in joint project proposals the role of each organization must be clearly defined and any sub-granting agreements must be included in the proposal submission.

To the fullest extent possible programs should be two-way exchanges supporting roughly equal numbers of participants from the U.S. and foreign countries. Participants may be professional artists, arts educators, arts administrators or other arts and cultural experts.

Through these people-to-people exchanges, the Bureau seeks to break down stereotypes that divide peoples, enhance understanding of democratic processes, contribute to conflict resolution and build respect for cultural expression and identity in a world that is experiencing rapid globalization. The Bureau is especially interested in engaging socially and economically diverse groups of young people, who may not have had extensive contact with their counterparts and institutions in the United States. Priority will be given to proposals that engage these participants in countries with significant Muslim, and where appropriate in the Western Hemisphere, indigenous populations. We are especially interested in projects that accomplish these goals in part by addressing public audiences, where appropriate to the project.

For the purposes of this competition, eligible regions are Africa, East Asia, Eurasia, Central and Southeastern Europe, the Near East/North Africa, South Asia, and the Western Hemisphere. No guarantee is made or implied that grants will be awarded in all themes and for all regions. As stated above, in the Western Hemisphere region, the Bureau is particularly interested in projects that include indigenous populations.

Applicants proposing projects involving Afghanistan, Pakistan and Iraq should demonstrate in their Narrative Sections their awareness of security issues that will affect the ability of the grantee organization to arrange for travel of U.S. citizens to these countries or to conduct site visits, participant interviews, seminars, workshops or training sessions there. All travel to, and activities conducted in, these countries will be subject to consultation with and approval of official U.S. security personnel in country. The applicant should be prepared to modify timing or to reconfigure project implementation plans as required by security considerations.

Proposed projects should be designed to foster positive dialogue, joint creative activities and co-operative artistic endeavors that respond to one of five U.S. foreign policy themes: (1) Conflict Resolution; (2) New Opportunities for Youth, especially in Muslim countries; (3) Respect for Cultural Identity and Creative Products; (4) Governance, Accountability and Transparency in Cultural Management; and (5) HIV and AIDS Awareness and Prevention. [Please see the Purpose Section below for a further description of these themes]. Projects must include one or more of the following disciplines: Performing Arts [including, but not limited to Dance, Music, Traditional Arts and Theater], Visual Arts, Arts Education, Arts Management, and Film/Video/Digital Media.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the

United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The Bureau seeks proposals that will demonstrate the effectiveness of arts and cultural programs to address the following priority themes: (1) Conflict Resolution; (2) New Opportunities for Youth, especially in Muslim countries; (3) Respect for Cultural Identity and Creative Products; (4) Governance, Accountability and Transparency in Cultural Management; and (5) HIV and AIDS Awareness and Prevention. The Bureau is particularly interested in projects that will create mutually beneficial and self-sustaining linkages between professional communities in the U.S. and their counterpart communities in other countries. Proposals that show strong prospects for enhancing existing long-term collaboration or establishing new collaborative efforts among participating organizations will be deemed more competitive under the program planning criteria listed below.

The Cultural Programs Division seeks proposals for international exchange projects that employ various artistic disciplines/subjects as vehicles for increasing awareness about our five priority policy issues. Projects must concentrate on furthering the participants' and the audience members' understanding of the issues associated with the foreign policy topics listed below. All proposals submitted in response to this RFGP must present strategies for communicating about a policy issue through the selected artistic discipline. The foreign policy topics included in this RFGP are defined as follows:

1. Conflict Resolution

Bridging differences between peoples, communities and countries is an important aspect of the democratic process. Conflict resolution is the implementation of peaceful, non-violent mediation and dispute resolution strategies to achieve mutual agreement among community and interest groups, political parties and nations. Applicants should demonstrate their knowledge and understanding of the conflict situation in which they propose to work. Proposal narratives should include a description of the basis of the conflict and possible reconciliation objectives (dialogue, information sharing, etc.)

2. New Opportunities For Youth, Especially in Muslim Countries

Reaching out to Muslim youth—who are the catalysts for change in their societies—is an essential step toward democracy building. ECA hopes through collaborative projects, that the United States may further the participants' understanding of freedom and democracy. To the fullest extent possible, programs should strengthen voices of moderation, reinforce the United State's commitment to education and opportunity, build on values shared by the United States and Muslim societies and create a platform for positive dialogue.

3. Respect for Cultural Identity and Creative Products

The United States, as a culturally diverse nation, strongly supports and promotes cultural diversity both at home and globally. The U.S. values each nation's cultural identity and is committed to helping all countries preserve and protect their cultural heritage and identity. One means of doing so is ensuring the development of appropriate systems for protecting intellectual property. Protection of intellectual property contributes to a country's economic development and trade relationships, and increased trade brings greater consumer awareness and support for a country's cultural goods. In addition, enhancing local cultural production capacities and distribution mechanisms for cultural products can contribute to a stronger cultural identity. For the purposes of this RFGP, cultural heritage may also include, for example, conserving or developing a specific archaeological or culturally important site or maintaining, preserving and restoring a country's cultural artifacts or audiovisual records. This theme also includes projects to develop cultural tourism for a country or region. All proposals related to this theme should include a strong exchange component involving U.S. and foreign visual and performing artists, writers, filmmakers, and arts managers, rather than exchanges principally among legal, economic development, or other professionals.

4. Governance, Accountability and Transparency in Cultural Management

Cultural organizations are an important component of civil society, serving to identify, develop and strengthen social values. Cultural organizations often have a special role in reaching youth, disadvantaged groups within the society, and specific ethnic or social communities, both to support their group identity and to help define the way in which the group relates to society at large. To fulfill this role and to maintain the confidence of their stakeholders, audiences, and funders, the managers of cultural organizations have the same responsibility for open and effective management in support of their goals, as do other non-governmental organizations.

5. HIV and AIDS Awareness and Prevention

Concern about the growing numbers of people with HIV and AIDS, especially in areas with limited access to educational and treatment programs, reaches across all geographic regions. Proposals under this theme will have the following goals: encourage prevention, further education and decrease the stigma of HIV and AIDS through the arts. Proposals will target youth, people living with HIV and AIDS, related NGOs, schools and community groups. Exchange activities will bring together HIV and AIDS professionals and artists from the U.S. and overseas to discuss and implement ways to decrease the stigma of HIV and AIDS with positive social messages via artistic disciplines. Projects should employ the arts as a mechanism for social change and for publicizing positive messages about HIV and AIDS prevention and treatment.

The artistic disciplines/subjects included in this Request for Proposals are as follows:

Performing Arts Including Dance, Music, Traditional Arts and Theater

ECA welcomes projects that address one or more of our priority foreign policy themes through the exchange of dance, music, traditional arts and/or theater professionals working collaboratively to develop new and innovative projects. Proposals should focus on the exchange of expertise and best practices between U.S. and overseas performing arts organizations, including strategies for building relationships between the organizations and their communities. The presentation of performances overseas, as a part of a larger exchange project, may be funded under this topic. Production costs for performances in the U.S. cannot be funded by ECA, but can be included in the applicant organization's cost share. ECA seeks proposals that support the professional

development of the U.S. and foreign artists, and provide a personal connection between U.S. and overseas individuals and institutions. Projects that focus only on performance tours and/or a performing arts festival will not be eligible under this RFGP. Contact: Kathryn Wainscott, tel: (202) 203–7499, *WainscottKK@state.gov.*

Visual Arts

Proposals are sought for projects that address one or more of the priority policy themes through projects in the full range of visual art activities. Proposals should include reciprocal exchange components for U.S. curators, artists and institutions. Projects should include opportunities for American and overseas curators and artists to present lectures, workshops, residencies, and master classes. All of these activities may be presented to enhance an education component of an exhibition. The overseas costs of exhibition presentation are eligible for support. Domestic presentation costs should be presented as part of the institution's cost share. Proposals that solely focus on the development, production and presentation of exhibitions and lack a substantive professional exchange component will not be eligible for support under this RFGP. Contacts: Leanne Mella, tel: (202) 203–7497, *MellaLA@state.gov*; or E.J. Montgomery, tel: (202) 203–7498, *MontgomeryEJ@state.gov*.

Arts Education

Proposals submitted under this topic may include collaborative activities and two-way exchanges between staff members of education departments of non-profit arts and cultural organizations. Project components under this theme may encompass the joint creation of film/digital/ media, visual and/or performing arts education programs to further students' abilities to express their ideas through their own artistic creations, increase their critical analysis skills and discover alternative views of their own and other people's cultural identity. Exchanges of primary and secondary teachers and curriculum and/or textbook development or publishing will not be eligible for support under this RFGP.

Contact: Jill Staggs, tel.: (202) 203–7500, *Staggsjj@state.gov.*

Arts Management

Projects may address management issues in a particular arts discipline or issues that affect arts organizations generally in a given country or region. Areas of possible interest would include board development, membership, fundraising, government relations, facilities management, audience development and marketing, and volunteer program management and the development of public/private partnerships. Proposals must demonstrate the applicant's capacity to link the special needs of arts and cultural organizations with general principles of management and civil society development. Proposals should include creative and innovative approaches to sharing experiences and best practices in arts management. Stand-alone conferences or lecture series will not be eligible for support under this RFGP (Please see Ineligible Projects Section below for more information about conferences). Contact: Jill Staggs, tel.: (202) 203–7500, *Staggsjj@state.gov*.

Film, Video and Digital Media

Proposals are sought that use feature films, documentaries, animated films, video or digital media in a cross-cultural outreach and exchange program designed to support one or more of our foreign policy themes. Proposals should focus on the collaborative creative process and could involve any of the creative or business aspects of filmmaking, *i.e.* directing, screenwriting, editing, cinematography, animation, film scoring, independent filmmaking, marketing, distribution, copyright protection, film preservation, etc. Proposals should involve American filmmakers and other film professionals and provide for workshops, seminars, and master classes in addition to film screenings and other presentations. Proposals may be submitted to fund the production and presentation of a film or other creative endeavor, but only as a natural outgrowth of collaboration and exchange. Such proposals should show significant cost-sharing or in-kind contributions. Proposals that include film presentations as part of outreach efforts are strongly desired. However, proposals that provide solely for screenings with no collaboration and exchange component will not be eligible for support under this RFGP. Contact: Susan Cohen, tel: (202) 203–7509, *CohenSL@state.gov.*

Proposal Components

The Narrative Section of the proposal must contain: (1) An explanation of why the proposed project is important; (2) a description/analysis of the relationship of your project to the policy themes described above; and (3) a full and detailed description of the project plan.

Each proposal narrative should include an innovative, informed and efficient plan to identify, recruit and/or audition, select and program participants. If the project will involve youth, the proposal must demonstrate the applicant's experience working with youth and implementing substantive and meaningful programs for youth.

The proposal should clearly distinguish between program participants and the program audience. Participants are the relatively few individuals, normally visual or performing artists, filmmakers, writers, arts educators and arts managers who are selected for the exchange components of the program. The audience is the public, which may or may not be selected or invited, which attends program activities or events, including performances, exhibitions, workshops, and master classes. Both participants and audiences are important elements of the program. The proposal should clearly define the types of participants who will be recruited and the target audience for program activities and should clearly explain the importance of each to the overall program plan.

The proposal narrative should explicitly state the applicant's commitment to consult closely with the Public Affairs Section of the U.S. Embassy in the relevant overseas country(ies) to develop plans for project implementation and to select project participants. Applicants should state their willingness to invite representatives of the embassy(ies) and/or consulate(s) to participate in program sessions or site visits. Applicants are also encouraged to consult with Public Affairs Officers at U.S. embassies in relevant countries as they develop proposals responding to this RFGP. Narratives should state that all material developed for the project will prominently acknowledge Department of State Educational and Cultural Bureau funding for the program. Proposals should acknowledge U.S. embassy involvement in the final selection of all participants.

Competitive proposals will include the following:

- A brief description of the problem as it relates to the target country or region. (Proposals that request resources for an initial needs assessment will be deemed less competitive.);
- A clear statement of program objectives and projected outcomes that respond to Bureau goals for each theme in this competition. Desired outcomes should be described in qualitative and quantitative terms. (See the Program Monitoring and Evaluation section below, for more information on project objectives and outcomes);

- A description of participant selection processes;
- A project timeline, listing the optimal schedule for each program activity;
- An alternative timeline and/or contingency program plan if the project will include countries with security issues;
- Demonstrated knowledge of overseas partner organization(s), including a description of each organization and an explanation of how partner organizations were selected
- Letters of support from foreign and U.S. partners
- An outline of the applicant organization's relevant expertise in the project theme and country(ies);
- Documentary evidence, such as published reviews, letters of endorsement from known experts, or the like, indicating the applicant's ability to organize a program of artistic merit and quality. Please note that work samples such as recordings, videotapes, catalogs and slides of work are not requested and cannot be reviewed;
- An outline of relevant experience managing previous international arts and/or cultural exchange programs;
- Resumes of experienced staff who have demonstrated a commitment to monitor grant projects and ensure implementation;
- A comprehensive plan to evaluate whether program outcomes achieved met the specific objectives described in the narrative. (See the Program Monitoring and Evaluation Section)
- A post-grant plan that demonstrates how the grantee plans to maintain contacts initiated through the program. Applicants should discuss ways that U.S. and foreign participants or host institutions could continue their exchange activities through on-going or future projects, once the ECA-funded grant has concluded.

Ineligible Projects

The Arts Exchanges on International Issues Program is not open to amateur or community-based visual or performing artists. Our grant program is solely intended to support the international exchange work of non-profit organizations. Individuals are not eligible to apply for funding of their own work. While our program emphasizes outreach to youth, all exchange participants must be at least 18 years of age. However, educators, managers, program directors and administrators who work with youth and/or youth related non-profit organizations are encouraged to apply for grant support under this competition. The Office of Citizens Exchanges does not support proposals limited to conferences or seminars (*i.e.* one-to-fourteen day programs with plenary sessions, main speakers, panels and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition. The Office does not support academic research or faculty or student fellowships.

II. Award Information

Type of Award: Grant Agreement.
Fiscal Year Funds: 2005.
Approximate Total Funding: $1,000,000.
Approximate Number of Awards: 5–10.
Approximate Average Award:
Floor of Award Range: $50,000.
Ceiling of Award Range: $300,000.
Anticipated Award Date: Pending availability of funds, June 1, 2005.
Anticipated Project Completion Date: June 1, 2006–June 30, 2008.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. Cost-sharing is an important element of the ECA-grantee institution relationship, and it demonstrates the implementing organization's commitment to the program. Cost-sharing is included as one criterion for grant proposal evaluation.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs, which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

(b) *Technical Eligibility:* All proposals must comply with the following: (1) Proposal submission deadline date; (2) non-profit organization status; (3) focus on one or more of the specified subject themes, or they will result in your proposal being declared technically ineligible and given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the Cultural Programs Division, Office of Citizen Exchanges, ECA/PE/C/CU, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 203–7488, to request a Solicitation Package. Please refer to Funding Opportunity Number ECA/PE/C/CU–05–16 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission.

Instruction (PSI) document that consists of required application forms, and standard guidelines for proposal preparation.

Please specify Bureau Program Officer, Jill Staggs, and refer to Funding Opportunity Number ECA/PE/C/CU–05–16, located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and 12 copies of the application should be sent per the

instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs

and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $300,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Travel. International and domestic airfare (per the ''Fly America Act''), ground transportation and visas. (J–1 visas for ECA-supported participants from overseas are issued through the Embassies at no charge).

(2) Per Diem. For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/perd03d.html.* ECA urges applicants to budget realistic costs, which reflect the local economy and do not exceed Federal per diem rates. Foreign per diem rates can be accessed at: *http://www.state.gov/m/a/als/prdm/html.*

(3) Interpreters. For U.S.-based activities, ECA strongly encourages applicants to hire their own locally based interpreters. However, applicants may ask ECA to assign State Department interpreters. One interpreter is typically needed for every four participants who require interpretation. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both lodging and M&IE) and ''home-program-home'' transportation in the amount of $400 per interpreter. Salary expenses for State Department interpreters will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds cannot support interpreters who accompany delegations from their home country or travel internationally.

(4) Book and Cultural Allowances. Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

(5) Consultants. Consultants may be used to provide specialized expertise or to make presentations. Honoraria rates should not exceed $250 per day. Organizations are encouraged to cost-share rates that would exceed that figure. Subcontracting organizations may also be employed, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Such subcontractors should detail the division of responsibilities and proposed costs, and subcontracts should be itemized in the budget.

(6) Room rental. The rental of meeting space should not exceed $250 per day. Any rates that exceed this amount should be cost shared.

(7) Materials. Proposals may contain costs to purchase, develop and translate materials for participants. Costs for high quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to ECA, and ECA support should be acknowledged on all materials developed with its funding.

(8) Costs associated with the presentation of performances, visual arts exhibitions or films overseas, as one component of a larger exchange project, may be included in the budget. Production costs for performances, visual arts exhibitions and film screenings in U.S. cannot be funded by ECA. However, modest domestic presentation costs may be included in the applicant organization's cost share.

(9) Working meals. Only one working meal may be provided during the program. Per capita costs may not exceed $8 for a lunch and $20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. When setting up a budget, interpreters should be considered ''participants.''

(10) Return travel of participants. A return travel allowance of $70 for each participant may be included in the budget. This allowance would cover incidental expenses incurred during international travel.

(11) Health Insurance. Foreign participants will be covered during their participation in the program by the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE), for which the grantee must enroll them. Details of that policy can be provided by the contact officers identified in this solicitation. The premium is paid by ECA and should not be included in the grant proposal budget. However, applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

(12) In-country travel costs for visa processing purposes. Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.

(13) Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct

and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive in terms of the cost-effectiveness review criteria. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times

Application Deadline Date: February 8, 2005.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will *not be* accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 12 copies of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/CU–05–16, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grant assistance awards resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Objectives:* The program plan must illustrate the relevance of a project to one or more of the five U.S. Department of State foreign policy goals listed in the eligible themes. Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and geographic world region. A detailed agenda and relevant work plan must explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, seminars, shadowing experiences and consulting should be described in detail.

2. *Institutional Capacity:* Proposals should include the institution's mission and date that 501(c) 3 status was approved. Proposals should reflect the institution's prior work with the overseas partner organization(s), expertise in the subject area and knowledge of conditions in the target country/countries, expertise in the artistic discipline, and where relevant, ability to engage young Muslim participants and/or reach out to young Muslim audience members. Descriptions of the experience and qualifications of staff members who will implement the program should be included in the proposals. Applicants also need to include an outline of prior U.S. government and/or private sector grant awards received for the target theme/country/region. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. The Bureau strongly encourages applicants to submit letters of support and commitment from proposed overseas partner organizations.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Priority will be given to proposals whose administrative costs are less that twenty five (25) per cent of the total funds requests from the Bureau. Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost sharing, including contributions from the applicant, proposed in-country partner (s) and other sources should be included in the budget request. Proposals that do not reflect cost sharing will be deemed not competitive in this category. Costs for domestic performing arts presentations and/or visual arts exhibitions and/or film screenings must be cost-shared, as ECA will not fund these costs.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI) for guidance.

5. *Post-Grant Activities:* Applicants should provide a plan to conduct

activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Post-grant activities must be funded by contributions from the applicants or sources outside the Bureau. Costs for these activities should not appear in the proposal budget, but should be outlined in the narrative.

6. *Monitoring and Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. Competitive evaluation plans will describe how applicant organizations will measure the project's success at meeting program objectives in quantitative terms, and should include draft data collection instruments such as surveys and questionnaires. Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. As stated previously, ECA is especially interested in the results of project activities both in terms of the impact on audiences as well as on participants. It is the applicant's responsibility to inform the Bureau of exchange activity results and changes to the program plan and/or project time-line.

VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b The following additional requirements apply to this project:

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants; http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

Grant award recipients must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Quarterly program and financial reports which should include a summary of program accomplishments and an updated project time line.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Cultural Programs Division, Office of Citizens Exchanges, ECA/PE/C/CU, Room 568, ECA/PE/C/CU–05–16, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202–203–7488 or 202–203–7500; fax: 202–203–7525; *ProctorLM@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and ECA/PE/C/CU–05–16. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: December 6, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–27556 Filed 12–15–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4923]

Bureau of Educational and Cultural Affairs; U.S. Studies Institute for South Asian Undergraduate Student Leaders

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/USS 05–08–SA.

Catalog of Federal Domestic Assistance Number: 00–0000.

Key Dates:

Application Deadline: February 4, 2005.

Executive Summary: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of

Educational and Cultural Affairs, announces an open competition for public and private non-profit organizations to develop and implement the U.S. Studies Institute for South Asian Undergraduate Student Leaders. The Institute is intended to provide 21 highly motivated first through third year undergraduate students from Bangladesh, India, and Pakistan a six week academic seminar, including a domestic travel component, that will give them a deeper understanding of U.S. history, contemporary U.S. culture and society, and American politics and policymaking. An important subsidiary objective of the Institute is to help the participants develop their leadership and collective problemsolving skills.

I. Funding Opportunity Description

Authority: Overall grantmaking authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding above is provided through legislation.

Purpose: The Bureau is seeking detailed proposals for a U.S. Studies Institute for South Asian Undergraduate Student Leaders from U.S. colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: Political science, international relations, law, history, sociology, American studies, and/or other disciplines or sub-disciplines related to the study of the United States.

The U.S. Studies Institute for South Asian Undergraduate Student Leaders should provide 21 highly motivated first through third year undergraduate students from Bangladesh, India, and Pakistan with a creative program that utilizes a variety of teaching techniques and formats to expose participants to a range of perspectives on U.S. history, contemporary U.S. culture and society, and American politics and policymaking. The academic program should include attention to the role and influence of principles and values such as democracy, the rule of law, individual rights, freedom of expression, equality, diversity and tolerance. Historical political, social and economic debates that have shaped U.S. society and/or current issues may be examined. The concepts of individual and civic responsibility, volunteerism and community involvement should also be addressed, and hands-on activities related to these areas should be included in the program. The grantee institution should take into account that the participants may have little or no prior knowledge of the U.S. and varying degrees of experience in expressing their opinions in a classroom setting, and should tailor the curriculum and classroom activities accordingly.

In addition to promoting a better understanding of the United States, the institute emphasizes developing the participants' leadership and collective problemsolving skills. In this context, the program should include lectures as well as group discussions and exercises focusing on such topics as the essential attributes of leadership; ''teambuilding;'' effective communication and problemsolving skills; and management skills for diverse organizational settings. Activities of this kind should ideally be scheduled to take place at least on a weekly basis, if not more frequently, during the academic residency period, and should be integrated into the academic program wherever possible.

The institutes must be serious academic programs and grantee institutions will be expected to demonstrate sensitivity in explaining the students' responsibility to take full advantage of the opportunity, fully participate in all elements of the program and prepare for discussions and activities in a serious way.

The program should be six weeks in length including a domestic travel component of not more than ten (10) days, of which 3–4 days should be spent in Washington, DC, at the end of the program. This travel component should directly complement the academic residency segment. It should include visits to cities and other sites of interest in the region of the grantee institution.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above (political science, international relations, law, history, sociology, American studies, and/or other disciplines or sub-disciplines related to the study of the United States). Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

The Institute for South Asian Undergraduate Student Leaders should be organized through an integrated, balanced series of lectures and seminar discussions that leave ample time for discussion and interaction among students, lecturers and guest speakers. Reading and writing assignments need to be adjusted to the participants' familiarity with English. Grantee institutions need to recognize the diverse characteristics and academic preparation of the students. Experiential learning exercises, regional travel, and site visits are important elements of the program. Institutes should also include opportunities for participants to meet American citizens from a variety of backgrounds, to interact with peers, and to speak to appropriate student and civic groups about their experiences and life in their home countries.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the expertise of nationally recognized scholars and other experts throughout the United States. Within the limits of their thematic focus and organizing framework, institute programs should also be designed to:

1. Give participants a multi-dimensional view of U.S. society and institutions that includes a broad and balanced range of perspectives. Where possible, programs should therefore include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals such as government officials, journalists and others who can substantively contribute to the topics at issue;

2. Ensure access to library and material resources that will enable grantees to continue their research and studies upon returning to their home institutions; and,

3. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content.

The grantee institution will also be expected to provide participants post-program opportunities for further investigation and research on the topics and issues examined and discussed during the institute.

Participants: As specified in the Project Objectives, Goals and Implementation (POGI) guidelines in the solicitation package, the program should be designed for highly-motivated and exemplary first through third year undergraduates from colleges, universities, and teacher training institutions in India, Pakistan and

Bangladesh, who have demonstrated leadership through academic achievements, community involvement, and extracurricular activities. Their major fields will be varied, including the humanities, social sciences, education, business, and other professional fields. Seven participants will be selected from each country. All participants will have good knowledge of English.

Please Note: While the participants will have good knowledge of English, the level of comprehension and speaking ability may vary. Therefore, the grantee institutions will be required to prepare lectures and discussions that meet high academic standards while using language appropriate for students for whom English is their second or third language.

Efforts will be made to recruit participants from non-elite backgrounds from both rural and urban sectors of the home country, and who have had little or no prior study or travel experience in the United States or elsewhere outside of their home country. All participants will be required and committed to return to their home countries to continue or commence their university studies in the fall of 2005 following completion of their institute program; be willing and able to fully participate in an intensive academic program, community service, and active educational travel program. Participants and grantee institutions must recognize that the primary purpose of the program is to develop understanding of the U.S. in a structured environment managed by the Department of State and the grantee institution. Personal travel during or after the program is not a benefit of participating in the institute. As participants will be selected in large part on the basis of their demonstrated leadership capacity, it is expected they will eventually utilize the experience derived from the program in positions of responsibility in their home countries.

The grantee institution will show sensitivity to the cultural traditions and religious practices of the participating students, who will represent a variety of Muslim and possibly Hindu or other religious traditions. Special requirements and restrictions regarding diet, daily worship, housing and medical care should be considered. The Bureau will provide guidance and assistance, as needed.

Program Dates: Ideally, the program should be 44 days in length (including participant arrival and departure days) and is anticipated to begin late June or early July 2005.

Program Guidelines: While the conception and structure of the institute program is the responsibility of the organizers, it is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and how each session relates to the overall institute theme. A syllabus must be included that indicates the subject matter for each lecture, panel discussion or other activity (*e.g.,* group exercises), confirms or provisionally identifies proposed lecturers and session leaders, and clearly shows how assigned readings will support each session. A calendar of all program activities must also be included. Additionally, applicant institutions should describe their plans for public and media outreach in connection with the program.

Note: In a cooperative agreement, the Study of the U.S. Branch is substantially involved in program activities above and beyond routine grant monitoring. Branch activities and responsibilities for this program are as follows: The Branch will participate in the selection of participants, exercise oversight with one or more site visits, debrief participants while they are in the U.S. and also engage in follow-up communications with the participants upon their return home. The Branch may require changes in the content of the program as well as the activities proposed after the grant is awarded. The recipient will be required to obtain review and approval of significant agenda/syllabus changes in advance of their implementation.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I ''Note'' above.

Fiscal Year Funds: FY–05.

Approximate Total Funding: $250,000.

Approximate Number of Awards: 1.

Approximate Average Award: $250,000.

Floor of Award Range: $225,000.

Ceiling of Award Range: $250,000.

Anticipated Award Date: Pending availability of funds, March 15, 2005.

Anticipated Project Completion Date: October 30, 2005.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3 Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant in an amount up to $250,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition.

(b) Technical Eligibility: All proposals must comply with the following: The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the following fields: Political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program themes. Failure to meet this criterion will result in your proposal being declared technically ineligible and given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. The Branch staff will be available to consult with prospective applicant institutions about program design and content up until the proposal submission deadline. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 619–4557 and fax number (202) 619–6790, e-mail *SchmidtRC@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/USS 05–08–SA located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Branch Chief Robert Schmidt and refer to the Funding Opportunity Number ECA/A/E/USS 05–08–SA located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and ten (10) copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b.

All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c.

You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d.

Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. *Adherence to All Regulations Governing the J Visa.* The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, Fax: (202) 401–9809.

Please refer to Solicitation Package for further information.

IV.3d.2. *Diversity, Freedom and Democracy Guidelines.* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. *Program Monitoring and Evaluation.* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project

objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.
2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes (satisfaction) will be deemed less competitive under the present evaluation criteria.)

Please note: Because the cooperative agreement prospectively to be awarded under the terms of the present RFGP is likely to be of less than one year's duration, prospective grantee institutions will not be expected to be able to demonstrate significant specific results in terms of participant behavior or institutional changes during the agreement period. Applicant institutions' monitoring and evaluation plans should, therefore, focus primarily on the first and more particularly the second level of outcomes (learning). The Branch will assume principal responsibility for developing performance indicators and conducting post-institute evaluations to measure changes in participant behavior as a result of the program, and effect of the program on institutions, over time.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. *Describe Your Plans for Overall Program Management, Staffing, and Coordination With ECA/A/E/USS.* The Branch considers program management, staffing and coordination with the Department of State essential elements of your program. Please be sure to give sufficient attention to these elements in your proposal. Please refer to the Technical Eligibility Requirements and the POGI in the Solicitation package for specific guidelines

IV.3e. Budget

Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $250,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Based on a group of 21 participants, the total Bureau-funded budget (program and administrative) for this program should not exceed $250,000, with Bureau-funded administrative costs as defined in the budget details section of the solicitation package accounting for $85,000 of this total amount.

Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete institute budget guidelines and formatting instructions.

IV.3e.2. Allowable Costs for the Program Include the Following:

(1) Institute staff salary and benefits.
(2) Honoraria for Guest speakers.
(3) Participant per diem.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times

Application Deadline Date: Friday, February 4, 2005.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will not notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and ten (10) copies of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/USS 05–08–SA, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

Applicants are also requested to submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Overall Quality: Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship, and be suitable for students with English as their second or third language. Program elements should be tailored for students with limited knowledge of the U.S. and with varying degrees of experience in expressing their opinions. Lectures, panels, and other interactive classroom activities, readings, community service, and site visits, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as its inherent diversity and dynamism.

2. Program Planning and Administration: Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented.

3. Ability to Achieve Program Objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Institutional Capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of participants.

5. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange program activities, indicating the experience that the organization and its professional staff have had working with foreign students. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity.

''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Applicant should highlight instances of diversity in their proposal.

7. Evaluation and Follow-up: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to link outcomes to original project objectives is strongly recommended. Proposals should discuss provisions for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

Mandatory:

(1) A final program and financial report no more than 90 days after the conclusion of the program;

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Optional Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, ECA/A/E/USS 05–08-SA, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 619–4562 and fax number (202) 619–6790, e-mail *SchmidtRC@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/USS 05–08–SA.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: December 8, 2004.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–27555 Filed 12–15–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2004–19058; FAA Order 5050.4B]

NEPA Implementing Instructions for Airport Actions

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability, and request for comments on Draft Order 5050.4B, NEPA implementing procedures for airport actions.

SUMMARY: The Federal Aviation Administration's Office of Airports (ARP) is proposing revisions to its National Environmental Policy Act (NEPA) implementing instructions for the airport development projects and other airport actions under its authority. ARP has prepared a draft order, FAA Order 5050.4B, NEPA Implementing Procedures for Airport Actions. The final version of that order would replace Order 5050.4A, Airports Environmental Handbook, dated October 8, 1985. The proposed order updates and adds to the instructions in the 1985 publication and is consistent with FAA Order 1050.1E, Environmental Impact: Policies and Procedures, discussed below.

The draft order follows the Council on Environmental Quality's (CEQ's) NEPA implementing regulations at 40 CFR Part 1500 *et seq*. It also follows DOT's Order 5610.C, Policies for Considering Environmental Impacts, and FAA Order 1050.1E, Environmental Impact: Policies and Procedures. Information in this Notice's ''Summary of Proposed Changes'' section highlights the most substantial changes ARP is proposing for Order 5050.4B.

DATES: ARP publishes this order for public review and comment. ARP is providing a 60-day review period. Commenters must file their comments at the following address by February 16, 2005. FAA intends to issue a final version of Order 5050.4B by October 31, 2005.

ADDRESSES: Commenters must provide 3 copies of their comment letters. Commenters must mail their letters to the Federal Aviation Administration (FAA), Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. FAA–2004–19058, 800 Independence Ave., SW., Room 915–G, Washington, DC 20591. People wishing to review comments may do so in Room 915–G at the above address, weekdays between 8:30 a.m. and 5 p.m., eastern time, except on Federal holidays.

Anyone seeking FAA's recognition of receipt of their comments must send a self-addressed, stamped postcard with their comments. On the postcard, print: ''Comments to Docket No. FAA–2004–19058.'' FAA will date-stamp and return the postcard to the commenter.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Ed Melisky, Environmental Specialist, Community and Environmental Needs Division (APP–600), Office of Airport Planning and Programming, FAA, 800 Independence Avenue, SW., Washington, DC, 20591; telephone (202) 267–5869.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act (NEPA) and the regulations implementing it (40 CFR 1500–1508) provide Federal agencies with instructions on protecting the quality of the human and natural environment. The law and regulations require Federal agencies to carefully evaluate and take into account the environmental effects of their actions before the agencies make their decisions on proposed actions having the potential to disturb the environment. Section 102(B) of NEPA requires Federal agencies to develop procedures in consultation with the President's Council on Environmental Quality (CEQ) to carry out NEPA and CEQ's regulations for their specific activities.

Draft Order 5050.4B presents ARP's proposed revisions of the NEPA instructions in Order 5050.4A, dated October 8, 1985. Readers may *not* use

the draft to complete *any* NEPA process. They must continue to use FAA Order 5050.4A, which is now incorporated into FAA Order 1050.1E (paragraph 214. of Order 1050.1E). If conflicts between Orders 1050.1E and 5050.4A arise, instructions in 1050.1E supersede those in 5050.4A, except for instructions addressing internal FAA coordination and review of environmental documents. In those cases, continue to use instructions in FAA Order 5050.4A, paragraphs 63, 64, and 95.

On June 8, 2004, FAA's Office of Environment and Energy issued FAA's revised, agency-wide, NEPA policies and procedures. FAA published those new instructions in Order 1050.1E, which updated FAA instructions last changed in October 1986. Order 1050.1E provides NEPA implementing instructions for all FAA organizations.

ARP is publishing this Notice of Availability for Order 5050.4B to inform the public it is supplementing instructions in 1050.1E. Although FAA has issued agency-wide instructions, ARP has traditionally published Order 5050 to provide detailed instructions for airport actions. This ensures FAA's environmental reviewers and airport sponsors have NEPA instructions for airport actions that comply with Order 1050.1E. Readers wanting to know how other FAA organizations address NEPA requirements for non-airport projects should see FAA Order 1050.1E.

Request for Comments: ARP believes the public and other governmental agencies and organizations may be interested in the proposed changes draft order 5050.4B contains. By this Notice, ARP seeks comments on those changes. ARP requests that reviewers cite the chapter, page, and line number(s) corresponding to the text to which the comment applies. This will greatly facilitate ARP's review of comments and ensure it applies the comment to the correct text on each page. The following section summarizes the most substantial changes to FAA Order 5050.4A.

Summary of Proposed Changes: Draft order 5050.4B, NEPA Implementing Procedures for Airport Actions, presents proposed revisions to current Order 5050.4A, Airports Environmental Handbook.

The draft order provides information on many issues (see the Table of Contents), but the changes discussed here are the most important. Reviewers should note that the order is re-organized and includes new chapters, including one on Environmental Streamlining to address the requirements of the Century of Aviation Re-Authorization Act of 2003 (''Vision 100'').

Change 1. Draft Order 5050.4B proposes deleting the summary of requirements and procedures under special purpose environmental laws, regulations, and executive orders found in Order 5050.4A, paragraphs 47.e.(1) thru (20) and 85.a. thru t. These paragraphs addressed various laws, regulations, and orders protecting environmental resources such as wetlands, Federally-listed endangered species, or historic properties. ARP proposes deleting the portions of these paragraphs that summarize requirements under other environmental review and consultation requirements from the Order 5050.4B to focus that Order on NEPA requirements. ARP is retaining from these paragraphs the impact intensity factors used to identify the appropriate level of NEPA review, as discussed below in Change 3. ARP will issue a separate document entitled, An Environmental Desk Reference for Airport Actions to ensure its staff and interested parties have information needed to integrate and comply with Federal environmental laws, regulations, and Executive Orders beyond NEPA's scope. ARP plans to provide the Desk Reference to its environmental staff and anyone interested in that information when it issues the final version of Order 5050.4B.

In proposing to focus Order 5050.4B on policies and procedures to implement NEPA, ARP is adhering to the approach being used by other Federal agencies. ARP's review of NEPA implementing instructions published in the **Federal Register** during 2004 shows none of the six Federal agencies publishing NEPA instructions included substantial information about other Federal environmental laws, regulations, or Executive Orders (*e.g.,* Endangered Species Act, Section 106 of the National Historic Preservation Act, etc.). ARP also is making this change to address recommendations it received when FAA published Order 1050.1E for comment. Some commenters recommended that FAA delete Appendix A of Order 1050.1E so that 1050.1E would only provide implementing instructions for NEPA.

Finally, reviewers should note that ARP will continue to integrate compliance with applicable environmental laws, regulations, and Executive orders with the NEPA process as appropriate. ARP's proposal to remove the summary of requirements under environmental laws and regulations other than NEPA from Order 5050.4B is not intended to reflect any lack of commitment to meet these requirements.

Change 2. Draft Order 5050.4B provides definitions for important terms used during ARP's NEPA analysis for airport actions. Among other definitions, the draft order modifies definitions for the terms ''approving FAA official'' and ''Federal actions.'' It also provides a proposed definition for the term ''reasonably foreseeable.'' Paragraph 8.a. cites FAA Order 1100.154A, Delegation of Authority, dated June 1990, as it relates to the approving FAA official to note that various environmental decisions may occur at different levels. Paragraph 8.d. adds the authority to authorize airport sponsor requests to impose and use Passenger Facility Charges. Readers should note that paragraph 8.k. presents a proposed definition for the term, ''reasonably foreseeable'' to help ARP staff better understand future actions a cumulative impact analysis should include.

Change 3. Paragraph 3.c. informs the reader that ARP proposes to continue to use specific factors to determine the intensity of impacts airport development projects or airport actions may cause and the appropriate level of NEPA review, in addition to the significance thresholds in FAA Order 1050.1E., Appendix A. ARP proposes to continue to use these factors to supplement the thresholds in Order 1050.1E because they reflect ARP experience concerning resource-specific factors that should be considered for projects that involve large amounts of ground disturbance. ARP believes continued use of these supplemental factors will help ARP staff better determine impact severity and the NEPA document needed to properly address those impacts.

Change 4. Paragraph 5.d. informs the reader the draft document is available at *http://www.faa.gov/arp* for anyone wishing to review an electronic version.

Change 5. Paragraph 200.c. discusses how the final Order would relate to FAA Order 1050.1E. It notes Order 5050.4B supplements Order 1050.1E by focusing on detailed information for airport development projects and airport actions.

Change 6. Paragraph 200.d. informs the reader that Order 5050.4B focuses on procedures to implement NEPA. ARP will issue a Desk Reference for Airport Development Projects to provide ARP staff with the instructions they need to comply with other Federal requirements. Examples of those requirements include the Endangered Species Act, Section 106 of the National Historic Preservation Act, and various Executive Orders.

Change 7. Paragraph 302. discusses the importance of sponsors meeting with FAA environmental specialists and airport planners when developing proposed airport actions. This effort is intended to help streamline the NEPA process. It should help the sponsor develop plans very early in the project planning phase when the widest range of alternatives is available to avoid, if possible, potentially significant adverse effects on known, specially-protected environmental resources (wetlands, floodplains, or historic properties, etc.). If avoidance is not possible, this effort is intended to help the sponsor design proposed actions to minimize impacts on those resources during the preliminary design stage when the widest array of design options exists.

Change 8. Paragraph 306.b. discusses the need to consult with Native American and Alaska Natives according to FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures, dated January 28, 2004.

Change 9. Paragraph 403.b. states the responsible FAA official may categorically exclude only those actions on lists in FAA Orders 1050.1. The public commented on those exclusions during the review period for Order 1050.1E. Except for two categorical exclusions discussed in Changes 17 and 18, Order 5050.4B (Chapter 4, Tables 1 and 2) presents alphabetically-arranged annotations of the airport portions of the categorical exclusions published in Order 1050.1E for reference. ARP responsible FAA officials must cite FAA Order 1050.1E as the ''authorization'' for the categorical exclusion, not FAA Order 5050.4B.

To fulfill the commitment FAA made in the preamble for FAA Order 1050.1E, ARP has provided guidance to help define when passenger handling facilities are not substantially larger than an existing one. ARP proposes using the Noise Equivalent Model (NEM) and information from Section 2.1 of the FAA's Addendum to FAA's Air Quality and Procedures for Civilian Airports & Air Force Bases handbook as screening tools to help make this determination. If a proposed action would not trigger levels stated in the NEM or in Section 2.1, it is unlikely the terminal expansion would cause significant noise or air quality problems. Of course, the responsible FAA official must also examine other extraordinary circumstances to ensure the expansion does not significantly affect other environmental resources.

Change 10. Paragraph 403.c. explains the process that would occur if updates to the categorical exclusion lists are needed. If ARP experience suggests that other airport actions may qualify as categorical exclusions, it will propose those actions to FAA's Office of Environment and Energy (AEE). AEE, which is responsible for FAA's agency-wide NEPA instructions, would complete the process needed to determine if changes to FAA's categorical exclusion lists are warranted. If AEE, after public review, determines changes to the categorical exclusion lists in FAA Order 1050.1E are warranted, it will revise that order to include the new actions.

Change 11. Paragraph 403.e. notes that some categorically excluded actions rarely involve extraordinary circumstances. Table 1 of this paragraph alphabetically lists those actions, provides an annotation for the action as it relates to airports, and the paragraph(s) from FAA Order 1050.E authorizing the actions as categorical exclusions.

Change 12. Paragraph 403.f. identifies categorical exclusions for other airport actions. Table 2 of this paragraph alphabetically lists those actions, provides an annotation for the action as it relates to airports, and the paragraph(s) from FAA Order 1050.E authorizing the actions as categorical exclusions.

Change 13. Readers should note that Chapter 4, Table 2, action 13 presents a modification of categorical exclusions in FAA Order 1050.1E, paragraphs 309g., 310f., 310n., and 310u. The modification addresses proposed projects involving low emission technology equipment, including the Voluntary Airport Low Emission Program. ARP believes the cited paragraphs from FAA Order 1050.1E supports this change because these projects normally benefit air quality by reducing air quality emissions. As a result, they would qualify for a categorical exclusion because they do not normally cause significant environmental effects under NEPA (see 40 CFR 1058.4).

Change 14. The last entry in Chapter 4, Table 2 presents a proposed modification of the categorical exclusion in FAA Order 1050.1E, paragraph 310k. The modification addresses a categorically excluded action affecting waters or wetlands *not* under Corps of Engineers jurisdiction (''non-jurisdictional waters''). ARP believes this categorical exclusion is warranted because it includes only those actions whose design would meet the same standards as those that would be authorized under the Corps of Engineers' National Permit Program (NWP), had the project location been under the Corps' jurisdiction. By definition, projects qualifying for the NWP do not normally cause significant environmental impacts. Therefore, they meet CEQ's definition of a ''categorically excluded action'' (see 40 CFR 1508.4). ARP wishes to include this categorical exclusion to respond to numerous questions on how to address airport development projects and actions affecting non-jurisdictional waters for NEPA purposes.

Change 15. Paragraph 403.g. provides information on categorically excluding an airport development project or airport action involving a ''special-purpose Federal environmental law.'' If the action meets both of the specific requirements in paragraphs 403.g.(1)(a) and (b), FAA may be able to categorically exclude those actions. A footnote to the paragraph lists those ''special purpose environmental laws'' to which this categorical exclusion may apply.

Change 16. For efficiency and user reference, paragraph 403.g. includes Table 3. The table alphabetically lists and annotates extraordinary circumstances that FAA Order 1050.1E, paragraph 304 presents. Note that ARP is proposing a footnote to this table defining the terms, ''dividing'' and ''disruption'' of communities. ARP presents this proposed definition to address numerous questions it receives on these somewhat ambiguous terms as they relate to coounities airport projects may affect.

Change 17. Paragraph 404. recommends that the responsible FAA official inform the airport sponsor via documentation (via memo, or e-mail) that FAA has categorically excluded an airport development project or airport action. ARP includes this instruction to facilitate greater awareness on the airport sponsor's part about how FAA has complied with the NEPA for their particular airport projects.

Change 18. Paragraph 405. expands the list of airport actions normally requiring an environmental assessment (EA). ARP proposes to revise the list in FAA Order 5050.4A, paragraph 22 to answer many questions about certain airport development projects and airport actions it has received since publishing Order 5050.4A in 1985.

Change 19. Paragraph 407. discusses some updated information on cumulative impacts and airport actions to highlight this important part of NEPA analysis. It discusses how to consider past, present, and reasonably foreseeable actions when establishing a scope of work for analyzing cumulative impacts.

Change 20. Paragraphs 408.a.(1) through (20) discuss various intensity factors ARP proposes to continue to use to supplement the significance thresholds in FAA Order 1050.1E, Appendix 1. ARP believes this guidance is helpful due to the amount of disturbance airport development often causes. ARP believes these factors are necessary to aid its staff in effectively determining whether an EA or an environmental impact statement (EIS) is the proper NEPA document for a proposed airport development project or an airport action.

Change 21. Paragraph 502, 503, and 504 provide detailed policies and procedures for the FAA's State Block Grant Program (SBGP). Paragraph 502 discusses the participants in the SBGP (paragraph 502.c.), and the responsibilities SBGP participants must fulfill for non-primary airports (paragraph 502.b.). These duties include include all environmental requirements FAA would normally fulfill for approval of funding under the AIP paragraph 503). FAA's issuance of state block grant funds normally qualifies for a categorical exclusion. (see FAA Order 1050.1E, paragraph 307.o). The paragraph notes FAA does not have funding and approval authority for projects funded under the SBGP, so awarding grants for actions through the SBGP to individual airports is not a ''Federal action.'' For policy reasons, FAA contractually requires that SBGP states fulfill those environmental duties. This ensures that those states properly evaluate and take into account the potential environmental impacts resulting from specified airport development projects before deciding to fund those projects under the SBGP. Paragraphs 502.e. and 504 discuss those actions outside the SBGP for which FAA retains authority and, therefore, remains responsible for complying with NEPA and other applicable environmental laws. These paragraphs provide the detailed guidance promised in the preamble to FAA Order 1050.1E in response to comments concerning the state block grant program.

Change 22. Paragraph 505b.(3) limits conditional approvals for airport layout plans (ALPs) when a sponsor or its consultant is preparing an QEA or FAA is preparing an EIS for actions at an airport. FAA limits such approvals to avoid the appearance that FAA is taking an action prematurely before it completes its required NEPA process. This limitation does not prevent FAA from conducting or issuing air space determinations to airport sponsors.

Change 23. Paragraphs 505.e.(1) and (2) provide suggested language for conditional and unconditional approval letters, respectively.

Change 24. Paragraph 508. discusses FAA's roles and responsibilities under NEPA when an airport sponsor wishes to participate in a joint-use program or program to convert a military airfield to civilian use program. Here, the sponsor may wish to share use of an airport with the military or convert an excess military base to a public-use airport. In these instances, FAA normally will be a cooperating agency for NEPA purposes.

Change 25. Paragraph 511. provides instructions to the responsible FAA official on complying with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. The official must meet the Executive Order's requirements if NEPA analysis shows an airport action would cause a significant impact in a foreign land.

Change 26. Paragraph 512. provides more information on complying with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The paragraph discusses the need for government-to-government meetings when a project may involve or affect Federally-recognized tribes, their trust resources, or other rights. The paragraph also notes FAA personnel must follow FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures when addressing issues with these tribes.

Change 27. Paragraph 513. clarifies that NEPA applies to FAA approval of wildlife hazard management plans under 14 CFR 139.337, when and to the extent that FAA has discretion about methods and procedures to minimize environmental effects, while still assuring aircraft safety. When FAA lacks such discretion, there is no Federal action and NEPA does not apply. ARP includes this information to address the numerous questions it has received on approvals for these plans, which are important to airport operations.

Change 28. Paragraphs 600. and 602. inform the responsible FAA official that documentation for categorically excluded actions is not needed for NEPA purposes. However, documentation is necessary to demonstrate compliance with ''special purpose'' environmental laws and to support the determination that such compliance demonstrates that there are no extraordinary circumstances warranting preparation of an EA.

Change 29. Paragraph 601.b. suggests that the airport sponsor seeking FAA action to support for an airport project provide certain information to assist the responsible FAA official in determining whether the action qualifies for categorical exclusion. Accurate, complete information will improve the efficiency and effectiveness of the responsible FAA official's review of potential categorically excluded actions.

Change 30. Paragraph 603. restates the recommendation in paragraph 404. that the responsible FAA official inform the airport sponsor when FAA has determined a proposed action qualifies for a categorical exclusion.

Change 31. Paragraph 704. discusses a suggested format for an EA and for use of references. Using this format should enhance document content and ensure the necessary interdisciplinary analyses has occurred and is documented.

Change 32. Paragraph 705. discusses public review of an EA and the timing of an airport sponsor's submittal of the EA to FAA.

Change 33. Paragraph 706. contains guidance for preparing a written re-evaluation of and supplement to an EA to comply with FAA Order 1050.1E, paragraph 411.

Change 34. Paragraph 801. discusses the continued use of impact intensity factors for EAs as established in Order 5050.4A. (See discussions for Changes 1, 3, and 20 for more information.).

Change 35. Paragraph 803. provides instructions to the responsible FAA official for an EA when the approving FAA official selects a preferred alternative that differs from the airport sponsor's proposed action.

Change 36. Paragraphs 804.a.–c. discuss coordinating FONSI reviews within FAA. Paragraph 804.a. notes when the Regional Administrator must sign the FONSI. Paragraph 804.b. provides instructions for seeking legal sufficiency review for a proposed FONSI. Paragraph 804.c. notes that ARP's Community and Environmental Needs Division (APP–600) is available to review FONSIs on request.

Change 37. Paragraph 806. provides information the responsible FAA official may consider when determining if a Record of Decision for a FONSI (''FONSI-ROD'') is needed. A FONSI-ROD is a decision document and order subject to the exclusive review by U.S. Circuit Courts of Appeal.

Change 38. Paragraph 809. directs the responsible FAA official to include mitigation a FONSI contains in a grant assurance or unconditional letter of approval for the airport layout plan. The paragraph also recommends that the official to track the sponsor's compliance with the mitigation by using an Environmental Management System.

Change 39. Paragraphs 902. and 903. provide more detailed information on the scoping process than Order 5050.4A.

Change 40. Paragraph 905. provides information on the Notice of Intent to Prepare an EIS (NOI). The paragraph also discusses the NOI's content and its publication in the Federal Register relative to the start of Scoping. Paragraph 905.c., provides information on notifying the public if the responsible FAA official determines that an EIS is not needed after FAA issues an NOI. ARP provides this information to address many questions it has received on this topic. After anticipating significant impacts during the scoping process, ARP has occasionally found that an EIS was not needed because impact analyses showed a proposed airport development action would not cause significant impacts.

Change 41. Paragraph 906. provides expanded information on the responsible FAA official's duties during the scoping process. ARP includes this information to highlight the varied roles the official must fulfill during this stage of EIS preparation. Paragraph 906.b. states that the responsible FAA official must invite agencies having permitting or approval authorities to be cooperating agencies during EIS preparation. It may also help to improve the efficiency of the environmental review process. Paragraph 906.j. highlights the need for cooperating agencies to provide important information during scoping.

Change 42. Paragraph 908. states that FAA's may be a cooperating agency In special situations addressing airport actions, FAA normally fulfills this role for projects involving military base joint-use or re-use or conveyance of Federally-owned land for airport purposes.

Change 43. Paragraph 909. discusses using the scoping process in preparing an EA. Although this process is not mandatory for EA preparation, the Process may help the sponsor or its consultant prepare a thorough EA. sponsors may find scoping useful particularly for an action that may be highly controversial or assessing many environmental impacts (*e.g.,* ''special purpose laws'').

Change 44. Paragraph 1003. clarifies FAA, airport sponsors, and environmental consultant roles during FAA's EIS preparation. It reflects policy and procedures FAA has adopted for EIS preparation in response to *Citizens against Burlington* v. *FAA*, 938 F2d 190 DC Cir. 1991. The paragraph notes that FAA decides EIS content, even through the airport sponsor may pay the environmental consultant costs for EIS preparation and a Third Party MOU. The Order provides a sample Disclosure statement (Appendix 2, Attachment A) environmental consultants must sign to be part of EIS preparation. It also includes examples of Memoranda of Understanding defining the roles of FAA, airport sponsor and environmental consultant personnel during EIS preparation (Appendix 2, Attachments B and C).

Change 45. Paragraph 1004. provides more detailed guidance concerning limitations on sponsor activities during EIS preparation. ARP provides this to alert users of the Order about the requirements in 40 CFR 1506.1 (Limitations on actions during the NEPA process) and to address questions ARP has received on this topic.

Change 46. Paragraph 1005. provides instructions for adopting another Federal agency's EIS to streamline (*i.e.,* improve efficiency) NEPA and reduce paperwork.

Change 47. Paragraph 1007. provides re-organized and updated information on EIS format and content to more closely track information in FAA Order 1050.1E. The paragraph also includes information from the best practices ARP has found important in preparing EISs. Paragraphs 1007.m and n. discuss how to use appendices and references to reduce the bulk in an EIS's main body. This effort promotes CEQ's intent to keep EISs to manageable sizes.

Change 48. Paragraph 1101. provides added guidance for distributing DEISs for public and inter-agency reviews. Various paragraphs give addresses for the headquarters' offices of the Federal department that review DEISs. They also provide the number of DEIS copies to send to those departments. Paragraph 1101.b.(4)(c) provides standard language certifying that FAA has issued DEISs to the public at the same time or before it filed the documents with the U.S. Environmental Protection Agency (EPA).

Change 49. Paragraph 1104. provides instructions for re-circulating DEISs. ARP provides this information to answer questions it has received on this topic.

Change 50. Paragraph 1202. notes that CEQ requires that the final EIS (FEIS) must identify the agency's preferred alternative, unless a law prohibits FAA from doing so. This is to clarify that FEISs must contain this information, if FAA has not selected its preferred alternative when it prepared the DEIS. FAA Order 5050.4A noted, but did not highlight, this requirement of 40 CFR 1502.14(e).

Change 51. Paragraph 1203.b.(2) requires the responsible FAA official to ensure the FEIS contains evidence that an airport sponsor has certified that the airport management board has voting representation from the communities where a new airport location, a runway, or major runway extension is proposed. Alternatively, the paragraph also notes the sponsor must advise these communities that they may petition the Secretary of Transportation about a proposed project. FAA includes this change to meet the requirements of 49 U.S.C. 47106(c)(1)(A)(ii).

Change 52. Paragraph 1203.b.(3) directs the responsible FAA official to ensure the sponsor has made available and provided an existing metropolitan planning organization in the area where the project is located a copy of: a proposed ALP amendment depicting a proposed project at a medium or large hub airport and the master plan describing or depicting that project. ARP includes this assurance to meet the requirements of 49 U.S.C. 47106(c)(1)(A)(iii).

Change 53. Paragraph 1203.e. discusses the need for the FEIS to include evidence support necessary determination regarding impacts to jurisdictional and non-jurisdictional waters and wetlands. ARP includes information on non-jurisdictional wetlands to address many questions it has received about environmental review of impacts to these resources. Many people believe ARP need not address impacts or provide assurances for waters or wetlands not under U.S. Army Corps of Engineers jurisdiction. ARP notes analyses of impacts to all wetlands are needed to comply with NEPA and other laws and Executive Order 11990, Protection of Wetlands, and DOT Order 5660.1A, Preservation of the Nation's Wetlands.

Change 54. Paragraph 1203.g. discusses the need for the FEIS to include evidence to support determinations in any ROD for proposed actions that affect areas inside and outside the coastal zone area, if project impacts affect coastal zone resources. ARP includes this information to address Coastal Zone Management Act (CZM Act) amendments. Among other things, these requirements address impacts to coastal zone resources, even if a project occurs outside CZM boundaries.

Change 55. Paragraphs 1203.g.(1) and (2) discuss the evidence that must be included in the FEIS to support determinations in a ROD regarding Subparts D and C of 15 CFR, Part 930 (regulations implementing the CZM Act). Paragraph 1203.g.(1) provides consistency requirement information for a project FAA approves, such as a sponsor's request for FAA approval of an ALP change. Paragraph 1203.g.(2) provides consistency information for projects FAA itself undertakes, such as

installing a NAVAID in the coastal zone. ARP includes this information to highlight the different CZM Act requirements that may apply to an ARP action.

Change 56. Paragraph 1204.a. discusses the various approval levels ARP follows to meet FAA Order 1100.154A, Delegation of Authority, dated June 12, 1990. The Order delegates approval authority for certain airport projects from the FAA Administrator to the Associate Administrator for Airports (ARP–1). ARP–1 may further delegate that authority, per Order 1100.154A, as paragraph 1204.a. explains.

Change 57. Paragraphs 1205.d., e., and f. provide updated information on the number of copies of the FEIS the responsible FAA official must send to the U.S. EPA (EPA) regional office reviewing an ARP project and to EPA and the Department of the Interior headquarters.

Change 58. Paragraph 1206. discusses more detailed information concerning the process for referring EISs to CEQ under 40 CFR 1504. ARP includes this information to ensure personnel knew about this little used, but important CEQ NEPA regulation.

Change 59. Paragraph 1301.g. requires FAA to ensure the agency and the airport sponsor complete required mitigation. The paragraph suggests using an Environmental Management System (EMS) to track mitigation compliance. ARP includes EMS tracking to comply with EO 13148, Greening the Government Through Leadership in Environmental Management.

Change 60. Chapter 14 provides guidance on the longevity of EAs and EISs, supplementing those documents, written re-evalautions, and tiering. It also notes that FAA is applying the same standards it uses for EISs to EAs. The paragraph also notes that the responsible FAA official may use his or her best professional judgment when determining the need for a written re-evaluation. ARP provides that information to address questions about EA longevity and to comply with FAA Order 1050.1E, paragraphs 410 and 411. ARP agrees that accurate EAs and EISs are needed to ensure approving FAA officials have the best available information when making decisions on proposed airport development projects and airport actions.

Change 61. Paragraph 1404. provides instructions on applying NEPA to emergency situations. ARP includes this information to ensure order users are aware of this requirement.

Chapter 62. Chapter 15 provides information on streamlining the EIS process for certain airport projects. This information addresses requirements of Century of Aviation Reauthorization Act also known as ''Vision-100.'' Among other things, Vision-100 requires streamlining the environmental process for airport capacity projects at congested airports. These are airports that account for at least 1% of all delayed aircraft operations in the nation. Vision 100 also applies to airport safety and airport security projects throughout the nation, regardless of their delay status.

Change 63. Appendix 1 includes updated flowcharts on completing the NEPA processes for categorical exclusions, EAs, FONSIs, EISs, and RODs.

Change 64. Appendix 2 includes information on the third-party contracting process FAA uses to select contractors to help the agency prepare EISs, as explained in Change 44. It also includes a sample Disclosure Statement and two types of Memoranda of Understanding describing the respective duties of FAA, the airport sponsor, and the FAA-selected consultant.

Change 65. Appendix 3 provides an example of a ''short-form'' EA. ARP provides this as one example of how to prepare an EA that meets CEQ's recommended length for an EA (i.e., maximum of 15 pages).

ARP encourages full public participation during this comment period. ARP will consider filed comments on the draft order as it prepares the final Order 5050.4B.

Dated: December 13, 2004.

Dennis E. Roberts,

Director, Office of Airports Planning and Programming.

[FR Doc. 04–27598 Filed 12–15–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 218X)]

Union Pacific Railroad Company—Abandonment Exemption—in Kootenai County, ID

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 5.25-mile line of railroad known as the Coeur'd Alene Industrial Lead from milepost 2.25 near Feeley Spur to milepost 7.50 near Gibbs, in Kootenai County, ID. The line traverses United States Postal Service Zip Code 83840.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overheard traffic which could travel over the line has been shifted to an adjacent line of The Burlington Northern and Santa Fe Railway Company; (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 report), 49 CFR 1105.8 (historic report), 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 January 15, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 27, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 5, 2005, 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 UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Dr., Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

---

[1] 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 posible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

UP has filed an environmental report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 21, 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), UP 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 UP's filing of a notice of consummation by December 16, 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 *http://www.stb.dot.gov.*

Decided: December 10, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–27528 Filed 12–15–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Application for Payment of a Deceased Depositor's Postal Savings Certificate (POD 1681)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing efforts to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the Form POD 1681, ''Application for Payment of a Deceased Depositor's Postal Saving Certificate.''

DATES: Written comments should be received on or before February 14, 2005.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vivian Cooper, Financial Accounting and Services Division, 3700 East West highway, Room 600D, Hyattsville, MD 20782, (202) 874–8380.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Application for Payment of a Deceased Depositor's Postal Savings Certificate.

OMB Number: 1510–0027.

Form Number: POD 1681.

Abstract: This form is used when an application is submitted for payment of a deceased Postal Savings depositor's account. Information furnished on the form is used to determine if the applicant is entitled to the proceeds of the account.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 25.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 7, 2004.

Ronald G. Cymbor,

Acting Assistant Commissioner, Financial Operations.

[FR Doc. 04–27576 Filed 12–15–04; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Thursday,
December 16, 2004

Part II

Department of Labor

Employment and Standards Administration

Wage and Hour Division

29 CFR Parts 570, 579, and 580

Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

29 CFR Parts 570, 579, and 580

RIN 1215–AA09

Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document revises the child labor regulations in order to implement two amendments of the Fair Labor Standards Act's child labor standards—the Compactors and Balers Safety Standards Modernization Act, (August 6, 1996) (The Compactor and Baler Act); and the Drive for Teen Employment Act, (October 31, 1998). This document also revises procedural regulations dealing with administrative hearings and appeals of civil money penalties.

The Compactor and Baler Act sets conditions which permit 16- and 17-year-old workers to load, but not operate or unload, certain scrap paper balers and paper box compactors. The Act also specifies that civil money penalties may be assessed for violations of these conditions. This document also revises the regulation to implement the provisions of this Act. The Drive for Teen Employment Act prohibits minors under 17 years of age from driving automobiles and trucks on public roadways on the job, and establishes the conditions and criteria under which 17-year-olds may drive automobiles and trucks on public roadways on the job. The regulation is also revised to implement the provisions of this Act.

A regulation concerning government-issued Certificates of Age is also being revised. Prior to this Final Rule, the regulation required that the employer return the certificate to the issuing agency when the employee left employment, except that a certificate issued for employment in agriculture may be given to the named minor at termination of employment and a certificate issued to an 18- or 19-year-old shall be given to the named worker at termination of employment. This revision modifies the regulation to direct the employer to give the certificates to the employees when their employment ends.

Further, the Department is revising the regulation regarding the types of cooking and cooking-related duties that 14- and 15-year-olds may perform. The Department is updating the regulation to modify a long-standing Department of Labor (DOL) interpretation of this child labor standard.

Finally, this document revises certain other provisions which proscribe certain hazardous employment for 16- and 17-year-olds. Prior to this revision, the regulation prohibited these minors from working in roofing operations. The Department has revised the regulation to also prohibit all work on or about roofs. In addition, the Department has revised the regulation to update the definition of the terms *explosives* and *articles containing explosive components* in the prohibition on employment of minors in establishments which manufacture or store explosives.

DATES: *Effective Dates:* This rule is effective February 14, 2005. The incorporation by reference of American National Standards Institute standards in the regulations is approved by the Director of the Federal Register as of February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Arthur M. Kerschner, Jr., Office of Enforcement Policy, Child Labor and Special Employment Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–0072 (this is not a toll free number). Copies of this final rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023. TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of final regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling the Wage and Hour Division's toll-free help line at 1–866–4USWAGE (1–866–487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the Wage and Hour Division's website for a nationwide listing of Wage and Hour District and Area Offices at: *http://www.dol.gov/esa/contacts/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Background

The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 16 years for employment in nonagricultural occupations, but the Secretary of Labor is authorized to provide by regulation for 14- and 15-year-olds to work in suitable occupations other than manufacturing or mining, and during periods and under conditions that will not interfere with their schooling or health and well-being. The FLSA provisions permit 16- and 17-year-olds to work in the nonagricultural sector, without hours or time limitations, except in certain occupations found and declared by the Secretary to be particularly hazardous, or detrimental to the health or well-being of such workers.

The regulations for 14- and 15-year-olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of part 570 (29 CFR 570.31–.38). Reg. 3 limits the hours and times of day that such minors may work, and identifies occupations that are either permitted or prohibited for such minors. Under Reg. 3, 14- and 15-year-olds may work in certain occupations in retail, food service, and gasoline service establishments, but are not to work in certain other occupations (including all occupations found by the Secretary to be particularly hazardous for 16- and 17-year-olds). Reg. 3, originally promulgated in 1939, was revised to reflect the 1961 amendments to the FLSA which extended the Act's coverage to include enterprises engaged in commerce or the production of goods for commerce. Because of the statutory amendments, the FLSA's child labor protections became applicable to additional areas of employment for young workers in retail, food service, and gasoline service establishments.

The regulations concerning nonagricultural hazardous occupations are contained in subpart E of 29 CFR part 570 (29 CFR 570.50–.68). These Hazardous Occupations Orders (HOs) apply either on an industry basis, specifying the occupations in the industry that are prohibited, or on an occupational basis, irrespective of the industry in which performed. The seventeen HOs were adopted individually during the period of 1939 through 1963.

Because of changes in the workplace, the introduction of new processes and technologies, the emergence of new types of businesses where young workers may find employment opportunities, the existence of differing Federal and State standards, and divergent views on how best to correlate school and work experiences, the Department has long been reviewing the criteria for permissible child labor employment. In this review, the

Department published a Proposed Rule in 1982, a Final Rule in 1991, both an Advance Notice of Proposed Rulemaking and a Proposed Rule in 1994, a Final Rule in 1995, and a Notice of Proposed Rulemaking in 1999.

On July 16, 1982, a Proposed Rule was published in the **Federal Register** (47 FR 31254) which proposed to revise several elements of Reg. 3, including the permissible hours and times of employment for 14- and 15-year-olds and the types of cooking operations those minors would be permitted to perform. The Proposed Rule generated considerable public interest and controversy, most having to do with the expansion of the hours and times of work for this age group. The Department subsequently suspended the proposal from further consideration and no final rule was implemented (50 FR 17434, April 29, 1985; DOL's Semiannual Regulatory Agenda).

The Department continued to receive communications from the public suggesting that certain changes should be made to the child labor regulations on a number of issues. In 1987, the Department established a Child Labor Advisory Committee (CLAC) composed of 21 members representing employers, education, labor, child guidance professionals, civic groups, child advocacy groups, State officials and safety groups. The mission of the CLAC was to give advice and guidance in developing possible proposals to change existing standards. After reviewing a number of issues, the CLAC proposed making certain changes to the child labor regulations. The Department considered the CLAC's suggestions, as well as suggestions received from the public as noted above. A Proposed Rule was published in October 1990, proposing changes to three HOs (55 FR 42612). In December 1991, the Department promulgated a Final Rule which revised the three HOs (56 FR 58626).

The Department continued to review the child labor regulations and, in an effort to accumulate data concerning all aspects of the provisions, published both a Notice of Proposed Rulemaking (NPRM) (59 FR 25164) and an Advance Notice of Proposed Rulemaking (ANPRM) (59 FR 25167) on May 13, 1994.

The NPRM proposed to exempt 14- and 15-year-olds from Reg. 3 hours standards when employed under certain restrictions as sports attendants for professional sports teams, to standardize the Reg. 3 process for issuing occupational variances for Work Experience and Career Exploration Program (WECEP) participants, to remove an outdated exemption for enrollees in certain work training programs, and to revise the process by which HOs are promulgated. A Final Rule on these issues was published April 17, 1995 (60 FR 19336).

The 1994 ANPRM requested public comment on several specific topics as well as all aspects of the child labor provisions. Several individuals and organizations submitted comments. The National Institute for Occupational Safety and Health (NIOSH) provided the Department with epidemiological data on a number of issues related to both Reg. 3 and the HOs. NIOSH also provided the Department with statistics regarding occupational injuries and made several recommendations. A number of child guidance professionals, educators, unions, employer associations and child labor advocates also commented and made various recommendations.

Twice in the last eight years, Congress has amended the child labor provisions of the FLSA. The Compactors and Balers Safety Standards Modernization Act, Public Law 104–174 (Compactor and Baler Act), was signed by the President on August 6, 1996. This legislation adds a section 13(c)(5) to the FLSA, permitting minors 16 and 17 years of age to load, but not operate or unload, certain scrap paper balers and paper box compactors if certain requirements are met. The Drive for Teen Employment Act, Public Law 105–334, was signed by the President on October 31, 1998. This legislation adds a section 13(c)(6) to the FLSA, prohibiting minors under 17 years of age from driving automobiles and trucks on public roadways on the job and establishing the conditions and criteria for 17-year-olds to drive automobiles and trucks on public roadways on the job.

The Department published a Notice of Proposed Rulemaking in the **Federal Register** on November 30, 1999 (64 FR 67130), inviting comments until January 31, 2000, on revisions of regulations to implement the recent legislation and to update certain regulatory standards. The Compactor and Baler Act affects the HO 12 standards (Occupations involved in the operation of paper-products machines) (29 CFR 570.63) and certain other related regulations; amendments of those regulations were proposed. The Drive for Teen Employment Act affects the HO 2 standards (Occupations of motor-vehicle driver and outside helper) (29 CFR 570.52); an amendment of that regulation was proposed. As a result of its ongoing review of the child labor provisions, the Department also proposed changes to HO 1 (Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components) (29 CFR 570.51), HO 16 (Occupations in roofing operations) (29 CFR 570.67), the Reg. 3 limitations on cooking (29 CFR 570.34), and 29 CFR 570.6(b)(1) which deals with the disposition of a Certificate of Age when the named individual's employment ends.

II. Summary of Comments

A total of 16 comments were received in response to the notice—from trade and professional associations, advocacy organizations, private consultants, an employer, a State department of labor, a State department of education, and one Federal agency (the National Institute for Occupational Safety and Health (NIOSH)). The sole employer responding restricted his comments to recommending changes to Hazardous Occupations Order No. 8 (Occupations involved in the operations of power-driven metal forming, punching, and shearing machines), a subject not raised by the Proposed Rule. The New Jersey Department of Labor limited its comments to commending the Secretary's concern for the safety of minors and advising her that the proposed rule would in no way impede in the enforcement of New Jersey's child labor laws. A consultant with the Ohio Department of Education reported that a committee of teachers of Career Based Intervention Programs agreed with all the proposals with the assumption that the Department would continue to grant variances to WECEP participants as it has done in the past.

In July of 2002, NIOSH disseminated its report entitled *National Institute for Occupational Safety and Health Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders.* The report, which makes many recommendations, also repeats the comments NIOSH submitted in response to the NPRM which are discussed later in this document. Since receiving the NIOSH report, the Department has been conducting a detailed review and has met with various stakeholders to evaluate and prioritize each recommendation for possible regulatory action consistent with the established national policy of balancing the benefits to employment opportunities for youth with the necessary and most effective safety protections.

A. Certificates of Age (29 CFR 570.5–.27)

Section 3(l) of the FLSA provides an affirmative defense against the citation of child labor violations for employers who ''have on file an unexpired

certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such [employee] is above the oppressive child labor age'' (29 U.S.C. 203(l)). The use of such certificates is not mandatory under the FLSA. The Department's regulations, at 29 CFR 570.5–.27, set out the procedures for application, issuance, retention and disposition of certificates of age. The regulations authorize the issuance of certificates by most of the States as well as by the Wage and Hour Division. Most certificates are, in fact, requested from and issued by the States.

Section 570.6(b), prior to this Final Rule, directed the employer to return the certificate to the issuing authority when the named worker's employment terminated, except that a certificate issued for employment in agriculture could be given to the worker and a certificate issued to an 18- or 19-year-old was to be given to the worker. The Department proposed to revise § 570.6(b) to specify that the worker's certificate issued by DOL be given to him/her when employment ends, regardless of the worker's age or type of employment. The youth could then provide the certificate to any future employer(s). This regulatory amendment, suggested by the Office of Management and Budget, would preclude unneeded repetition of the certification process and reduce paperwork burdens on employers.

The Department received two comments on this proposal. A consultant with the Ohio Department of Education's Career Based Intervention Programs commented that when the responsibility of providing the age certificate to the new employer is delegated to the minor, the certificate may not actually get to the new employer in many cases. The Department believes that young workers will be cooperative with prospective employers in providing employment-related information. The National Grocers Association (NGA) recommended that the proposal be expanded to include certificates issued by State governments as well. Although the Department encourages States to adopt similar rules regarding the disposition of age certificates, it is left to the individual States to establish rules regarding the disposition of the certificates they issue. This portion of the proposal is adopted as a Final Rule.

B. Reg. 3 Occupations: Cooking (29 CFR 570.34)

Reg. 3 established restrictions on the type of cooking and cooking-related work which 14- and 15-year-olds may perform as employees of retail, food service, and gasoline service establishments. At § 570.34(b)(5), the regulation prohibits these minors from ''cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking.'' Under § 570.34(a)(7), however, 14- and 15-year-olds are permitted to perform ''kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as but not limited to, dish-washers, toasters, dumbwaiters, popcorn poppers, milkshake blenders, and coffee grinders.''

These regulatory standards were added to Reg. 3 after the 1961 FLSA amendments which extended the FLSA's coverage to include certain enterprises engaged in commerce or in the production of goods for commerce. The Act's child labor provisions became applicable to additional areas of employment in retail, food service, and gasoline service establishments. The regulations were the Department's response to the challenge of identifying those food preparation activities which 14- and 15-year-olds could safely perform without interfering with their schooling, health or well-being.

In establishing these standards, the Department recognized that some forms of cooking were not appropriate for persons under 16 years of age. Lifting large containers of hot materials, working over a hot stove for long periods of time, cooking over an open flame or with equipment that utilize extremely high temperatures, and operating pressure cookers were all considered too dangerous for young workers. On the other hand, preparing an occasional hamburger or grilled cheese sandwich or performing simple cooking functions like those which minors safely might do in their own homes did not seem to place young workers at risk. The Department determined that the type of cooking performed at a snack bar or soda fountain, where the worker would not only take the customer's order but also prepare and serve the light fare, did not pose serious risks to the minor's health or well-being. The work was not strenuous, did not require continuous cooking at a stove or range, and did not require the minor to use complicated or dangerous equipment.

The Department's promulgation and interpretation of the Reg. 3 standards were based, to some extent, upon a factor common to snack bars and soda fountains—namely, that the cooking performed in such food service operations was performed ''in plain view'' of the customer. This factor, in and of itself, did not make the activity safer, but it did tend to limit the scope of the cooking to activities that were relatively free of risk. By limiting cooking work to soda fountains and snack bars, Reg. 3 barred the ''heavy duty'' and more strenuous types of cooking performed in full-service restaurants, while permitting other, less strenuous types of ''light'' cooking. Over a period of time in the l960's, the Department developed an ''in plain view'' interpretation of the regulation, making the Reg. 3 standard dependent upon whether the 14- and 15-year-olds are performing their cooking duties within the customers' sight. Under this interpretation, cooking performed ''in plain view'' would be permissible even if the minor was not working at a traditional soda fountain or snack bar, and cooking performed out of plain view (*i.e.*, in the kitchen or behind a partition) would not be permissible.

The snack bars and soda fountains upon which the Reg. 3 standards were established have been largely, if not entirely, replaced by different kinds of quick-service restaurants (also referred to as fast food establishments) that evolved during the decades of the 1970's, 1980's and 1990's. In recognition of the changing nature of the retail food service industry, the Wage and Hour Division examined quick-service restaurants in 1977 and conducted a survey of quick-service restaurants in 1979 to determine what, if any, changes were needed in the cooking prohibitions. Interested parties, including major quick-service restaurant chains, organized labor, and child labor advocates, were consulted.

In 1982, the Department published a Proposed Rule (47 FR 31254) which would have revised several elements of Reg. 3, including the permissible hours and times of employment for 14- and 15-year-olds and the types of cooking operations they would be allowed to perform. Under the proposal, all cooking would have been permitted except: cooking with hot oils at temperatures over 140 °F; cooking over an open flame; and cooking involving the use of pressure cookers without proper safety valves. The ''in plain view'' interpretation would no longer have been applied. The Proposed Rule generated considerable public interest and controversy, most having to do with the expansion of the hours and times of employment standards. The Department subsequently suspended the proposal from further consideration and no final rule was implemented (50 FR 17434, April 29, 1985; DOL's Semiannual Regulatory Agenda).

The Department continued to receive communications from the public suggesting that certain changes should be made to the regulations concerning cooking. A general consensus seemed to develop that the ''in plain view'' interpretation no longer served as an important safety standard as it did in the 1960's, because the activities involved were no longer limited to ''light'' cooking. Further, the general view appeared to be that the interpretation did not provide sufficient guidance to employers, parents, and working teens. The proscription of tasks mainly on the basis of place of performance complicated the regulation and led to confusion. For example, in one quick-service restaurant, 14- and 15-year-olds may perform most cooking jobs because all cooking is performed in the plain view of the customers; but at another food service establishment, those minors would not be able to perform the identical functions because all cooking is done in a closed kitchen away from the customer's view. Complications may also exist within a single establishment when some cooking equipment is placed so customers may view the cooking operation and additional pieces of the same equipment are placed outside of the customer's line of sight.

The Department recognized the need to review and update the Reg. 3 standards. New generations of cooking devices have been introduced since the cooking regulation was published in the 1960s, including microwaves, automatic cooking machines and systems, and computerized equipment and systems. Any proposed changes to the cooking prohibitions—to take into account all of these changes in the food service industry—must carefully consider the safety risks to young workers.

In an effort to accumulate data concerning all aspects of the child labor provisions, the Department in 1994 published an Advance Notice of Proposed Rulemaking (ANPRM) (59 FR 25167). The ANPRM requested public comment on many aspects of the child labor provisions, specifically including the Reg. 3 cooking standards. The Department received numerous and diverse comments on this matter.

The Department carefully considered all the comments and materials received, and reviewed the Reg. 3 standards, to develop the Proposed Rule which was published on November 30, 1999. Recognizing the delicate balance between the value of jobs that provide positive, formative experiences and the negative effects that the wrong type of jobs can have on the health and well-being of young workers, the Department preliminarily concluded that the regulations should be revised so that 14- and 15-year-olds may perform a limited number of cooking activities—*i.e.*, only those that are safe and appropriate for their age group. The Department believed that this regulatory revision could be accomplished without negatively impacting employment opportunities for young workers.

The Department proposed to eliminate the ''in plain view'' interpretation and establish standards for cooking duties which it believed to be safe and appropriate for these minors regardless of where the cooking is performed within the food service establishment. The proposed standards would prohibit 14- and 15-year-olds from any cooking except cooking with electric or gas grilles which does not involve cooking over an open flame, and using deep fat fryers which are equipped with and utilize, during the frying process, devices which automatically raise and lower the ''baskets,'' but not pressurized fryers. The proposal also would permit 14- and 15-year-olds to clean, maintain (including the changing, cleaning, and disposing of oil or grease and oil or grease filters) and repair cooking devices (other than power-driven equipment) when the surfaces of the equipment or liquids do not exceed a temperature of 140 °F. The proposal would, thus, prohibit 14- and 15-year-olds from performing any of the following duties when the minor would be exposed to or working with liquid or equipment surfaces which exceed a temperature of 140 °F: cleaning equipment such as grilles, deep fat fryers, and steam tables; removing grease filters; filtering grease or oil; and lifting, moving or carrying receptacles or containers of hot grease or oil. This ban on carrying or working with hot oil would apply regardless of the type of oil.

The Department proposed to continue the current interpretation of Reg. 3 as banning 14- and 15-year-olds from using such equipment as rotisseries, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as ''Neico broilers.'' The Department also proposed to continue its long-standing interpretation of the regulation as permitting these minors to operate microwave ovens that are used only to warm prepared food and do not have the capacity to warm above 140 °F, and to use, dispense, and serve food from warmers, steam tables, and other warming devices (even if the temperatures exceed 140 °F). Further, the proposal preserved the current Reg. 3 provision allowing these minors to perform kitchen work and other work to prepare and serve food and beverages, including operating certain machines used in performing such work.

Additionally, the Department proposed to continue the ban on all baking activities by those under 16 years of age. These minors would still be prohibited from performing all jobs that are part of the baking process, such as weighing and mixing ingredients; placing or assembling products in pans or on trays; operating ovens, including convection ovens, microwave ovens (except those used for warming food as described above), pizza ovens, and automatic feeding ovens; removing items from ovens; placing items on cooling trays; and finishing baked products. This ban on baking tasks exists because of the dangers to young workers in activities such as lifting heavy bags of ingredients, filling hot pans, moving hot pans and trays into and out of ovens, emptying hot pans and trays, having clothing or fingers entangled in conveyors or other mechanisms, and operating power-driven equipment. Although the proposal continued the ban on all baking activities by those under 16 years of age, the Department requested evidence regarding whether certain activities would be safe for 14- and 15-year-olds to perform in the baking process in retail establishments, and if so, whether consideration should be given to modifying the ban on the baking process performed in retail establishments by 14- and 15-year-olds. Specifically, the Department sought evidence and comments on whether such youths should be permitted to perform certain prescribed activities such as measuring and weighing ingredients and finishing baked goods, provided that operation of power-driven equipment is not performed. As a result of recommendations submitted by NIOSH in response to the 1994 ANPRM, the Department also sought evidence and comments as to whether, if the Department does amend the rules to allow certain baking activities to be performed, there should be a weight limit, such as 10 pounds, for jobs requiring lifting by 14- and 15-year olds.

Finally, the proposal preserved the current Reg. 3 process whereby State agencies operating approved Work Experience and Career Exploration Programs (WECEPs) (in which students are closely supervised and receive safety instruction) may seek variances from the Department to authorize students to cook and to perform certain jobs that would otherwise be banned.

Ten comments were received in response to these proposals. The commenters were unanimous in supporting the elimination of the ''in plain view'' standard, although they disagreed concerning the standards which had been proposed to replace it. NIOSH recommended that the ''in plain view'' interpretation be withdrawn; this position was endorsed by the American Federation of Labor and Congress of Industrial Relations (AFL–CIO), the United Food and Commercial Workers International Union (UFCW), and the Child Labor Coalition of the National Consumers League (CLC). However, each of these commenters took issue with particular aspects of the proposed standards. NIOSH noted that, when it had commented on the Department's 1994 ANPRM, it had ''recommended that all cooking and working in proximity to cooking appliances should be a prohibited activity for youths under 16 years of age, regardless of whether the cooking was within 'plain view' of the customer.'' But in commenting on the Proposed Rule, NIOSH endorsed the elimination of the ''in plain view'' standard while supporting some of the proposals concerning permissible activities in food service employment. NIOSH stated that it ''appreciates and concurs with DOL's intent [in the Proposed Rule] to permit 14- and 15-year-olds to conduct safe and appropriate work activities, including those associated with cooking, while prohibiting them from performing more hazardous activities.'' The NIOSH comment included copies of several reports and publications concerning occupational injuries including injuries in food service establishments. The National Restaurant Association (Association), the National Child Labor Committee (NCLC), and the National Council of Chain Restaurants (Council) commented that the ''in plain view'' standard is no longer appropriate and should be eliminated. The Association approved of the '' 'common sense' approach'' taken in the Proposed Rule, and stated that ''[t]he current interpretation is a product of a bygone era and is not practical in most restaurant settings. * * * the Association supports the proposal to eliminate the 'in plain view' interpretation while allowing limited cooking and cleaning of cooking devices.'' The Council pointed out that ''the restaurant industry provides a tremendous number of entry level positions that are often the ideal 'first' jobs for teenage individuals seeking part-time employment, but who otherwise have little or no job skills to offer employers. * * * any expansion of the child labor restrictions in a manner that is not directly necessary to the safety and well-being of teenage employees will only serve to eliminate entry level job opportunities for young individuals that otherwise may have little experience to offer employers.''

The commenters expressed differing views with regard to the proposal to allow 14- and 15-year-olds to cook with electric and gas grills that do not involve cooking over an open flame and with deep fryers which are equipped with and utilize devices which automatically raise and lower the baskets.

Several commenters opposed the proposal. NIOSH stated that cooking appliances, such as grills and deep fryers, are associated with serious occupational burns among youth caused not only by cooking but also by the worker coming into contact with hot surfaces or hot grease as a result of slipping, or falling, or being in close enough proximity to food that is ''popping'' as it cooks. NIOSH also commented that limiting the use of fryers to only those which automatically raise and lower cooking baskets may reduce the risk of injuries, but the limitation would not prevent all burn injuries associated with fryers. The CLC, the AFL–CIO, and the UFCW cited data provided by NIOSH and expressed concerns about the risks associated with the high temperatures at which grills and fryers operate. With regard to the use of deep fat fryers equipped with devices that automatically raise and lower the baskets, the UFCW questioned whether such devices are effective in assuring safety; and the NCLC opposed allowing youths to cook with such fryers because of the unreliability of such equipment and a concern that supervisors of young workers would assign them to operate equipment even though it did not comply with the restriction. A Dallas based labor consultant recommended that the Department heed the NIOSH and CLC recommendations.

The National Restaurant Association supported the proposal to allow 14- and 15-year-olds to cook with gas and electric grills that do not involve cooking over an open flame; the Association did not comment concerning the proposal pertaining to the use of deep fryers. The National Council of Chain Restaurants supported the proposal regarding cooking with gas and electric grills, and noted its assumption that the proposal would allow these employees to operate ''automated broilers'' which cook chicken, hamburgers, and other foods without exposure to an open flame. The Council recommended that the proposal regarding deep fryers be modified, to permit these employees to cook with all fryers including those not equipped with devices that automatically raise and lower the baskets. The Council stated that such devices do not add to operator safety and that ''the job of using a deep fryer is just as safe for the operator regardless of whether the basket is lowered and raised automatically or manually.'' The NCLC commented that, absent any contrary-indicating injury data, it would appear that permitting the use of electric and gas grills that do not include an open flame may not contribute to a rise in teen occupational injuries; the NCLC stated that should such data exist, promulgating this portion of the proposal should be delayed until NIOSH could generate a study of teen occupational injuries resulting from the use of such grills.

Only one commenter—NIOSH—addressed the proposal to continue the Department's long-standing positions on several additional matters: permitting 14- and 15-year-olds to operate microwave ovens that are used only to warm prepared food and do not have the capacity to warm above 140 °F; permitting such minors to use, dispense, and serve food from warmers, steam tables, and other warming devices (even if the temperatures exceed 140 °F); permitting them to perform kitchen work and other work to prepare and serve food and beverages; and banning them from using such equipment as rotisseries, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as ''Neico broilers.'' On all of these matters, NIOSH concurred with the Department's proposal.

The commenters expressed contradictory views with regard to the proposal to allow 14- and 15-year-old workers to clean kitchen equipment (not otherwise prohibited), remove oil or grease filters, pour oil or grease through filters, and move receptacles containing hot grease or hot oil, but only when the equipment, surfaces, containers and liquids do not exceed a temperature of 140 °F.

NIOSH did not oppose minors performing the named tasks, but did object to establishing 140 °F as the maximum temperature. Noting that the Department had proposed this temperature because it had been established as the minimum temperature at which a first-degree burn can occur, NIOSH objected to the Department allowing youths performing

these clean-up tasks to be exposed to a temperature sufficient to cause first-degree burns. The AFL–CIO, the UFCW, and the CLC expressed similar concerns. Neither NIOSH nor any of the other commenters suggested a temperature which, in their opinion, would be an acceptable standard for the equipment or materials with which these youths would be performing clean-up tasks. The AFL–CIO, the UFCW, and the CLC along with the NCLC questioned the practicality of the proposal. These commenters expressed doubt that the minors, their employers, and enforcement officials would be able to determine when and if the equipment, oil, or grease had cooled to the permissible temperature of 140 °F, and the CLC inquired whether the Department could enforce the standard ''short of a reported injury which indicates non-compliance.'' The UFCW and the AFL–CIO expressed further concern about the lack of training provided to adolescents in the quick-service restaurant industry, as reported in a 1999 study by NIOSH.

The Education Development Center, Inc. (EDC) of Newton, Massachusetts, took no position on the matter but submitted data and incident reports from the Massachusetts Department of Public Health regarding occupational injuries in restaurants and retail bakeries. The EDC expressed the view that this information ''underscores the problem of burn injuries among teen workers.'' Included in the information was a reference to training materials prepared by the Educational Foundation of the National Restaurant Association for its members, *Aware; Employee and Customer Safety. Manager's Manual, Preventing Burns, 1997* (Inventory Code MG 525, ISBN: 1–883904–62–5. National Safety Council Inventory Code: 15865–0600), which identified 100 °F as the appropriate temperature for oil or grease to be handled by workers (adults or minors) for disposal.

The National Restaurant Association supported the proposal concerning clean-up tasks, including the standard of a maximum allowable temperature of 140 °F for equipment and materials to be handled by youths in such tasks. The National Council of Chain Restaurants did not directly address the proposal concerning permissible clean-up tasks and the maximum allowable temperature.

The Department received some general comments, but no detailed information, in response to the Proposed Rule's request for data and comments on baking activities. NIOSH and the UFCW recommended that the Reg. 3 ban on all baking activities be maintained. The only comment concerning a possible weight limitation came from the UFCW, which recommended against establishing weight limitations on lifting by minors, because a standard would be difficult to enforce and would not work in practice. The Council of Chain Restaurants recommended that the Department give consideration to relaxing the across-the-board prohibition on baking when such functions are performed in a retail restaurant setting, stating that such activities are ''generally extremely safe'' for employees, including 14- and 15-year-olds. The National Restaurant Association, while not addressing the issue of identifying potentially permissible baking activities, offered to conduct a survey of its membership to gather more detailed information for the Department's consideration.

The Department has given careful consideration to all the views and recommendations presented in the comments, and has examined all the materials and authorities that were provided and/or cited by the commenters. Based on this thorough evaluation, the Department has concluded that the Proposed Rule concerning Reg. 3 cooking restrictions will be made final with certain limited modifications as described below.

With regard to the elimination of the ''in plain view'' interpretation, the Department has concluded that the proposed standard should be adopted to replace the ''soda fountains, lunch counters, snack bars'' regulatory language which had been the basis of that interpretation. The Final Rule permits 14- and 15-year-olds to perform only cooking tasks using electric or gas grills which do not have open flames, and using deep fryers which are equipped with and utilize devices that automatically lower and raise the baskets. This standard allows all 14- and 15-year-olds to perform the kinds of cooking tasks that many such workers have, for decades, been permitted to perform under the ''lunch counter'' regulatory language (provided that these tasks were performed ''in plain view'' of the customers). The Department, therefore, does not view this standard as substantially altering the nature of the Reg. 3 restriction, or as increasing the exposure of individual youngsters to possible harm in their food service establishment work sites. The standard provides more consistency in protecting young workers' health and well-being, by specifying the allowable cooking tasks without regard to the manner in which work sites may be arranged by different employers (*i.e.*, the existence of a wall or a pass-though partition, which may vary from worksite to worksite, will have no effect on whether a cooking task is allowable). The standard provides more consistency for employers' child labor compliance efforts and business operations, since all employers will be held to the same rule on allowable cooking tasks regardless of the appearance or arrangement of their worksites. The standard assures the health and well-being of young workers by limiting their cooking tasks to specific types of equipment (*i.e.*, no open flames, no manually-operated deep fryer baskets), but leaves opportunities for employment in the food service establishments which have been—and will continue to be—extremely important ''first job'' experiences for many thousands of young workers. The Department is sensitive to the concerns of commenters who recommended that 14- and 15-year-olds should no longer be permitted to perform any cooking duties whatsoever, due to the possibilities of accidents in the workplace. But the Department believes that such a rule would be unnecessarily broad and that it would be an unwarranted barrier to the personal development of youths that benefit in many ways from positive, healthful work experiences in food service establishments. The Department considers the Final Rule—severely restricting the types of cooking duties that may be performed by such minors—to be appropriate.

The Department seeks to forestall any confusion which might arise from the comment of the Council of Chain Restaurants concerning this portion of the Proposed Rule. The Council indicated that it viewed the proposal to allow youths to cook with ''no open flame'' electric and gas grills as permitting these workers to use a number of automated broilers which are used to broil chicken, beef, and hamburgers as well as toast bread and buns. The Department cautions that the proposal did not alter the Department's long-standing position that cooking with such broilers is prohibited. That position is expressly stated in the Final Rule to prevent misunderstanding, as further discussed below. The Council also recommended that 14- and 15-year-old employees be permitted to cook with all deep fryers, including those not equipped with devices that automatically raise and lower the baskets. The Council stated that ''the job of using a deep fryer is just as safe for the operator regardless of whether the basket is lowered and raised automatically or manually.'' The Department considers both the use of

baskets and the automatic basket device to be important safety features because they significantly restrict the young workers' likelihood of contact with the hot oil or grease in the fryer. Therefore, the Department cautions that 14- and 15-year-olds may not use deep fryers that do not use baskets to contain the food product during frying, nor may they use fryers that require the operator to manually lower or raise the baskets. To assure that employers are fully informed, the Final Rule expressly requires that deep fryers must utilize automatic baskets in order for such employees to cook with them.

In connection with the proposal to continue several long-standing Departmental positions concerning cooking and cooking-related activities, the Department has concluded that the positions should be continued in the Final Rule. As explained in the NPRM Preamble, these positions ban 14- and 15-year-olds from using equipment such as rotisseries, fryolators and ''Neico broilers,'' and permit them to use certain microwave ovens, to use and serve foods from certain warming devices, and to perform various food preparation and kitchen work. The only commenter that addressed these positions—NIOSH—specifically endorsed each of them. No commenter objected to any of the positions. In light of the comment record, as well as the Department's enforcement experience, we believe that it is appropriate to maintain all of these positions. In addition, we believe that the text of Reg. 3 should be modified to add clear statements of two of these standards that have, heretofore, been interpretations of the existing regulatory provisions. Having all of these standards expressly included in the regulation will provide better guidance for employers and greater protections for young workers. Consequently, the Final Rule contains all of these long-established departmental standards.

With regard to the proposal that 14- and 15-year-olds be permitted to perform certain clean-up functions on equipment and materials at a temperature no higher than 140 °F, the Department has concluded—after review of the comments—that a modification in the maximum allowable temperature is appropriate.

While the commenters did not object to the tasks that would be permitted, most of the commenters objected to the maximum allowable temperature of 140 °F, the temperature at which a minor would be exposed to a first-degree burn. Upon careful consideration, the Department concurs with the views of the commenters and has concluded that the regulation should set a temperature standard which would substantially alleviate the potential for these young employees receiving even a superficial burn when performing the authorized cleaning, filtering and disposal activities. None of the commenters suggested an alternative to the proposed maximum allowable temperature. Therefore, the Department has looked to available data and industry publications in order to identify the appropriate maximum allowable temperature of 100 °F.

The Department has reviewed the data presented in a 1990 article entitled *Recommended Maximum Temperatures for Touchable Surfaces* (*Applied Ergonomics* 1990, 21.1, 69–73), in which the author, H. Siekman, demonstrates that there can be no single ''maximum temperature for touchable surfaces'' below which burns can be avoided. The maximum safe temperature varies with both the materials from which the surface is made and the amount of time the skin stays in contact with the hot surface. The article notes that the maximum safe touchable temperature is attained at 140 °F when contact is made for a period of 3–4 seconds with a smooth, uncoated metal surface or with water. The maximum safe touchable temperature for these two same surfaces is reached at 149 °F when the contact lasts no more than one second. Although the author did not determine the maximum safe touchable temperature for oil or grease, the Occupational Safety and Health Administration's Office of Occupational Medicine has advised us that similar burns will occur from contact with oil or water when the temperature and length of the exposures are the same for each liquid.

The Department has considered the safety guidelines for the food service industry, published by the Educational Foundation of the National Restaurant Association—*Aware: Employee and Customer Safety. Manager's Manual, Preventing Burns, 1997* (Inventory Code MG 525, ISBN: 1–883904–62–5. National Safety Council Inventory Code: 15865–0600). These safety guidelines recommend that the oil from deep fryers be cooled to 100 °F prior to disposal (without differentiating when an adult or a minor employee performs such tasks).

The Department has concluded that a maximum allowable temperature of 100 °F—for equipment surfaces as well as for oil and grease—will significantly diminish the possibility of young workers suffering burns while cleaning equipment and surfaces or while filtering and disposing of cooking oil and grease.

The Department recognizes that compliance with this standard will require vigilance by employers, whose managers and supervisors must assure that equipment and materials have cooled to 100 °F or less, before young workers are allowed to undertake any clean-up tasks such as washing the machines or removing or filtering the oil or grease. This supervision may be exercised through the use of thermometers, and through the imposition of cool-down waiting periods during which the equipment is out of use while the temperature falls. The Department's enforcement of this standard will use the investigative methods which have consistently been used in the child labor program. As with other child labor restrictions, the investigator would, of course, consider a violation to be self-evident where there is an injury to a young worker as a result of the specified activities (*e.g.*, worker's hand burned by oil that the worker was filtering or removing). As with other restrictions, the investigator would also identify violations through observations at the worksite and through interviews with workers (both adults and minors) and supervisors, to obtain information concerning the tasks performed by youths.

The ban on cleaning grilles that exceed a temperature of 100 °F would not prohibit 14- and 15-year-olds from performing the normal grill ''maintenance'' that an employee routinely does during the actual cooking process involving the use of water and a spatula to scrape away and remove food particles and grease from the surface of the grill.

With regard to the Reg. 3 prohibition on all baking activities by 14- and 15-year-olds, the Department has concluded that no regulatory modification will be undertaken at the present time. The comments addressing this point were general statements of positions, either opposed to any change in the existing regulation or in favor of a relaxation of the existing prohibition. No specific information was submitted. The National Restaurant Association offered to conduct a survey of its members to obtain information and requested an extension of the comment period for this purpose, but the Department concluded that it would not be appropriate to further delay the rule making procedure to provide time for this activity. The Department would welcome any survey information that the Association may provide. The matter of the Reg. 3 prohibition on

baking activities may be considered in future rule making.

The Proposed Rule did not contain provisions dealing with the training of young workers. However, several commenters expressed concerns that young workers fail to receive on-the-job training that is crucial to protecting their health and well-being. The Department recognizes the important roles that occupational safety education and training—in the home, in the classroom, and on-the-job—play in helping teens experience positive work experiences and in reducing injuries to all workers. The Department encourages all those who can positively impact the health and well-being of young workers to expand their efforts in this important area of safety instruction.

C. Explosives and Articles Containing Explosive Materials (HO 1) (29 CFR 570.51)

Hazardous Occupations Order No. 1, originally issued in 1939, greatly restricts the employment of minors in any establishment which manufactures or stores explosives or articles containing explosive components (*e.g.*, plants that manufacture dynamite, fireworks, or gunpowder). HO 1 also prohibits minors from handling and transporting primers and blasting caps.

The regulation's definition of the crucial terms ''explosives and articles containing explosive components'' has become, in part, obsolete. The definition states that these terms ''mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers * * * issued pursuant to the [Interstate Commerce Act] * * *''. Congress abolished the Interstate Commerce Commission in 1995. The HO 1 incorporation of ICC regulatory standards is, therefore, no longer feasible and the Department proposed to revise the definition to eliminate this ICC reference.

The Department considers it essential that the HO 1 definition of ''explosives and explosive components'' be as complete, clear, and user-friendly as possible, so as to best serve the FLSA's purpose of protecting young workers from hazards. Therefore, while preparing to delete the incorporation of ICC standards, the Department sought an alternate source of expertise in the identification of explosives and explosive components. After careful consideration, the Department concluded that the appropriate source of expertise is the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (ATF). Prior to the enactment of the Homeland Security Act of 2002, the ATF was part of the Department of Treasury and was named the Bureau of Alcohol, Tobacco and Firearms. Under statutory and regulatory mandates (18 U.S.C. 841(d); 27 CFR 55.23), the Director of ATF must revise and publish at least annually in the **Federal Register** a list of explosives covered by the U.S. Code Title 18 provisions concerning importation, manufacture, distribution and storage of explosive materials. The ATF list, which covers explosives, blasting agents and detonators, is intended to include any and all mixtures containing any of the materials on the list. At the time of the publication of the Proposed Rule, the most recent ATF list had been published in the **Federal Register** on May 1, 1998 (63 FR 24207). The most recent list was published in the **Federal Register** on March 31, 2004 (69 FR 16958). The Department proposed to revise the HO 1 definition of ''explosives and articles containing explosive components'' to include the materials identified in the 1998 ATF list, and have it appear in an appendix to the HO 1 subsection of the regulations. The Department pointed out that, by comparing this alphabetical list of materials to the product information for materials that are used or stored at the work site (*e.g.*, the list of contents found on the product package), employers and other parties could readily determine whether any product or material is an explosive or contains explosive components, so as to be within the HO 1 prohibition.

Only two comments were received on this proposal. NIOSH recommended that, as the ATF list is to be updated in the **Federal Register** annually, the Department should reference the ''current'' list rather than incorporate the 1998 list into the regulations. NIOSH also recommended that the Department retain the more general terminology (*e.g.*, ammunition, fireworks, primers and smokeless powders) within the text of HO 1 as these terms are not contained in the List of Explosive Materials. The CLC supported the Department's referencing of the ATF list of explosives but expressed a concern about the Department's ''enforcement of HO 1 protection when it comes to minors being employed in the U. S. military.''

The Department has carefully considered these comments and consulted with the ATF. The ATF has advised that the Department's proposed definition of *explosives* and *articles containing explosive components* is incomplete as it does not contain all the explosives listed in 18 U.S.C. 841(c)–(f). The ATF noted that the proposed definition, should, but does not, ''encompass any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion'' as per 18 U.S.C. 841(d). The ATF also reminded the Department that its annual list of explosive materials is not all-inclusive and the fact that an explosive material is not on the list does not mean that it falls outside of the coverage of the law if it otherwise meets the statutory definitions in 18 U.S.C. 841. The ATF also recommended, as did NIOSH, that the Department not publish the annual list of explosives as an appendix of HO 1 but incorporate the list in the HO by reference so as to ensure that the list is current and to avoid the need for additional rulemaking each time the list is revised. The ATF also recommended that the regulation refer the public to the website where ATF publishes the list.

As explained above, the Department's intention in the Proposed Rule was to provide the most complete, clear and user friendly regulation possible, through the incorporation of the ATF list into the regulation (as a complete, alphabetical list in Appendix A) rather than a mere cross-reference to the ATF publication. Upon reconsideration, the Department agrees with NIOSH and the ATF that these goals can be better achieved by incorporating the ATF list of explosive materials into the rule by reference and by providing the public with information as to how to obtain the most current list. Accordingly, the HO 1 Appendix presented in the Proposed Rule has been omitted.

The Department also agrees that greater clarity can be brought to the definition of *explosives* and *articles containing explosive component* by adopting ATF's recommendations to expand that definition to include ''any chemical compound, mixture, or device the primary or common purpose of which is to function by explosion'' and incorporate the statement, as contained on the ATF list of explosive materials, that the list is updated annually and not intended to be all-inclusive. The Department believes that these changes serve to clarify the proposed definition and are of such a nature that they can be incorporated into the final rule without additional public comment. Accordingly, the Department adopts the proposal as a Final Rule with the modifications listed above.

The Department notes that, while the Proposed Rule contained a detailed list

of particular materials in the Appendix, it did not propose to remove the more general terminology of *ammunition, black powder, blasting caps, fireworks, high explosives, primers,* and *smokeless powder* from the HO 1 definition of the terms *explosives and articles containing explosive components.* Therefore, the NIOSH concern about the regulatory definition is accommodated through the adoption of the rule, as proposed.

In response to the comments of the CLC concerning minors in military service, the Department notes that the jurisdiction of the FLSA—including its child labor provisions—does not extend to members of the United States' armed forces.

D. Driving on Public Roads or Highways (HO 2) (29 CFR 570.52)

Hazardous Occupations Order No. 2, originally issued in 1940, generally prohibits minors under 18 years of age from employment in the occupations of motor-vehicle driver and outside helper on any public road or highway; in or about any mine, logging or sawmilling operations; or in any excavation covered by HO 17 (which includes excavation in trenches, building construction, or tunnels; 29 CFR 570.68). The occupational dangers specifically identified by the original HO 2 included the high degree of accident risk for persons of any age in these occupations, the fact that 16- and 17-year-old drivers experience a proportionately larger number of fatal accidents than older drivers, and the fact that States placed numerous restrictions on employees who perform as drivers and driver helpers.

HO 2 contains two limited exemptions to the prohibition on minors driving on public roads and highways: ''incidental and occasional'' driving under certain restrictions; and school bus drivers for a limited period under certain restrictions. The history of these two exemptions was discussed in the Proposed Rule. The exemptions are discussed separately below.

1. ''Incidental and occasional driving'' (§ 570.52(b)(1)).

HO 2 provides a limited exemption (§ 570.52(b)(1)) permitting 16- and 17-year-olds to drive automobiles and trucks on public roads and highways on an ''incidental and occasional'' basis when all the following criteria are met:

- The automobile or truck being driven does not exceed 6,000 pounds gross vehicle weight;
- The driving is restricted to daylight hours;
- The minor holds a State driver's license valid for the type of driving involved in the job performed and has completed a State-approved driver education course; and
- The vehicle is equipped with a seat belt or similar restraining device for the driver and for each helper, and the employer has instructed each minor that such belts or other devices must be used.

The limited exemption is not applicable to any occupation of motor-vehicle driver that involves towing a vehicle.

The term ''incidental and occasional''—while not defined in the regulations—was for many years interpreted by the Department to mean only driving that involves emergency-type situations or that happens at rare intervals. Thus, the Department enforced the exemption as not including driving which, even if only infrequent or sporadic, is an integral part of the job. The Department's interpretation excluded from the exemption any situations where a minor's employment requires routine and regular driving, such as to deliver auto parts, make pizza deliveries, or run errands.

The Department reviewed HO 2 in 1984 and concluded, based upon data involving vehicle-related injuries and fatalities, that HO 2 should be retained in its current form. The Department found that 16-year-olds were involved in a disproportionate share of accidents and tended to be responsible for fatal accidents more often than other drivers. Seventeen-year-old drivers were the next most likely to be involved in such accidents. Teenagers accounted for 8 percent of the population at the time but sustained 17 percent of fatal injuries in automobile accidents.

In 1987, concerned that some of the child labor regulations needed updating, the Department created the Child Labor Advisory Committee (CLAC), a committee whose mandate was to consider, among other things, the appropriate scope of ''incidental and occasional'' driving in the HO 2 exemption. In 1989, after careful consideration of HO 2, the CLAC recommended clarification of the term ''incidental and occasional'' driving. The committee's recommendation, discussed below, was later adopted with modifications and issued by the Department as interpretative guidance.

In 1994, in its continuing effort to review its child labor regulations, the Department published an Advance Notice of Proposed Rulemaking (59 FR 25167) seeking the views of the public on possible changes in the child labor regulations, including the Hazardous Occupations Orders. Although HO 2 was not specifically mentioned in the ANPRM, the Department received comments from various groups with differing views of HO 2. For example, the National Automobile Dealers Association (NADA), individual automobile dealerships, and florists requested more flexibility in the Department's interpretation of ''incidental and occasional'' driving and urged a change in HO 2 to permit minors to spend more time driving on the job. Child advocacy groups, on the other hand, sought to further limit, or to abolish completely, job-related teenage driving. The Child Labor Coalition, for example, supported a definition of ''incidental and occasional'' which permitted emergency-situation driving only. The Washington State Child Labor Advisory Committee recommended a complete ban on teenagers driving on-the-job.

As a result of comments received in response to the ANPRM, the Department decided to review HO 2. In 1995, in order to clarify the appropriate scope of ''incidental and occasional'' driving until further rulemaking could be completed, the Wage and Hour Division adopted the Child Labor Advisory Committee's 1989 recommended interpretation. Under this Departmental interpretation of the regulatory language, driving was deemed *incidental* if it was limited to no more than 20% of the minor's work in any workday and did not exceed 5% of the minor's worktime in any workweek when performed. Driving was deemed *occasional* if the minor drove on average no more than once in a workweek and no more than four times in a calendar month. A ''single episode'' of driving meant an occurrence when the employee was working and operated a motor vehicle on behalf of the employer. Although the Child Labor Advisory Committee also recommended that the HO 2 exception should be permitted only for 17-year-olds, the Department did not address this point because it was considered too substantive to be adopted without rulemaking.

The Drive for Teen Employment Act (Pub. L. 105–334) was signed by the President on October 31, 1998. The Act amended the FLSA by adding a new subsection 13(c)(6). This provision prohibits employees under 17 years of age from performing any on-the-job driving of automobiles and trucks on public roadways. It permits 17-year-old employees to drive automobiles and trucks on public roadways only if such driving meets all of the following conditions:

''(A) Such driving is restricted to daylight hours;

''(B) The employee holds a State license valid for the type of driving involved in the job performed and has no records of any moving violation at the time of hire;

''(C) The employee has successfully completed a State approved driver education course;

''(D) The automobile or truck is equipped with a seat belt for the driver and any passengers and the employee's employer has instructed the employee that the seat belts must be used when driving the automobile or truck;

''(E) The automobile or truck does not exceed 6,000 pounds of gross vehicle weight;

''(F) Such driving does not include—

''(i) The towing of vehicles;

''(ii) Route deliveries or route sales;

''(iii) The transportation for hire of property, goods, or passengers;

''(iv) Urgent, time-sensitive deliveries;

''(v) More than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer or to a customer (other than urgent, time-sensitive deliveries);

''(vi) More than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than employees of the employer);

''(vii) Transporting more than three passengers (including employees of the employer); or

''(viii) Driving beyond a 30 mile radius from the employee's place of employment; and

''(G) Such driving is only occasional and incidental to the employee's employment.

''For purposes of subparagraph (G), the term ''occasional and incidental'' is no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's worktime in any workweek.''

While the Drive for Teen Employment Act affected the HO 2 exemption for ''occasional and incidental'' driving, the Act did not affect any other parts of HO 2, which continue to apply as it has since the regulation's promulgation. The HO restrictions apply to driving on public roadways and have no effect on driving of motor vehicles by 16- and 17-year-old employees when performed exclusively on private property (except in or about any mine, logging or sawmilling operations, or any excavation covered by HO 17). The HO 2 prohibition against the employment of 16- and 17-year-olds driving motor vehicles on public roads other than cars and trucks—such as truck-tractors, trailers, semitrailers, and motorcycles—remains the same. The HO 2 prohibition concerning the towing of any vehicle (whether such vehicle is motorized or non-motorized) also remains the same. The HO 2 prohibition concerning the employment of 16- and 17-year-olds as ''outside helpers'' on motor vehicles is unchanged. The Act also leaves unchanged the applicability of HO 2 regardless of the registration or ownership of the vehicle being driven by the minor. Further, the Act has no effect on the relationship between the FLSA, HO 2, and State laws. Many States have laws setting standards for child labor and teen drivers. When both Federal and State laws apply, the law setting the more stringent standard must be observed.

The Department proposed to revise HO 2 to incorporate the provisions of the Drive for Teen Employment Act and to provide guidance regarding what constitutes ''urgent, time-sensitive deliveries.'' The Department stated its view that such deliveries—prohibited by the Act—would include trips which, because of such factors as customer satisfaction, the rapid deterioration of the quality or change in temperature of the product, and/or economic incentives, are subject to time-lines, schedules, and/or turn-around times which might impel the driver to hurry in the completion of the delivery. Such trips would include, but are not limited to, the delivery of pizzas and prepared foods to the customer; the delivery of materials under a deadline (such as deposits to a bank at closing); and the shuttling of passengers to and from transportation depots to meet transport schedules. ''Urgent, time-sensitive deliveries'' would not depend on the delivery's points of origin and termination, and would include the delivery of people and things to the employer's place of business as well as from that business to some other location.

The Department noted that the employer bears the burden of proving compliance with several conditions contained in the Drive for Teen Employment Act that must be met before a 17-year-old employee may drive automobiles and trucks on public roadways in his/her job performance. These conditions include: the employee must have a State license valid for the type of driving being performed; the employee must have successfully completed a State approved driver education course; and the employee must have no records of any moving violations at the time of hire. The Department did not propose to require that employers create or maintain any records with regard to compliance with the Drive for Teen Employment Act. The Department observed that, in order to better protect themselves against unwitting violations of HO 2, employers may wish to obtain, at the time of hire, sufficient documentation from 17-year-old employees who will be expected to drive on-the-job. This documentation could include such things as an age certificate issued in accordance with the child labor regulations (29 CFR 570.5–.27), photocopies of the minor's driver license and his/her certificate of completion or diploma issued by the State approved driver education course, and correspondence from State or local authorities and/or the minor's insurance company verifying that the minor has no records of moving violations.

The Department also noted that the Drive for Teen Employment Act limits the type and extent of driving a 17-year-old may perform on-the-job. The Department did not propose to require that employers create or maintain any records with regard to compliance with these provisions of the Act. The Department observed, however, that in order to better protect themselves against unwitting violations of these restrictions, employers may wish to maintain logs to keep track of on-the-job driving performed by 17-year-old employees. These logs could identify the driver and show such things as the starting and stopping times of each trip, the destination of each trip, the purpose of each trip, the number of miles driven, the vehicle driven, and the number of passengers riding in the vehicle.

Four comments were received on the proposal to revise HO 2.

NIOSH concurred with the Department's proposal to incorporate the provisions of the Drive for Teen Employment Act in HO 2 and supported the proposed standard regarding ''urgent and time-sensitive deliveries.'' Though agreeing that requiring employers to create new systems of records to document compliance with the revised HO 2 would be unnecessarily prescriptive, NIOSH expressed the view that the proposed guidance to employers—concerning possible records and driving log information—would be helpful to them in their efforts to comply with the law. NIOSH recommended that these suggestions and guidance should be retained in the final rule.

The NCLC stated that it was ''disturbed by the extension of commercial driving activities permitted for seventeen year olds'' but did support the requirements that these drivers be properly licensed and have no record of moving violations. The NCLC expressed concern as to the enforceability of the proposed regulation, and stated that the

Department might be able to monitor and enforce compliance if the Department's suggestions (concerning employer documentation of the licensing and driving history of 17-year-olds, as well as logs concerning the nature and extent of their driving) were made requirements.

A Dallas-based labor consultant echoed the sentiments of the NCLC and stated that the proposal—suggesting, but not requiring, possible records—gave an incentive for the employer not to keep any records. He recommended that the rule should require that adequate records be maintained ''so that when an investigator checks for compliance it is all documented.'' He also suggested that the rule should include a requirement that 17-year-old drivers maintain safe driving records while employed.

The National Automobile Dealers Association (NADA) commented on three aspects of the proposal. First, NADA objected to the NPRM Preamble statement that ''the employer bears the burden of proving compliance'' with the Drive for Teen Employment Act; NADA suggested that the statement should be that ''employers are responsible for complying with the Act and with HO 2.'' Further, NADA objected to the NPRM Preamble's ''list[ing] gratuitously a host of detailed recordkeeping 'suggestions.' '' NADA recommended that these suggestions be deleted ''so as to avoid any conflict with the Act's intent or with Paperwork Reduction and Regulatory Flexibility Acts requirements.'' Finally, NADA objected to the proposed definition of *urgent, time sensitive deliveries*. While acknowledging that ''employers should not require employee drivers, least of all teenagers, to drive under time restraints that may result in speeding or otherwise compromise safety,'' NADA stated that that the proposed definition ''can be read to restrict an employer's ability to see that work responsibilities are completed in a timely manner and without inappropriate delay.'' NADA observed that ''[t]he fact is, younger workers often require extra oversight regarding their work timeliness. Consequently, the * * * definition should * * * distinguish between deliveries that are prohibited because they necessarily call for haste or undue speed and those that evidence responsible work habits.'' NADA did not suggest alternative language.

The Department has fully considered these comments.

With regard to the employer's obligation to assure compliance, and the NPRM Preamble suggestions as to methods by which the employer may meet that obligation, the Department has concluded that the rule will be issued as proposed and that the compliance suggestions (which were not proposed for inclusion in the regulation) will not be withdrawn.

As pointed out by NADA, the employer bears the burden of complying with the Drive for Teen Employment Act. An employer can permit a 17-year-old employee to drive on public roads or highways in the course of his/her job duties *only* through the ''incidental and occasional driving'' exemption incorporated into the FLSA by the Drive for Teen Employment Act. If the Department conducts an investigation, it will follow its normal investigation procedures to determine if the employer complied with child labor requirements, including the restrictions on driving. If the Department finds a violation, it will be the employer's burden—as it is for all statutory and regulatory exemptions—to establish that it did not violate the driving restrictions. It is well settled that an employer seeking to avail itself of any exemption to FLSA provisions must be able to prove satisfaction of all the requirements of that exemption. *See e.g.*, *Arnold* v. *Ben Kanowsky*, 361 U.S. 388, 392 ; *reh. denied,* 362 U.S. 945 (1947); *Donovan* v. *United Video, Inc.*, 725 F.2d 577, 580–81 (10th Cir. 1984). The employer may carry this burden of proof through documents or records of its own choice; the Department does not impose any particular requirements as to documentation. However, we consider it to be appropriate to offer assistance to employers who seek to comply with the FLSA and HO 2. Therefore, the Department has made suggestions of several easy-to-use methods that employers may wish to follow—which include obtaining and/or photocopying documentation concerning such things as the age, licensing and driving history of the 17-year-old, and the maintaining of certain logs concerning on-the-job driving. These suggested methods are purely voluntary, despite the recommendations of some commenters that these records be made mandatory. No employer will be penalized for not having the materials identified in the suggestions. Since the Department is not imposing any recordkeeping burdens on employers through this compliance assistance, there is no conflict with the intent of the Drive for Teen Employment Act, or with the requirements of the Paperwork Reduction Act and Regulatory Flexibility Act.

With regard to the definition of *urgent, time-sensitive deliveries*, the Department has concluded that the rule will be issued as proposed. The definition encompasses the types of on-the-job driving that are likely to involve 17-year-old employees in hurried and therefore hazardous work activity. The Department concurs with NADA's comment that ''young workers often require extra oversight regarding their work timeliness'' and believes that this need for oversight is a natural result of their youth and inexperience in the world of work. The Department recognizes that, on a day-to-day basis, employers of young workers provide training in important work habits such as timeliness, productive use of worktime, attention to details, and responsiveness to instructions. Employers can better protect the health and well-being of their young workers by taking their need for extra oversight into account during all aspects of their employment. An employer's oversight should include assuring that adequate time is provided for the young worker's safe completion of tasks, and assuring that appropriate instructions are given to the worker in a clear and effective manner. Employers should be aware that if a young driver is not given enough time to complete a trip without hurrying, or if he/she is given instructions which imply a requirement for hurried action, an on-the-job trip that would not normally fall within the definition of an *urgent, time-sensitive delivery* would become one. The Department is confident that employers of 17-year-old drivers will recognize the needs of their young workers, and will exercise appropriate oversight in developing work skills while assuring compliance with the Drive for Teen Employment Act.

The Department has considered the suggestion of one commenter that the rule should include a requirement that 17-year-old drivers maintain safe driving records while employed. However, we have concluded that the Drive for Teen Employment Act does not authorize the imposition of such a requirement. The statute speaks only of the young driver having ''no records of any moving violation at the time of hire.''

2. School Bus Drivers (§ 570.52(b)(2))

Hazardous Occupations Order No. 2 provides a limited exemption for driving on public roads and highways by certain youths employed as school bus drivers (§ 570.52(b)(2)). This exemption has been included in HO 2 for decades, but was revised to its present form in 1991. The Department conducted a review of the school bus driver exemption in 1990, and gave particular attention to the views of the Child Labor Advisory Committee (discussed above). A Proposed Rule was

published in 1990, addressing this exemption along with some other issues concerning other HOs (55 FR 42812). A Final Rule was issued in 1991 (56 FR 58626), revising the school bus drivers exemption to permit employment of young workers as school bus drivers only through the 1995–1996 school year, for certain schools that were already employing young drivers under authorizations previously issued by the Department.

The Department proposed to delete from HO 2 the now-expired school bus driver exemption. The exemption was available only to certain ''grandfathered'' school districts and, by the explicit language of the regulation, expired with the 1995–1996 school year. The Department saw no justification for a revival of the exemption, since our records reflect that this exemption was last used by a school district in the 1994–1995 school year, one year before the exemption's last available school term under the regulation.

No comments were received concerning this proposal. The proposed deletion of this HO 2 provision is implemented in the Final Rule.

E. Scrap Paper Balers and Paper Box Compactors (HO 12) (29 CFR 570.63)

Hazardous Occupations Order No. 12 generally prohibits minors under 18 years of age from working in occupations involving the operation of paper-products machines. The HO prohibits the loading, operation and unloading of scrap paper balers, including paper box balers and compacting machines, and other power-driven machines used in the remanufacture or conversion of paper or pulp into a finished product. When HO 12 was promulgated in 1954, the dangers specifically associated with the operation of scrap paper balers involved being caught in the plungers during the compression process and suffering strains and other injuries while moving the compressed bales.

The Department has consistently interpreted HO 12 to apply to any establishments that use such paper-products machines, including retail stores. The Department has long interpreted the regulation as applying to paper box compactors (which generally perform the same function, utilize the same processes of compacting, and present the same dangers as scrap paper balers) although paper box compactors are not specifically named in the HO. The Department has also interpreted the prohibitions of HO 12 as applying to equipment used exclusively to process paper products, even though machines used to process other materials, in addition to paper products, share the identical machine designs, operation methods, and potential risks.

As a result of reports the Department received in the 1980s of injuries to minors employed in retail stores involving paper balers, in 1990–91 the Wage and Hour Division conducted a review of HO 12 as it applied to grocery stores and other retail operations. Through a Proposed Rule (55 FR 42812), followed by a Final Rule (56 FR 58626), HO 12 was amended in December 1991. The regulation was clarified as applying where the baled paper products were recycled, as well as where they were disposed of as trash. Further, the regulation's prohibition on ''operation'' was clarified as not including the stacking of materials in areas adjacent to the machine. Finally, the regulation was revised to explicitly state that HO 12 applied to all establishments that used such machines, consistent with long-established Departmental interpretation.

The Department published an Advance Notice of Proposed Rulemaking in 1994 (59 FR 25167), seeking the public's views on possible changes in the child labor regulations, including the Hazardous Occupations Orders. Although HO 12 was not specifically mentioned in the ANPRM, the Department received comments from representatives of the grocery industry asserting that recent technological changes have rendered certain new balers and compactors safe for minors to load. The Food and Allied Service Trades Department, AFL–CIO, opposed any relaxation of the prohibitions contained in HO 12. The Child Labor Coalition also opposed any relaxation of HO 12 and suggested that it should be expanded to include all compactors.

The Compactor and Baler Act was signed by the President on August 6, 1996 (Pub. L. 104–174). This legislation amends the FLSA by adding a new subsection 13(c)(5) to permit 16- and 17-year-olds to load, but not operate or unload, scrap paper balers and paper box compactors only if all of the following conditions are met:

''(A) [The loading involves] * * * scrap paper balers and paper box compactors—

''(i) That are safe for 16- and 17-year-old employees loading the [machines]; and

''(ii) That cannot be operated while being loaded.

''(B) For purposes of subparagraph (A), scrap paper balers and paper box compactors shall be considered safe for 16- and 17-year-old employees to load only if:

''(i)(I) The scrap paper balers and paper box compactors meet the American National Standard Institute's Standard ANSI Z245.5–1990 for scrap paper balers and Standard ANSI Z245.2–1992 for paper box compactors; or

''(II) The scrap paper balers and paper box compactors meet an applicable standard that is adopted by the American National Standards Institute after the date of enactment of this paragraph and that is certified by the Secretary to be at least as protective of the safety of minors as the standard described in subclause (I);

''(ii) The scrap paper balers and paper box compactors include an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

''(iii) The on-off switch of the scrap paper balers and paper box compactors is maintained in an off position when the scrap paper balers and paper box compactors are not in operation; and

''(iv) The employer of 16- and 17-year-old employees provides notice, and posts a notice, on the scrap paper balers and paper box compactors stating that:

''(I) The scrap paper balers and paper box compactors meet the applicable standard described in clause (i);

''(II) 16- and 17-year-old employees may only load the scrap paper balers and paper box compactors; and

''(III) Any employee under the age of 18 may not operate or unload the scrap paper balers and paper box compactors.''

The NPRM stated that the Compactor and Baler Act required that all employers subject to the FLSA submit a report to the Secretary of Labor when an employee under 18 years of age died or suffered an injury requiring medical treatment (other than first aid) as a result of contact with a scrap paper baler or a paper box compactor during the loading, operation, or unloading of the equipment (§ 13(c)(5)(C)). This reporting obligation, which expired on August 6, 1998, required that the report be submitted within ten days of the occurrence of the injury or death. Only one report, involving the serious injury of a minor in Cass County, Texas, was received by the Department during the mandatory reporting period.

The NPRM also explained that the Compactor and Baler Act modified section 16(e) of the FLSA—concerning civil money penalties—to specify that such penalties may be assessed for violations of the new subsection 13(c)(5) as well as other child labor provisions. The Act did not modify the amount of the penalty under section 16(e), which

at that time was a maximum of $10,000 per violation for each minor who was the subject of the violation.

The Department proposed to amend HO 12 to incorporate the provisions of the Compactor and Baler Act. The NPRM specified that the regulation's prohibition on 16- and 17-year-olds operating and unloading compactors and balers would not be changed, and the regulation would specify that these minors may load machines only in accordance with the standards set by the Act. The Department noted that employers bear the burden of proving compliance with these standards:

(1) *The equipment must meet the ANSI standards imposed by the Act.* The NPRM recognized that Congress explicitly applied certain industry standards for the determination of which balers and/or compactors are safe for minors to load: American National Standards Institute's (ANSI) Standard ANSI Z245.5–1990 for scrap paper balers or Standard ANSI Z245.2–1992 for paper box compactors. ANSI is a national organization that coordinates the development of voluntary, consensus standards in a wide range of areas, including product and worker safety. Congress has used ANSI standards in other contexts as expressions of the best available technology in the safety area. For example, the Occupational Safety and Health Act of 1970 directed the Department of Labor to adopt the then-existing ANSI standards, rather than delay any activity until the agency promulgated particular occupational safety and health standards (see section 6(a) of the Occupational Safety and Health Act, 29 U.S.C. Sec. 655(a)). The ANSI standards for scrap paper balers and paper box compactors govern the manufacture and modification of the equipment, the operation and maintenance of the equipment, and employee training. Because these ANSI standards are copyright-protected, the NPRM stated that the Department cannot include them in the regulations or reproduce them for distribution to the public. Copies of the applicable ANSI standards are available for inspection at the Office of the **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC, 20408, at the Occupational Safety and Health Administration Docket Office at Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C., 20210, and at any of the OSHA regional offices. Copies of these standards are available for purchase at the American National Standards Institute, 11 West 42nd Street, New York, New York 10036.

The Department proposed that the employer will be required to make an initial determination of whether its machine(s) meet the ANSI standards, and that the Wage and Hour Division may make a final determination in any investigation concerning minors' work with the machines.

The Department's proposal incorporated only the two ANSI standards specified in the Compactor and Baler Act. However, the Department recognized that the Act also provides that any new standard(s) adopted by ANSI would be sufficient for the determination of safety of the balers and compactors if the Secretary of Labor certifies the new standards to be at least as protective of the safety of minors as Standard ANSI Z245.5–1990 for scrap paper balers or Standard ANSI Z245.2–1992 for paper box compactors. The NPRM explained that the Department was aware that ANSI has adopted newer standards for scrap paper balers (Standard ANSI Z245.5–1997) and for paper box compactors (Standard ANSI Z245.2–1997). When the NPRM was issued, the Department was in the process of reviewing these standards to determine if they are at least as protective of the safety of minors as those standards cited in the Compactor and Baler Act. A preliminary review indicated the new standards are as protective as those cited in the Act, and the NPRM noted that the Department was considering whether to include the new standards along with the older standards when the final rule was promulgated. The public was invited to provide comment on whether Standard ANSI Z245.5–1997 is as protective of the safety of minors as Standard ANSI-S245.5–1990, and whether Standard ANSI Z245.2–1997 is as protective of the safety of minors as Standard ANSI Z245.2–1992.

(2) *Notice is provided and posted on each piece of equipment.* The Compactor and Baler Act requires that, before any 16- or 17-year-olds may load materials into scrap paper balers and paper box compactors, the employer must provide notice and post a notice on each piece of equipment stating that the machine meets the applicable ANSI standard, that 16- and 17-year-olds may only load the equipment, and that no employee under age 18 may operate or unload such equipment. The Department proposed that the employer meet this statutory requirement by posting a permanent notice—containing the necessary information—in a place on the machine that is prominent and easily visible to any persons loading, operating, or unloading it. The Department proposed no specific form of notice but proposed specific language taken from the statutory requirements to be included in the notice.

(3) *The equipment must have certain controls and locks.* The Compactor and Baler Act requires that the equipment must include an on-off switch incorporating a key-lock or other system, that the control of the system must be maintained in the custody of employees who are 18 years of age or older, and that the on-off switch must be maintained in an off position when the equipment is not in operation. The Department proposed to include these explicit requirements in the regulation.

The Department also proposed to include in the regulation a specific identification of paper box compactors among the types of equipment subject to HO 12. The NPRM explained that this addition was required by the legislation, which explicitly includes paper box compactors. In addition, the NPRM stated, this regulatory change would communicate the Department's long held position that HO 12 also applies to paper box compactors which perform the same function, operate in a similar manner, and present the same risks as scrap paper balers, which are explicitly listed in the current regulation.

In addition to the regulatory changes necessitated by the Compactor and Baler Act, the Department proposed to modify HO 12 and its title to include scrap paper balers and paper box compactors that are used to process other materials in addition to paper products. In the past, HO 12 has prohibited minors from loading, operating, and unloading only those scrap paper balers and paper box compactors that are used exclusively to process paper products.

The proposed rule also would amend the regulations in part 579 concerning civil money penalties, to implement the Compactor and Baler Act's explicit authorization for penalties not to exceed $10,000 for each employee who was the subject of a violation of new subsection 13(c)(5) of the FLSA.

The Department received six comments on this proposal—from NIOSH, the Food Marketing Institute (FMI), the Council, the NCLC, the CLC, and the National Grocers Association (NGA). None of the commenters opposed the proposal to incorporate the provisions of the Compactor and Baler Act into the regulation. However, the commenters differed with regard to some of the particulars of the proposed regulation, as discussed by topic below.

Notice to be posted on machine. Opinions differed as to the wording of the notices that must be posted on balers and compactors that 16- and 17-

year-olds would be authorized to load, but not operate or unload.

The Department proposed that the exact language appearing in the statute be required on all notices in order to eliminate confusion and provide employers with clear guidance. The Department also believed that minors, who change jobs frequently, would receive greater overall protection if the posting language were consistent among all employers.

The NCLC commented that, while it had opposed and continues to oppose the Compactor and Baler Act, it realized that the Department must implement the provisions of the statute. In that context, the NCLC stated that it supported ''the clear and stringent proposed revisions'' to HO 12. The CLC also supported the Department's proposal but recommended that the notice should also include language prohibiting any minor from placing his or her hands, arms, or legs into the machine at any time.

Both the NGA and the FMI objected to the Department's proposal to adopt, for the required notice, the language exactly as it appears in the statute. Both organizations recommended that the Department not adopt the verbatim statutory language for the notice but, instead, allow employers to use the notice ''stickers'' which these organizations have developed for their industry. The NGA stated that, along with the FMI, it had undertaken an educational compliance program to inform retailers and wholesalers of how to comply with the new law. This program included the developing and marketing of notice stickers, copies of which were provided to the Department along with their comments. The organizations asserted that these stickers were in compliance with the posting requirements of the Compactor and Baler Act. The FMI also stated that it worked closely with ANSI experts to ensure that the stickers were consistent with industry safety standards and would effectively attract the attention of employees approaching or intending to use the machines. The FMI and the NGA pointed out that adoption of the proposed rule would render their stickers unusable.

After carefully considering the comments, the Department agrees that accepting only those notices which reflect the exact wording of the Compactor and Baler Act would be overly prescriptive. The Department believes that the intent of the Compactor and Baler Act will be satisfied if each notice: (1) Contains an accurate statement that the baler or compactor to be loaded by the minor meets the applicable ANSI standard named in section 13(c)(5)(B)(i)(I) of the FLSA or meets a more recent ANSI standard which the Secretary has certified to be at least as protective of the safety of minors as the standard described in section 13(c)(5)(B)(i)(I); (2) cites the specific ANSI standard, including the year of issuance, that the employer is providing notice that the equipment meets; (3) includes a clear statement that 16- and 17-year-olds may only load the scrap paper balers and paper box compactors; and, (4) includes a clear statement that no employee under the age of 18 may operate or unload the scrap paper balers and paper box compactors.

The Department has examined the sample notices—stickers—provided by both the NGA and the FMI. We note that these stickers do not clearly identify the applicable ANSI standard as required by the Compactor and Baler Act. ANSI includes, in the caption or title of each of its standards, both a ''series identifier'' and a year of issuance, so as to eliminate confusion between different editions of standards that apply to the same type of machinery. Congress recognized this precision of ANSI nomenclature when, in adopting the Compactor and Baler Act, it specifically required that balers meet Standard ANSI Z245.5–1990 and compactors meet Standard ANSI Z245.2–1992. ANSI has issued a succession of standards in the Z245.5 series for balers: Standard ANSI Z245.5–1982; revised and replaced by Standard ANSI Z245.5–1990 (approved December 12, 1989); revised and replaced by Standard ANSI Z245.5–1997. ANSI does not always adopt the same series identifier when revising and replacing standards for a type of machinery. The standard specified in the Act for compactors—Standard ANSI Z245.2–1992—replaced Standard ANSI Z245.1–1984. The sample notices submitted by the FMI and the NGA do not include the year the ANSI standard was issued, but merely reference the series identifier number. The Department considers this notice to be inadequate. We are concerned that an employer who utilizes a baler that is over 20 years old—but which meets the antiquated Standard ANSI Z245.5–1982—would be under the mistaken impression that after applying the sticker provided by the FMI or NGA, he/she could legally allow 16- and 17-year-old employees to load that equipment. We are also concerned about employers who might apply this sticker, and mistakenly assume themselves to be in compliance with the law by relying on a new ANSI standard which had not been certified by the Department as providing at least the same levels of protection to young workers as those specifically named in the Compactor and Baler Act. It is imperative that all notices posted in accordance with the Compactor and Baler Act cite both the series identifier and year of issuance for the ANSI standard, so that employers, their supervisory staff, and their young workers are fully informed, as Congress intended them to be.

The Department would consider the NGA and FMI stickers to constitute acceptable notices if they are modified to state explicitly the full caption of the ANSI standard (both the series identifier and the year of issuance). This modification may, of course, be made by printing all future stickers with the full, accurate information as to the specific applicable standard. But existing stickers may also be modified by making hand-written insertions of the additional information that is necessary to identify the specific standard. Such insertions must be written legibly, in indelible ink, and in the same size of lettering as the ANSI standard identifiers already printed on the sticker.

The NGA and the FMI have also provided copies of stickers they have developed to be placed on equipment that does not meet the requirements of the Compactor and Baler Act and, therefore, cannot be loaded, operated or unloaded by any employee who is less than 18 years of age. These stickers, which are not required by the Act and the use of which is completely voluntary, alert employees that they may not load, operate or unload the equipment unless they are 18 years of age or older. The Department appreciates these efforts by the NGA and the FMI and encourages all employers to adopt similar signage when applicable, as part of their efforts to reduce occupational injuries to young workers and increase compliance with the child labor provisions.

Making the determination that the equipment meets the ANSI standard named in the Compactor and Baler Act or a more recent ANSI standard the Secretary has certified as being at least as protective of the safety of minors. The FMI objected to the Department proposal that the employer will be required to make an initial determination of whether its machine(s) meet the ANSI standards, and that the Wage and Hour Division may make a final determination in any investigation concerning minors' work with the machines. The FMI asserted that the Compactor and Baler Act does not support this proposal, and suggested

that a machine's satisfaction of ANSI standards should be established by the reasonable assurances of the machine's manufacturer coupled with maintenance records. The FMI expressed concern that the employer should not be required to maintain any records beyond these assurances and maintenance records.

The Department considers the proposed provision to be necessary to achieve the clear intent of the Act, which is to allow minors to load machines (despite the HO 12 prohibition) only if such machines meet the ANSI standards specified in the statutory and regulatory exemption. The employer which has its young employees loading these machines can lawfully do so only pursuant to this exemption. As discussed above with respect to the HO 2 ''incidental and occasional driving'' regulation, the employer must be able to prove its satisfaction of all the requirements of this, or any other, FLSA exemption. The employer cannot know whether its operation is in compliance with the exemption (*i.e.*, cannot know whether its minor employees are permitted to load a particular machine) unless and until it determines that the machine meets the applicable ANSI standard. While the information mentioned by FMI would, of course, be important, the employer should also consider other pertinent information, such as equipment modifications, performance of scheduled maintenance, and equipment malfunctions. The Department does not, and will not, prescribe that any particular documentation or records be created by the employer.

As part of an investigation authorized by section 11(a) of the FLSA, the Wage and Hour Administrator may make a determination as to whether the equipment meets the ANSI standard cited on the notice posted by the employer on the machine; such a determination may be essential to an investigative finding of whether the employer has violated the regulation. The employer, of course, may request administrative review where the Administrator determines that minors are working in violation of the regulation because the machine they are using does not meet the ANSI standard. Upon reflection, the Department recognizes that the phrase ''final determination'' in the Proposed Rule may be confusing, in that the Administrator's investigative determination would be subject to review and, if appropriate, to revision in the administrative adjudicatory process. Therefore, the Department has concluded that the regulation should not state that the Administrator's investigative determination is ''final.''

After carefully considering the FMI comment, the Department has concluded that the proposed provision is necessary and appropriate under the FLSA and the Compactor and Baler Act. The proposed provision—with the word ''final'' deleted—is included in the Final Rule.

The Secretary's review of the more recent ANSI standards. The Compactor and Baler Act applies specific ANSI standards, issued by the organization in 1990 (balers) and 1992 (compactors). However, the Act also provides that any new standard(s) adopted by ANSI would also be sufficient for the determination of safety of the balers and compactors, if the Secretary of Labor certifies the new standard(s) to be at least as protective of the safety of minors as the two standards specified in the Act. In the NPRM, the Department stated that it was reviewing two new ANSI standards, and invited the public to comment on whether those standards should be certified by the Secretary.

Only one commenter, NIOSH, directly addressed the newer ANSI standards, supporting their incorporation into the regulation ''as they are as protective as previous standards cited in the Compactor and Baler Act.'' The CLC cautioned the Department to review thoroughly new ANSI standards for their effectiveness in protecting working minors, and to revise the regulation to reflect improved safety protection standards as they are introduced. The Department agrees with the CLC, concerning the importance of careful consideration of new safety standards. The Department's review of the new ANSI standards agrees with NIOSH's findings. The Secretary, in promulgating this Final Rule, hereby certifies that Standard ANSI Z245.5–1997 is as protective of the safety of minors as Standard ANSI-S245.5–1990 and that Standard ANSI Z245.2–1997 is as protective of the safety of minors as Standard ANSI Z245.2–1992. Accordingly, these newer standards are included in the Final Rule.

Revising HO 12 to include scrap paper balers and paper box compactors that are used to process other materials in addition to paper products. The Department proposed to modify HO 12 to include scrap paper balers and paper box compactors that are used to process other materials in addition to paper products. As explained in the NPRM, HO 12 has, in the past, prohibited minors from loading, operating, and unloading only those scrap paper balers and paper box compactors that are used exclusively to process paper products.

The FMI and the NGA objected to this proposal as being unauthorized, stating that the Compactor and Baler Act addresses only machinery used for paper products. These commenters, along with the Council, also stated that the Department had provided no basis or evidence for the expansion of HO 12.

NIOSH supported this proposal, stating ''[r]eview of surveillance and investigation data demonstrate that baling and compacting equipment are associated with deaths and injuries of workers, that these deaths are associated with uncontrolled hazardous energy and inadequate machine guards, and that deaths and injuries result from machines that process non-paper materials (e.g., aluminum cans, plastic, foam, and rubber) as well as paper materials.'' NIOSH reported that data covering the period of October 1, 1996 through December 31, 1999, reflects that balers and compactors were responsible for an estimated 2,625 injury reports nationwide. Almost half of the injuries occurred while working in either a retail or grocery store, with 24% occurring in manufacturing. NIOSH also reported that at least 29 occupational fatalities involving paper balers and compactors occurred between 1992 and 1997.

In making the proposal to modify HO 12, and in considering the comments on the proposal, the Department has given careful thought to the Secretary's long-standing and important statutory duty to ban unsafe working conditions for minors. The FLSA, at section 3(l), gives the Secretary the authority and responsibility to identify and declare those occupations which are ''particularly hazardous for the employment of children * * * or detrimental to their health or well-being.'' In meeting this statutory duty, the Secretary has promulgated the seventeen Hazardous Occupations Orders, including HO 12 on balers and compactors. The Secretary need not and should not wait for additional legislation when making determinations concerning the safety and well-being of working youth.

Since its inception, HO 12 has prohibited minors from loading, operating and unloading balers and compactors that are used exclusively to process paper products. In proposing to expand the scope of the regulation, the Department recognized that the existing, narrow prohibition ignores the fact that these machines are used to compress materials in addition to paper without any changes in design or procedures for loading, operating and unloading. Such other materials which may be processed

by scrap paper balers and paper box compactors include, but are not limited to, plastics, rubber, food waste, foam rubber and aluminum cans. The risks which these machines present to minor employees remain the same, regardless of the materials being processed. The information provided by NIOSH demonstrates that injuries and deaths continue to occur in the loading, operation and unloading of these machines, whether or not they are used exclusively for paper products. Further, the Department's enforcement experience shows that these machines are, indeed, ''particularly hazardous'' to load, operate or unload. For example, in recent years the Wage and Hour Administrator has investigated cases involving a 16-year-old who was killed operating a compactor, a 17-year-old whose arm was crushed while operating a compactor, and a 15-year-old who suffered a serious injury to his hand while operating a paper baler.

The Department does not believe that its revision of the scope of HO 12 required a new legislative authorization through the enactment of the Compactor and Baler Act. The Department's authority with regard to all of the Hazardous Occupations Orders is based on long-standing FLSA provisions. However, we note that the proposed expansion of HO 12 to include machines used for materials in addition to paper products is, in fact, supported by the definitions of both balers and compactors contained in the ANSI Standards which Congress adopted in the Compactor and Baler Act. Standard Z245.5–1990, for balers, identifies the materials which may be processed by the machines: ''Primary materials includ[ing] natural and synthetic fibers and their by-products;'' ''Waste paper (newsprint, corrugated containers, and the like), trim scrap, mill broke, metals (other than ferrous scrap), and textiles* * *'' Standard Z245.2–1992, for compactors, identifies the ''refuse'' which may be processed: ''Any type of solid waste (except human wastes), including garbage, rubbish, ashes, incinerator residues, street cleanings, plant trimmings, and residential, commercial, and industrial solid wastes, including recyclable materials.'' Further, the Department takes the position that the lack of reports from employers pursuant to the Compactor and Baler Act is not a factor in this revision of HO 12; the Department's enforcement experience and the data provided by NIOSH are ample information as to the ''particular hazards'' of these machines. We note, however, that the one report submitted by an employer pursuant to the Act involved an incident in which a 17-year-old had both his legs amputated in a baler machine at a recycling center. At the time of his injury, the machine was crushing cardboard, but the machine was the only baler at the center and, therefore, was also used for processing other materials, including plastic.

Accordingly, the Secretary has determined that occupations involving the loading, operating and unloading of scrap paper balers and paper box compactors that process other materials in addition to paper are particularly hazardous for minors between 16 and 18 years of age. The proposed modification of HO 12 is included in the Final Rule.

The Department notes that after the issuance of this Final Rule, there will still be one class of balers and compactors that falls outside of the scope of HO 12—those machines that process everything and anything but paper products. These machines share similar designs and operating procedures with those compactors and balers that process only paper products or process other materials in addition to paper products. The Secretary has not made a determination that occupations involving the loading, operating and unloading of balers and compactors that do not process paper are particularly hazardous to the health and well-being of youths between 16 and 18 years of age. The Department will continue to review this matter and may consider future rulemaking to further revise HO 12.

In addition, two minor editorial modifications to the existing regulation have been made in the Final Rule. The word ''also'' in the last sentence of section 570.63(b)(2) (ii) which is part of the definition of the term *paper products machine* was moved to avoid any confusion over what types of machines are subject to the HO. The word ''of'' in section 570.63(b) (3) that defines the term *scrap paper baler* has been replaced with the word ''or'' to comport with the language in the ANSI standard.

Proposal to amend the regulations in part 579 concerning civil money penalties. In the 1999 NPRM, the Department proposed to amend the regulations in sections 579.1 and 579.5 to implement the Compactor and Baler Act's explicit authorization for civil money penalties not to exceed $10,000 for each employee who was the subject of a violation of new subsection 13(c)(5) of the FLSA. No comments were received on this proposal. After publication of the 1999 NPRM, but prior to the publication of this Final Rule, the Department published a different Final Rule in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (66 FR 63501, December 7, 2001). That regulatory action not only increased the maximum amount of the civil money penalty that may be assessed under the FLSA for a child labor violation to $11,000, but also implemented the Compactor and Baler Act's authorization for civil money penalties. As the Compactor and Baler Act's authorization for civil money penalties has already been incorporated into section 579.5, that proposed change need not be included in this Final Rule. The corresponding proposed changes to section 579.1, however, are included in this Final Rule.

The Final Rule includes both the Federal Civil Penalties Inflation Adjustment Act change in the maximum amount of the penalty and the change specified in the Proposed Rule.

F. Work in Roofing Occupations (HO 16) (29 CFR 570.67)

Hazardous Occupations Order No. 16 covers ''occupations in roofing operations.'' It bans all occupations in roofing, but not all work on roofs. Roofing operations, as defined by the regulation, include most roofing activities and related occupations whether performed at elevations or at ground level. Not included are other tasks performed on or near roofs such as the installation, repair and maintenance of roofing sheathing, television and microwave antennas, air conditioning equipment, and gutters and downspouts.

The Department has received inquiries questioning why employees under 18 years of age may perform any work on a roof. Available data, such as that provided by NIOSH and the Massachusetts State Department of Health, indicates that working at heights is a major contributor to injuries and deaths of young workers.

The Department's 1994 Advance Notice of Proposed Rulemaking (59 FR 25167) raised the issue of minors working at heights. The ANPRM requested comments regarding a ban on all work performed by minors on roofs. The ANPRM also requested information as to whether such a prohibition should be a generic restriction or one limited to a particular industry or industries. Finally, the ANPRM sought information regarding exemptions from HO 16 for apprentices and student learners.

The Department received a number of comments on this issue, the vast majority of which supported the prohibition of roofing work and all work

on a roof. Many supported a complete prohibition against minors working above a certain elevation, often specified as 6 to 10 feet. The comments came from a variety of sources, including industry organizations, child advocates, and State and Federal agencies.

The single ANPRM commenter not in favor of prohibiting all work on a roof was the Associated Builders and Contractors, Inc. (ABC), which opposed a ban on 16- and 17-year-olds working at heights. ABC commented that a ban would jeopardize valuable career-advancing opportunities and that proper supervision, safety instructions, and training are sufficient to reduce or alleviate any heightened risk of injury without sacrificing the benefit of work experience.

After considering all of the information obtained in response to the ANPRM, the Department proposed to amend HO 16 to expand the ban from all *roofing occupations to* include all *work performed on or about a roof*. This ban would include, but not be limited to, occupations on or in close proximity to roofs such as the installation, repair, and maintenance of gutters and downspouts, installation of sheathing, roof trusses or roof bases, television antennas, air conditioners, exhaust and ventilating equipment, heating equipment, and similar appliances attached to roofs. The Department also proposed that the exemption for apprentices and student-learners employed under the conditions prescribed in 29 CFR 570.50(b) and (c) would continue to apply under HO 16. The Department stated its view that the additional supervision and training required by the exemption, coupled with the limited exposures provided by the exemption, will help to reduce safety risks to 16- and 17-year-olds working on roofs.

Four comments were received concerning this proposal.

NIOSH supported broadening the scope of HO 16, as proposed. NIOSH reported that the roofer occupation is among the occupations at highest risk of fatal work-related injury among workers of all ages. NIOSH stated that work on and around roofs is associated with falls from heights and contact with electrical energy, and that these two causes of injury together accounted for 18% of work-related injury deaths of 16- and 17-year-olds in the 1980's. Further, NIOSH reported that hazards are associated with workers using roofs as a means of access or support for other work at heights. As an example of such hazards, NIOSH discussed the death of a 17-year-old window washer who plunged 15 floors to his death due to the failure of the rigging he had attached to the roof of the building.

ABC—which had been the only ANPRM commenter that did not favor prohibiting all work on a roof—commented that it believed its previous concerns had been substantially addressed through the proposed regulation's preservation of the exceptions for apprentices and student-learners.

The NCLC and the CLC opposed the proposal as not having gone far enough. These commenters recommended that the regulation should prohibit minors working at elevations ''in any and every capacity'' whether on roofs, hanging out windows, or working on ladders, scaffolds, or other elevated surfaces. The CLC suggested that the prohibition should apply to work at elevations above 6 feet.

The Department has carefully considered the comments and available data, as well as our own enforcement experience. Based on this information, the Department has concluded that the dangers cited in the report supporting the promulgation of HO 16 still persist for youths working not only in roofing occupations but also on or about roofs. The main danger for such youths is from falls which may occur in any work performed on or about a roof. This danger was demonstrated by three recent incidents investigated by the Wage and Hour Administrator. Two minors (one in Pennsylvania and one in Alabama) fell to their deaths while employed in the installation of roofing trusses (part of building construction, but not a roofing occupation under the current regulation). A third minor, 16 years of age, died in July of 2002 in Arizona after falling from a roof while assisting in the maintenance of an air conditioning unit (again, work on a roof but not a roofing occupation under the current regulation). The danger of falls was also demonstrated in the incident cited by NIOSH: death of a window washer who worked on the roof of the building to attach and then enter the rigging which failed and caused his fall. Additional dangers in work on or about a roof include exposure to electricity, as discussed by NIOSH and as demonstrated in a case recently investigated by the Wage and Hour Administrator in which a 17-year-old was killed when the pipes he was hoisting to a roof (for assembly there into clothing racks) came into contact with overhead power lines.

The Department notes that the regulatory phrase *on or about a roof* is not limited to circumstances where the minor employee is standing or working on the roof itself. The prohibition extends to standing or working on a ladder or scaffold at or near the roof, working on the installation of roof trusses or joists which will support the roof, as well as working from or being transported to or from the roof in mechanical devices such as hoists. Thus, for example, a minor is prohibited from working on a scaffold (as well as on the roof itself) to install roof flashing or gutters. To avoid the possibility of confusion as to the scope of this prohibition, the proposed definition of the term *on or about a roof* has been modified in the Final Rule, to clarify that the term includes work ''upon or in close proximity to a roof'' and to clarify that the installation of trusses or joists is included in the ''construction of the base of roofs'' within the meaning of this definition.

The Department has carefully considered the views of commenters who suggested that the regulation should ban all work at an elevation, such as at a height of six feet. While we recognize that there may be some risk of accidents whenever workers are performing tasks above ground level, we have concluded, based on available data, that all such work by minors cannot be declared to be particularly hazardous. Therefore, we believe that such an across-the-board prohibition would be unwarranted, at the present time, and would deny minors many safe and promising employment opportunities such as library assistants climbing low ladders to retrieve or replace books, or retail stock clerks retrieving or restoring merchandise to shelving, or lifeguards mounting their stands at poolside. This matter may be further addressed in a future rule making, if appropriate.

The Department has concluded that occupations involving working on or about roofs, as well as all occupations in roofing operations, are particularly hazardous for minors between 16 and 18 years of age, and accordingly adopts the proposal as a Final Rule with the modifications discussed above.

G. Miscellaneous Matters

The Department has also made minor, nonsubstantive, changes to the regulations that are not discussed above. The 1999 NPRM proposed that the section headings contained in Subparts B and C of 29 CFR Part 570 and in 29 CFR Part 579 be presented as questions. It was believed such a format would more clearly identify the contents of each section. Upon further review, the Department has determined that headings consisting of a few words, or a short phrase, will be more useful to

the reader. Accordingly, the question format has not been adopted and the section headings will now consist of a few words or a short phrase. Also, as mentioned earlier, the 1999 NPRM proposed to revise 29 CFR Part 579.5 to incorporate the civil money penalty provisions of the Compactor and Baler Act. This revision was accomplished by a separate Final Rule published by the Department (66 FR 63501, December 7, 2001) and therefore does not need to be included in this Final Rule. Furthermore, the Department has concluded that four numbered subsections of the existing regulation on civil money penalties are obsolete—three ''reserved'' (§§ 579.6–.8) and one dealing with the implementation of the1990 FLSA amendment which increased the child labor civil money penalty to $10,000 (§ 579.9). The Final Rule removes these subsections from the regulation. In addition, the Department is also revising 29 CFR Part 579.3(a)(5) to remove a no longer appropriate reference to 29 CFR Part 545. Part 545, which was titled *Homeworkers in Industries in Puerto Rico*, was removed by the Department in 1990 as a result of the 1989 amendments to the FLSA (55 FR 12114, March 30, 1990). Finally, in keeping with current guidance provided by the **Federal Register**, we have restructured the *definitions* in 29 CFR 570.63 and 570.67 to reflect an alphabetical sequence.

III. Changes to Procedural Regulations (29 CFR Part 580)

The Department has determined that the procedural regulations—dealing with administrative hearings and appeals of civil money penalties—require updating to make it clear that the administrative procedures are a prerequisite to judicial review and to identify the Department's Administrative Review Board as the entity to which appeals from Administrative Law Judge decisions are taken. The Final Rule makes the necessary changes in Part 580 procedural regulations. Because these revisions pertain to rules of agency procedure or practice, notice of proposed rulemaking and public comment procedures are not required for these revisions pursuant to Section 553(b)(3)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A). Therefore, these procedural amendments are being adopted as a final rule without prior notice and comment.

IV. Paperwork Reduction Act

Federal Certificate of Age

Title: Form WH–14, Application for Federal Certificate of Age.

Summary: Section 3(l) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 203(l), provides, in part, that an employer may protect against unwitting employment of ''oppressive child labor'' (as defined in section 3(l)) by having on file a certificate issued pursuant to DOL regulations, certifying that the named person meets the FLSA minimum age requirements for employment.

Section 11(c) of the FLSA, 29 U.S.C. 211(c), requires that all employers covered by the Act make, keep and preserve records of wages, hours and other conditions and practices of employment with respect to their employees. The employer is to maintain the records for such period of time and make such reports as prescribed by regulations issued by the Secretary of Labor.

Regulations, at 29 CFR Part 570, subpart B, set forth the requirements for obtaining certificates of age from the Department. The regulations provide that State-issued age, employment or working certificates, which substantially meet the Federal regulatory requirements for certificates of age, are an acceptable alternative to obtaining a Federal certificate of age. The regulations contain a list of States that may issue such acceptable certificates. Since age certificates are issued by most States, these are widely used as proof of age for FLSA child labor purposes.

Federal certificates of age are issued by the Department upon request by the youth and the prospective employer. Form WH–14 is the DOL application form. As a practical matter, it is used in those States where no State certificates are issued or State certificates do not meet the Federal regulatory requirements. The Wage and Hour Division reviews each WH–14 application and the accompanying proof of age, which is identified in the regulation as sufficient to establish the young applicant's age and thus to achieve the intended purpose of the statutory provision (*i.e.*, to afford the employer an affirmative defense against unwitting violations of the child labor provisions). As appropriate, a Federal certificate of age is issued and forwarded to the employer (if the youth is under 18 years of age) or to the youth (if he/she is 18 or 19 years of age). The supporting evidence of age is returned to the applicant(s). The 18- or 19-year-old presents the certificate to his/her employer upon entering employment.

The employer is required to keep the certificate on file for the duration of the youth's employment, in order to achieve the intended purpose of the FLSA provision (*i.e.*, to protect the employer in situations where compliance with the child labor standards is questioned). The estimated average employment period is 6 months. When a youth under 18 years of age leaves employment, the employer was directed, prior to this revision of the regulation, to return the certificate to the office that issued it, except that a certificate for employment in agriculture might be given to the youth; any subsequent certificate of age requested for that youth could be issued without additional proof of age. A certificate of age issued for a youth 18 or 19 years of age was to be given by the employer to the youth upon his/her leaving employment.

Need: In August 1998, the Office of Management and Budget (OMB), in its review and approval of the Form WH–14 under the Paperwork Reduction Act, approved this information collection (OMB No. 1215–0083). OMB's approval was contingent upon DOL's agreement to eliminate the requirement for an employer to return the certificate to the issuing official in certain circumstances. The Department, as agreed with OMB, has revised the regulation at § 570.6(b)(1) to direct employers to give to each employee, upon termination of employment, any Federal age certificate issued in his/her name. This would occur regardless of the age of the employee and regardless of the type of employment (*i.e.*, agriculture or nonagriculture). This regulatory provision will enable young workers to provide future employer(s) with a properly issued age certificate without having to make another application to a government official. The Department has also revised the statement at the end of § 570.6(b)(2) to reflect the new OMB control number.

Respondents and frequency of response: It is estimated that 10 such WH–14 applications will be submitted annually.

Estimated total annual burden: It is estimated that each such application will take approximately ten minutes to complete for a total annual burden of one and two-thirds hours (10 applications × 10 minutes per application = 1.667 hours). The filing of a Federal Certificate of Age is estimated to take one-half minute per document for a total annual burden of .083 hours (10 Federal Certificates of Age × .5 minutes = .083 hours).

Total Annual Reporting and Recordkeeping Burden = 1.75 Hours.

Employees and employers of any of a wide variety of businesses, from small farms or retail stores to large manufacturing plants, may request Federal certificates of age. Absent specific wage data regarding applicants, respondent costs are estimated utilizing the average hourly rate of non-supervisory workers on non-farm payrolls of $15.38 for 2003 (Monthly Labor Review, U.S. Department of Labor, Bureau of Labor Statistics). Total annual respondent costs are estimated at $26.92 ($15.38 × 1.75 hours).

Total estimated annual postage and envelope costs for transmitting these applications are $4.00 (10 reports × $.37 postage + $.03 per envelope).

Total Annual Respondent Costs for FORM WH–14, Application for Federal Certificated of Age—$30.92 ($26.92 + $4.00).

No comments were received from the public regarding this burden. Two comments were received on the substantive aspects of the regulatory proposal concerning age certificates and these are discussed earlier in this document.

No changes have been made in this Final Rule which affect the information collection and recordkeeping requirements and estimated burdens previously submitted to OMB and discussed in the proposed rule.

V. Executive Order 12866

This rule is being treated as a ''significant regulatory action'' within the meaning of Executive Order 12866, because of its importance to the public and the Department's priorities. Therefore, the Office of Management and Budget has reviewed the rule. However, because this rule is not ''economically significant'' as defined in section 3(f)(1) of EO 12866, it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order. In addition, this rule imposes no new information collection, recordkeeping, or reporting requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

It is well established that several characteristics of youth place adolescent workers at increased risk of injury and death. Lack of experience in the work place and in assessing risks, and developmental factors—physical, cognitive, and psychological—all contribute to the higher rates of occupational injuries and deaths experienced by young workers. The Census of Fatal Occupational Injuries, U.S. Department of Labor, Bureau of Labor Statistics, reported that during the years of 1992–1997, 15-year-olds actually experience an occupational fatality rate per 100,000 fulltime equivalents that is greater than the average for all workers. A NIOSH report also showed that the fatality rate for adolescents aged 16 and 17 was 5.1 per 100,000 full-time equivalent workers for the 10-year period 1980–89 [Castillo *et al.* 1994], while the rate for adults aged 18 and older was 6.1. As NIOSH stated, ''[t]his relatively small difference in rates is cause for concern because youths under age 18 are employed less frequently in especially hazardous jobs.'' *Special Hazard Review: Child Labor Research Needs. Recommendations from the NIOSH Child Labor Working Team*, Ch. 2, August 1997. NIOSH also estimates that youth work injuries exceed 200,000 each year, and of that number, 77,000 are serious enough to warrant treatment in hospital emergency rooms. The NIOSH statistics show that, despite the fact that workers aged 15 through 17 are generally restricted from performing in hazardous occupations such as mining, motor-vehicle driving, logging, sawmilling and construction, they have a higher rate of injuries requiring emergency room treatment than any other age group except 18- and 19-year-olds (who are not restricted from performing such work). *NIOSH Recommendations to the U. S. Department of Labor for Changes to Hazardous Orders*, p. 8, May 2002. The economic and social costs associated with the deaths and serious injuries of young workers are substantial.

The Department considers the issuance of this rule as an important and necessary step in its ongoing review of the criteria for permissible child labor employment, a review which strives to balance the potential benefits of transitional, staged employment opportunities for youth with the necessary protections for their education, health and safety. Because youth often overcome the effects of those characteristics that initially place them at increased risk of injury and death in the workplace only through the maturation process, it is believed that requiring older workers to perform those tasks that present greater risks to younger workers actually eliminates injuries and deaths ''rather than delaying them or transferring them to the older workers.

This rule revises the child labor regulations in response to two statutory amendments enacted by the Congress that altered two of the child labor hazardous occupation orders: HO 12, affecting activities involving certain scrap paper balers and paper box compactors; and HO 2, affecting the operation of motor vehicles. The economic impact of these statutory provisions is expected to be minimal. The Department believes that only a few minors employed in such occupations would be affected by these revisions. In addition, any costs that might result from using older employees to perform the prohibited tasks would be more than offset by reduced health and productivity costs resulting from accidents and injuries to minors on the job. The additional changes are also expected to have little or no direct cost impact. The changes affecting the types of cooking and related food preparation activities that 14- and 15-year olds may perform in food service establishments (Reg. 3 Occupations) are primarily clarifications of existing provisions. Changes to HO 16 to prohibit youth under age 18 from performing all work on roofs and an update of definitions for the term ''explosives'' in HO 1 that prohibits minors working where ''explosives'' are made or stored are expected to affect few minors. A change in the regulation on government-issued certificates of age intended to reduce paperwork when a minor's employment ends would reduce the cost impact of the existing regulation.

In addition, the information required to be disclosed or posted on machines covered by the Baler and Compactor Act does not impose new burdens under the Paperwork Reduction Act because the information to be disclosed is originally supplied by the Federal government under the statute and these regulations (see 5 CFR 1320.3(c)(2)). The Department believes that any new costs incurred by employers to comply with the notice requirements would be *de minimis*. The Department estimates that the largest group of employers that will qualify for and take advantage of this limited exemption are grocery stores and food service establishments, of which only approximately 20% of the grocery stores (3,395) and 1% of the eating and drinking establishments (2,003) are covered by the FLSA, have balers or compactors which meet the ANSI standards named in the Compactor and Baler Act, and employ 16- and 17-year-old minors who they wish to utilize to load the balers or compactors, for a total of 5,398 affected employers.

Compliance with the notice requirements can be achieved by purchasing or creating a notice with all required information and affixing it to the baler or compactor. Once the notice is affixed and assuming all the equipment continues to meet the required ANSI Standard, the requirement is permanently satisfied and need only be repeated if the notice

is damaged or destroyed. Some employers may purchase the required notice. Some employers may create their own notice. Some employers have only one baler or compactor; others have several, possibly at multiple locations. Considering these various situations, we estimate that it will take an average of 4 minutes per employer to satisfy the notice requirement for a total, one-time burden of 360 hours. Absent specific wage data regarding the employees who will satisfy these notice requirements, respondent costs are estimated utilizing the average hourly rate of nonsupervisory workers of $10.04 in the retail trade for 2002 (Monthly Labor Review, U.S. Department of Labor, Bureau of Labor Statistics). The total additional costs associated with the notice requirement are estimated at $3,614.40 ($10.04 × 360 hours).

The Department also believes that this rule will not reduce the overall number of safe, positive and legal employment opportunities available to young workers. The rule overall modifies certain existing restrictions under two of the HOs and Reg. 3 occupations, expands restrictions under one HO, reduces paperwork burden involving age certificates, and makes other technical, clarifying changes. Although a small number of employers may be required to hire an older worker to perform the prohibited tasks, we believe that any resulting costs directly incurred would be minimal. Rules that limit permissible job activities for working youth to those that are safe do not, by themselves, impose significant added costs on employers, in our view. In fact, ensuring that permissible job opportunities for working youth are safe and healthy and not detrimental to their education, as required by the statute, produces many positive benefits in addition to fewer occupational injuries and deaths, including reduced health and productivity costs that employers may otherwise incur because of higher accident and injury rates to young and inexperienced workers. In any event, the direct, incremental costs imposed by this rule are expected to be minimal. Collectively, they will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy or its individual sectors, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, this rule is not ''economically significant'' and no regulatory impact analysis has been prepared.

VI. Small Business Regulatory Enforcement Fairness Act

The Department has similarly concluded that this rule is not a ''major rule'' requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

VII. Regulatory Flexibility Act and Executive Order 13272

This rule is not expected to have a significant economic impact on a substantial number of small entities. Two provisions (driving and paper balers) are specifically required by statutory amendments enacted by Congress. It is anticipated that the other provisions would have little or no cost impact on any small entities. The amendment to the provisions concerning the circumstances when 14- and 15-year-olds are permitted to cook is primarily a clarification of the existing provision. We believe that the prohibition against work on a roof and the revision to the paper baler and box compactor provisions would affect few minors, and therefore few small businesses. Although a small number of employers would be required to use an older employee to perform the prohibited tasks, we believe that any resulting costs directly incurred would be minimal. Indeed, we believe that the child labor regulations, by fostering safer work environments for working youth, would reduce health and productivity costs to employers, including covered small businesses, resulting from accidents and injuries to minors on the job. Thus, given the nature of the changes proposed by the rule, and for the reasons discussed above, we do not believe the rule will have a significant economic impact on a substantial number of small entities. The Department has certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Therefore, no Regulatory Flexibility Analysis is required.

VIII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, ''...(other than to the extent that such regulations incorporate requirements specifically set forth in law).'' For purposes of the Unfunded Mandates Reform Act, and as noted above, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector. Moreover, two of the changes constitute ''regulations [that] incorporate requirements specifically set forth in law'' (*i.e.*, amendments to HO 2 and HO 12).

IX. Effects on Families

This rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, 1999, for its effect on family well-being and the undersigned hereby certifies that the rule will not adversely affect the well-being of families.

X. Executive Order 13045, Protection of Children

Executive Order No. 13045, dated April 23, 1997 (62 FR 19885), applies to any rule that (1) is determined to be ''economically significant'' as defined in Executive Order No. 12866, and (2) concerns an environmental health or safety risk that the promulgating agency has reason to believe may have a disproportionate effect on children. This action is not subject to Executive Order No. 13045 because it is not economically significant as defined in Executive Order No. 12866. In addition, although this rule impacts the youth employment provisions of the FLSA and the employment of adolescents and young adults, it does not impact the environmental health or safety risks of children.

XI. Executive Order 13132, Federalism

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

XII. Executive Order 13175, Indian Tribal Governments

This rule was reviewed under the terms of E.O. 13175 and determined not to have ''tribal implications.'' The rule does not have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and the Indian tribes.'' As a result, no tribal summary impact statement has been prepared.

XIII. Executive Order 12630, Constitutionally Protected Property Rights

This rule is not subject to E.O. 12630 because it does not involve implementation of a policy ''that has takings implications'' or that could impose limitations on private property use.

XIV. Executive Order 12988, Civil Justice Reform Analysis

This final rule was drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the Federal court system. The rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct, and to promote burden reduction.

XV. Executive Order 13211, Energy Supply

This rule is not subject to E.O. 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

XVI. Environmental Impact Assessment

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 942 U.S.C. 1500) and the Department's NEPA procedures (29 CFR part 11). The rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

List of Subjects

29 CFR Part 570

Child labor, Child labor occupations, Employment, Government, Incorporation by reference, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

29 CFR Part 579

Child labor, Law enforcement, Penalties.

29 CFR Part 580

Administrative practice and procedure, Child labor, Employment, Labor, Law enforcement, Penalties.

Signed at Washington, DC on the 7th day of December, 2004.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Alfred B. Robinson, Jr.,

Acting Administrator, Wage and Hour Division.

■ For the reasons set forth above, title 29, parts 570, 579, and 580, of the Code of Federal Regulations are amended as set forth below.

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

Subpart B—[Amended]

■ 1.–2. The authority citation for part 570 Subpart B is revised to read as follows:

Authority: 29 U.S.C. 203(l), 211, 212.

■ 3. In § 570.5, the section heading is revised to read as follows:

§ 570.5 Certificates of age and their effect.

■ 4. In § 570.6, the section heading, paragraph (b)(1) and the parenthetical statement following paragraph (b)(2) are revised to read as follows:

§ 570.6 Contents and disposition of certificates of age.

* * * * *

(b)(1) We will send a certificate of age for a minor under 18 years of age to the prospective employer of the minor. That employer must keep the certificate on file at the minor's workplace. When the minor terminates employment, the employer must give the certificate to the minor. The minor may then present the previously issued certificate to future employers as proof of age as described in § 570.5.

(2) * * *

(The information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1215–0083.)

■ 5. In § 570.7, the section heading is revised to read as follows:

§ 570.7 Documentary evidence required for issuance of a certificate of age.

■ 6. In § 570.8, the section heading is revised to read as follows:

§ 570.8 Issuance of a Federal certificate of age.

■ 7. In § 570.9, the section heading is revised to read as follows:

§ 570.9 States in which State certificates of age are accepted.

■ 8. In § 570.10, the section heading is revised to read as follows:

§ 570.10 Rules for certificates of age in the State of Alaska and the Territory of Guam.

■ 9. In § 570.11, the section heading is revised to read as follows:

§ 570.11 Continued acceptability of certificates of age.

■ 10. In § 570.12, the section heading is revised to read as follows:

§ 570.12 Revoked certificates of age.

■ 11. In § 570.25, the section heading is revised to read as follows:

§ 570.25 Effect on laws other than the Federal child labor standards.

■ 12. In § 570.27, the section heading is revised to read as follows:

§ 570.27 Revision of subpart B.

Subpart C—[Amended]

■ 13. The authority citation for part 570 Subpart C is revised to read as follows:

Authority: 29 U.S.C. 203(l), 212.

■ 14. In § 570.31, the section heading is revised to read as follows:

§ 570.31 Secretary's determinations concerning the employment of minors 14 and 15 years of age.

■ 15. In § 570.32, the section heading is revised to read as follows:

§ 570.32 Effect of subpart C.

■ 16. In § 570.33, the section heading is revised to read as follows:

§ 570.33 Prohibited occupations for minors 14 and 15 years of age.

■ 17. In § 570.34, the section heading and paragraphs (a)(7) and (b)(5) are revised to read as follows:

§ 570.34 Occupations minors 14 and 15 years of age are permitted to perform in retail, food service, and gasoline service establishments.

(a) * * *

(7) Kitchen work and other work involved in preparing and serving food and beverages, including operating machines and devices used in performing such work. Examples of permitted machines and devices include, but are not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, coffee grinders, automatic coffee

machines, devices used to maintain the temperature of prepared foods (such as warmers, steam tables, and heat lamps), and microwave ovens that are used only to warm prepared food and do not have the capacity to warm above 140 °F. Minors are permitted to clean kitchen equipment (not otherwise prohibited), remove oil or grease filters, pour oil or grease through filters, and move receptacles containing hot grease or hot oil, but only when the equipment, surfaces, containers and liquids do not exceed a temperature of 100 °F;

* * * * *

(b) * * *

(5) Baking and cooking are prohibited except:

(i) Cooking is permitted with electric or gas grilles which does not involve cooking over an open flame (**Note:** this provision does not authorize cooking with equipment such as rotisseries, broilers, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as ''Neico broilers''); and

(ii) Cooking is permitted with deep fryers that are equipped with and utilize a device which automatically lowers the baskets into the hot oil or grease and automatically raises the baskets from the hot oil or grease;

* * * * *

■ 18. In § 570.35, the section heading is revised to read as follows:

§ 570.35 Hours of work and conditions of employment permitted for minors 14 and 15 years of age.

■ 19. In § 570.35a, the section heading is revised to read as follows:

§ 570.35a Work experience and career exploration program.

■ 20. In § 570.36, the section heading is revised to read as follows:

§ 570.36 Effect of a certificate of age under this subpart.

■ 21. In § 570.37, the section heading is revised to read as follows:

§ 570.37 Effect of this subpart on other laws.

■ 22. In § 570.38, the section heading is revised to read as follows:

§ 570.38 Revision of subpart C.

Subpart E—[Amended]

■ 23. The authority citation for part 570 subpart E is revised to read as follows:

Authority: 29 U.S.C. 203(l), 212, 213(c).

■ 24. In § 570.51, paragraph (b) (2) is revised to read as follows:

§ 570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1).

* * * * *

(b) * * *

(2) The terms *explosives* and *articles containing explosive components* mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and explosives and explosive materials as defined in 18 U.S.C. 841(c)–(f) and the implementing regulations at 27 CFR part 555. The terms include any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, as well as all goods identified in the most recent list of explosive materials published by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice. This list is not intended to be all-inclusive and is updated and published annually in the **Federal Register** pursuant to 18 U.S.C. 841(d). A copy of the most recent version of the list may be found through the Bureau of Alcohol, Tobacco, Firearms, and Explosives' Web site at *http://www.atf.gov.*

* * * * *

■ 25. In § 570.52, paragraph (b) is revised and new paragraphs (c)(5) and (c)(6) are added to read as follows:

§ 570.52 Occupations of motor-vehicle driver and outside helper (Order 2).

* * * * *

(b) *Exemption—Incidental and occasional driving by 17-year-olds.* Minors who are at least 17 years of age may drive automobiles and trucks on public roadways when all the following criteria are met:

(1) The automobile or truck does not exceed 6,000 pounds gross vehicle weight, and the vehicle is equipped with a seat belt or similar restraining device for the driver and for any passengers and the employer has instructed the employee that such belts or other devices must be used;

(2) The driving is restricted to daylight hours;

(3) The minor holds a State license valid for the type of driving involved in the job performed and has no records of any moving violations at the time of hire;

(4) The minor has successfully completed a State-approved driver education course;

(5) The driving does not involve: the towing of vehicles; route deliveries or route sales; the transportation for hire of property, goods, or passengers; urgent, time-sensitive deliveries; or the transporting at any one time of more than three passengers, including the employees of the employer;

(6) The driving performed by the minor does not involve more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the minor's employer to a customer (except urgent, time-sensitive deliveries which are completely banned in paragraph (b)(5) of this section;

(7) The driving performed by the minor does not involve more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than the employees of the employer);

(8) The driving takes place within a thirty (30) mile radius of the minor's place of employment; and,

(9) The driving is only occasional and incidental to the employee's employment.

(c) * * *

(5) The term *occasional and incidental* means no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's worktime in any workweek.

(6) The term *urgent, time-sensitive deliveries* means trips which, because of such factors as customer satisfaction, the rapid deterioration of the quality or change in temperature of the product, and/or economic incentives, are subject to time-lines, schedules, and/or turn-around times which might impel the driver to hurry in the completion of the delivery. Prohibited trips would include, but are not limited to, the delivery of pizzas and prepared foods to the customer; the delivery of materials under a deadline (such as deposits to a bank at closing); and the shuttling of passengers to and from transportation depots to meet transport schedules. *Urgent, time-sensitive deliveries* would not depend on the delivery's points of origin and termination, and would include the delivery of people and things to the employer's place of business as well as from that business to some other location.

■ 26. In § 570.63, the section heading and paragraphs (a)(1)(i), (b) and (c) are revised to read as follows:

§ 570.63 Occupations involved in the operation of paper-products machines, scrap paper balers, and paper box compactors (Order 12).

(a) * * *

(1) * * *

(i) Arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single-or-double facing machine,

envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap paper baler, paper box compactor, or vertical slotter.

* * * * *

(b) *Definitions.*

Applicable ANSI Standard means the American National Standard Institute's Standard ANSI Z245.5–1990 (''American National Standard for Refuse Collection, Processing, and Disposal—Baling Equipment—Safety Requirements'') for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2–1992 (''American National Standard for Refuse Collection, Processing, and Disposal Equipment—Stationary Compactors—Safety Requirements'') for paper box compactors. Additional applicable standards are the American National Standard Institute's Standard ANSI Z245.5–1997 (''American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Baling Equipment—Safety Requirements'') for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2–1997 (''American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Stationary Compactors—Safety Requirements'') for paper box compactors, which the Secretary has certified to be at least as protective of the safety of minors as Standard ANSI Z245.5–1990 for scrap paper balers or ANSI Z245.2–1992 for paper box compactors. The ANSI standards for scrap paper balers and paper box compactors govern the manufacture and modification of the equipment, the operation and maintenance of the equipment, and employee training. These ANSI standards are incorporated by reference in this paragraph and have the same force and effect as other standards in this part. Only the mandatory provisions (*i.e.*, provisions containing the word ''shall'' or other mandatory language) of these standards are adopted as standards under this part. These standards are incorporated by reference as they exist on the date of the approval; if any changes are made in these standards which the Secretary finds to be as protective of the safety of minors as the current standards, the Secretary will publish a Notice of the change of standards in the **Federal Register**. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards are available for purchase from the American National Standards Institute (ANSI), 23 West 43rd St., Fourth Floor, New York, NY, 10036. In addition, these standards are available for inspection at the National Archives and Records Administration (NARA) and at the Occupational Safety and Health Administration's Docket Office, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210, or any of its regional offices. 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.*

Operating or assisting to operate means all work which involves starting or stopping a machine covered by this section, placing materials into or removing materials from a machine, including clearing a machine of jammed paper or cardboard, or any other work directly involved in operating the machine. The term does not include the stacking of materials by an employee in an area nearby or adjacent to the machine where such employee does not place the materials into the machine.

Paper box compactor means a powered machine that remains stationary during operation, used to compact refuse, including paper boxes, into a detachable or integral container or into a transfer vehicle.

Paper products machine means:

(1) All power-driven machines used in—(i) Remanufacturing or converting paper or pulp into a finished product, including preparing such materials for recycling; or

(ii) Preparing such materials for disposal.

(2) The term applies to such machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment. The term also applies to those machines which, in addition to paper products, process other material for disposal.

Scrap paper baler means a powered machine used to compress paper and possibly other solid waste, with or without binding, to a density or form that will support handling and transportation as a material unit without requiring a disposable or reusable container.

(c) *Exemptions.* (1) Sixteen- and 17-year-olds minors may load materials into, but not operate or unload, those scrap paper balers and paper box compactors that are safe for 16- and 17-year-old employees to load and cannot be operated while being loaded. For the purpose of this exemption, a scrap paper baler or a paper box compactor is considered to be safe for 16- and 17-year-old to load only if all of the following conditions are met:

(i) The scrap paper baler or paper box compactor meets the applicable ANSI standard (the employer must initially determine if the equipment meets the applicable ANSI standard, and the Administrator or his/her designee may make a determination when conducting an investigation of the employer);

(ii) The scrap paper baler or paper box compactor includes an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

(iii) The on-off switch of the scrap paper baler or paper box compactor is maintained in an off position when the machine is not in operation; and

(iv) The employer posts a notice on the scrap paper baler or paper box compactor (in a prominent position and easily visible to any person loading, operating, or unloading the machine) that includes and conveys all of the following information:

(A) That the scrap paper baler or compactor meets the industry safety standard applicable to the machine, as specified in paragraph (b)(5) of this section. The notice shall completely identify the appropriate ANSI standard.

(B) That sixteen- and 17-year-old employees may only load the scrap paper baler or paper box compactor.

(C) That no employee under the age of 18 may operate or unload the scrap paper baler or paper box compactor.

(2) This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

■ 27. In § 570.67 the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 570.67 Occupations in roofing operations and on or about a roof (Order 16).

(a) *Finding and declaration of fact.* All occupations in roofing operations and all occupations on or about a roof are particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health.

(b) *Definitions.*

On or about a roof includes all work performed upon or in close proximity to a roof, including carpentry and metal work, alterations, additions, maintenance and repair, including painting and coating of existing roofs; the construction of the sheathing or base of roofs (wood or metal), including roof

trusses or joists; gutter and downspout work; the installation and servicing of television and communication equipment such as cable and satellite dishes; the installation and servicing of heating, ventilation and air conditioning equipment or similar appliances attached to roofs; and any similar work that is required to be performed on or about roofs.

Roofing operations means all work performed in connection with the installation of roofs, including related metal work such as flashing, and applying weatherproofing materials and substances (such as waterproof membranes, tar, slag or pitch, asphalt prepared paper, tile, composite roofing materials, slate, metal, translucent materials, and shingles of asbestos, asphalt, wood or other materials) to roofs of buildings or other structures. The term also includes all jobs on the ground related to roofing operations such as roofing laborer, roofing helper, materials handler and tending a tar heater.

* * * * *

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 28.–29. The authority citation for part 579 is revised to read as follows:

Authority: 29 U.S.C. 203(l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 4–2001, 66 FR 29656; 104 Stat. 890 (28 U.S.C. 2461 note), as amended by 110 Stat. 1321–373 and 112 Stat. 3293.

■ 30. In § 579.1, the section heading and paragraphs (a) introductory text, (a)(1), (a)(6) and (c) are revised to read as follows:

§ 579.1 Purpose and scope.

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989, the Omnibus Budget Reconciliation Act of 1990, and the Compactors and Balers Safety Standards Modernization Act of 1996, provides that—

(1) Any person who violates the provisions of section 12 relating to child labor, section 13(c)(5), or any regulation issued under those sections shall be subject to a civil penalty of not to exceed $11,000 for each employee who was the subject of such a violation.

* * * * *

(6) Except for civil money penalties collected for violations of sections 12 and 13(c)(5), sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties in accordance with the provision of section 2 of an Act entitled ''An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes'' (29 U.S.C. 9a).

* * * * *

(c) This part explains our procedures for issuing a notice of civil penalty to an employer that has violated section 12 or section 13(c)(5) of the Act, or any regulation issued under those sections; describes the types of violations for which we may impose a penalty and the factors we will consider in assessing the amount of the penalty; outlines the procedure for a person charged with violations to file an exception to the determination that the violations occurred; and summarizes the methods we will follow for collecting and recovering the penalty.

■ 31. In § 579.3, the section heading and paragraph (a)(5) are revised to read as follows:

§ 579.3 Violations for which child labor civil money penalties may be assessed.

(a) * * *

(5) The failure by an employer employing any minor for whom records must be kept under any provision of part 516 of this title to maintain and preserve, as required by such provision, such records concerning the date of the minor's birth and concerning the proof of the minor's age as specified therein; and

* * * * *

■ 32. In § 579.5, the section heading is revised to read as follows:

§ 579.5 Determining the amount of the penalty and assessing the penalty.

§§ 579.6 through 579.8 [Removed]

■ 33. Sections 579.6 through 579.8 are removed.

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

■ 34.–35. The authority citation for part 580 is revised to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 4–2001, 66 FR 29656; 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

■ 36. Section 580.5 is revised to read as follows:

§ 580.5 Finality of notice.

If the person charged with violations does not, within 15 days after receipt of the notice, take exception to the determination that the violation or violations for which the penalty is imposed occurred, the administrative determination by the Administrator of the amount of such penalty shall be deemed final and not subject to administrative or judicial review. Upon the determination becoming final in such a manner, collection and recovery of the penalty shall be instituted pursuant to § 580.18.

■ 37. In § 580.6, paragraph (a) is revised to read as follows:

§ 580.6 Exception to determination of penalty and request for hearing.

(a) Any person desiring to take exception to the determination of penalty, or to seek judicial review, shall request an administrative hearing pursuant to this part. The exception shall be in writing to the official who issued the determination at the Wage and Hour Division address appearing on the determination notice, and must be received no later than 15 days after the date of receipt of the notice referred to in § 580.3. No additional time shall be added where service of the determination of penalties or of the exception thereto is made by mail. If such a request for an administrative hearing is timely filed, the Administrator's determination shall be inoperative unless and until the case is dismissed or the Administrative Law Judge issues a decision affirming the determination.

* * * * *

■ 38. Section 580.13 is revised to read as follows:

§ 580.13 Procedures for appeals to the Administrative Review Board.

(a) Any party desiring review of a decision of the Administrative Law Judge, including judicial review, must file a petition for review with the Department's Administrative Review Board (Board). To be effective, such petition must be received by the Board within 30 days of the date of the decision of the Administrative Law Judge. Copies of the appeal shall be served on all parties and on the Chief Administrative Law Judge. If such a petition for review is timely filed, the decision of the Administrative Law Judge shall be inoperative unless and until the Board dismisses the appeal or issues a decision affirming the decision of the Administrative Law Judge.

(b) All documents submitted to the Board shall be filed with the Administrative Review Board, Room S–

4309, U.S. Department of Labor, Washington, DC 20210. An original and two copies of all documents must be filed.

(c) Documents are not deemed filed with the Board until actually received by the Board, either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time was made by mail.

(d) A copy of each document filed with the Board shall be served upon all other parties involved in the proceeding. Such service shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address of the party.

§ 580.14 [Removed and Reserved]

■ 39. Section 580.14 is removed and reserved.

■ 40. Section 580.16 is revised to read as follows:

§ 580.16 Final decision of the Administrative Review Board.

The Board's final decision shall be served upon all parties and the Chief Administrative Law Judge, in person or by mail to the last known address.

■ 41. In § 580.18, paragraph (a) is revised to read as follows:

§ 580.18 Collection and recovery of penalty.

(a) When the determination of the amount of any civil money penalty provided for in this part becomes final under § 580.5 in accordance with the administrative assessment thereof, or pursuant to the decision and order of an Administrative Law Judge in an administrative proceeding as provided in § 580.12, or the decision of the Board pursuant to § 580.16, the amount of the penalty as thus determined is immediately due and payable to the U.S. Department of Labor. The person against whom such penalty has been assessed or imposed shall promptly remit the amount thereof, as finally determined. The payment shall be by certified check or by money order, made payable to the order of the Wage and Hour Division, and shall be delivered or mailed to the District Office of the Wage and Hour Division which issued and served the original notice of the penalty.

* * * * *

[FR Doc. 04–27182 Filed 12–15–04; 8:45 am]

BILLING CODE 4510–27–P

Federal Register

Thursday,
December 16, 2004

Part III

Department of Labor

Wage and Hour Division

29 CFR Parts 1 and 4
Service Contract Act Wage Determination OnLine Request Process; Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 1 and 4

[RIN 1215–AB47]

Service Contract Act Wage Determination OnLine Request Process

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor (DOL) proposes amending two regulations to allow full implementation of the Wage Determinations OnLine (WDOL) Internet Web site (*http://www.wdol.gov*), reflect changes in a title and various statutory citations as well as update a list of Wage and Hour Division (WHD) Regional Offices. *See* **SUPPLEMENTARY INFORMATION** for additional information about where the DOL makes this proposed rule available.

DATES: Submit comments on or before January 18, 2005.

ADDRESSES: You may mail or otherwise hand-deliver comments to Alfred B. Robinson, Jr., Acting Administrator, Wage and Hour Division (Attention: Office of Wage Determinations), Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, NW., Washington, DC 20210. You should enclose a self-addressed, stamped post card, if you want notification that the DOL received your comments. *See* **SUPPLEMENTARY INFORMATION** for information about submitting comments electronically by mail, e-mail, facsimile (''FAX'') machine or the *http://www.regulations.gov* Web site. The DOL encourages you to submit comments by mail early or to transmit them electronically, because security concerns continue to cause delays in delivering mail to the Washington, DC area.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–0062. This is not a toll-free number.

You may direct questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice to the nearest WHD District Office. Locate the nearest office by calling the WHD toll-free help line at 1–866–4US–WAGE (1–866–487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the agency Web site for a nationwide listing of WHD District and Area Offices at: *http://www.dol.gov/esa/contacts/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Electronic Access and Filing

This proposed rule is available through the **Federal Register** and *http://www.regulations.gov* Web site—which will allow you to find, review and submit comments on Federal documents that are open for comment and published in the **Federal Register**. You may also access this proposed rule via the WHD home page at *http://www.dol.gov/esa/regs/fedreg/proposed/whdpro.htm.*

You may submit comments by mail, e-mail, ''FAX'' or the *http://www.regulations.gov* Web site. You may e-mail comments to *WHD-REG-1215-AB47@dol.gov* or ''FAX'' them to (202) 693–1302. This is not a toll-free number. Submit comments as an ASCII file, avoiding the use of special characters or encryption. You may also submit comments or attachments in Microsoft Word format. Identify all comments in electronic form by the docket number (1215–AB47). You should not submit comments on diskette or similar media, because security equipment may cause the loss or corruption of data.

II. Paperwork Reduction Act

This regulation is not subject to the Paperwork Reduction Act, because it contains no new information collection requirements and does not modify any existing requirements.

III. Statutory and Regulatory Framework

The McNamara-O'Hara Service Contract Act, as amended (SCA), 41 U.S.C. 351 *et seq.*, requires contractors and subcontractors performing services on prime contracts in excess of $2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality as determined by the Secretary of Labor, or his authorized representative, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. The DOL issues wage determinations on a contract-by-contract basis in response to specific requests from contracting agencies.

SCA section 4, 41 U.S.C. 353, provides the Secretary of Labor with authority to enforce the Act, make rules and regulations, issue orders, hold hearings, make decisions based upon findings of fact and take other appropriate action. Regulations 29 CFR part 4 contains the DOL rules relating to SCA administration. Regulation 29 CFR 4.4 requires any Federal contracting agency to file with the WHD its notice of intention to make a service contract (Form SF–98), if the agency believes the contract may be subject to the SCA. The WHD uses contracting agency filings to issue appropriate wage determinations.

Section 1 of the Davis-Bacon Act (DBA), as amended, 40 U.S.C. 3141 *et seq.*, requires that each contract over $2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under DBA provisions, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The DBA directs the Secretary of Labor to determine such local prevailing wage rates and requires contractors to post the scale of wages to be paid in a prominent and easily accessible place at the site of the work.

In Reorganization Plan No. 14 of 1950 (5 U.S.C. App., effective May 24, 1950, 15 FR 3176, 64 Stat. 1267), Congress directed the DOL to prescribe appropriate standards, regulations and procedures to be observed by Federal agencies responsible for the administration of the Davis-Bacon and Related Acts (DBRA) in order to assure coordination of administration and consistency of enforcement.

Regulations, 29 CFR part 1, set forth the procedures for making and applying determinations of prevailing wage rates and fringe benefits pursuant to the DBA and any other Federal statute providing for determinations of such wages (Related Acts) by the DOL in accordance with the provisions of the DBA. Regulation 29 CFR 1.5 sets forth the procedure Federal agencies must use to request wage determinations. Regulation 29 CFR 1.6 explains their use and effectiveness.

The ''Anti-Kickback'' section of the Copeland Act, 40 U.S.C. 3145, precludes covered Federal construction contractors and subcontractors from in any way inducing an employee to give up any part of the compensation to which he or she is entitled under his or her contract of employment. The Copeland Act also requires covered Federal contractors and subcontractors to submit weekly statements of the

wages paid to each employee performing on covered work during the preceding payroll period.

Public Law 107–217 recodified Title 40 of the U.S. Code and changed the statutory citations for the DBRA and the Copeland Act.

IV. Discussion of the Proposed Rule

The DOL proposes to update its regulations to have contracting agencies use the WDOL Internet Web site to meet their obligation to obtain DBA general wage determinations from the WHD. Under the proposal, the WHD will publish wage determinations solely through WDOL and will no longer publish notice of changes in the **Federal Register** and the Government Printing Office (GPO) will no longer publish paper copies of general wage determinations. WDOL offers users the opportunity to request e-mail notice of future revisions to a wage determination they have selected for a specific period of time, or until a specific date. The term WDOL shall mean the Government Internet Web site for both DBA and SCA wage determinations or any other Internet Web site or electronic means that the Department of Labor may approve for these purposes.

For SCA wage determinations, the DOL proposes to eliminate the paper Form SF–98 and replace it with an electronic ''e98,'' process by which contracting agencies may continue to request SCA wage determinations from the WHD. The DOL also proposes to allow use of WDOL as an alternative means of obtaining SCA wage determinations.

The DOL further proposes to update the statutory citations for laws providing the authority for regulations 29 CFR part 1 and in the appendix that lists various acts to which the regulations apply. These last proposed changes simply reflect Public Law 107–217 that has recodified Title 40 of the U.S. Code. Finally, the proposed rule will update the title of the Assistant Secretary for Employment Standards in a definition, as well as addresses and other contact information in an appendix.

V. Background

The development of WDOL requires an update to existing regulations to allow contracting agencies fully to realize the process improvements and savings that WDOL provides. This proposed rule will also create a basis for updating related information in the Federal Acquisition Regulations (FAR) to be compatible with the DOL rule.

WDOL does not affect how the WHD determines prevailing wages under either the SCA or the DBA.

29 CFR Part 1

Since 1985, the current regulations prescribing procedures for obtaining DBA wage determinations have not been revised. The current rules provide that DBA general wage determinations are published by the GPO in a series of volumes broken out by different geographic areas of the country. On a weekly basis, the WHD publishes a notice in the **Federal Register** of the wage determination updates that GPO would publish the following week. Users can subscribe to the GPO publication service and receive all weekly updates by mail. Subscription purchases can be limited to individual volumes or could be for all DBA general wage determinations.

Shortly after the publication of the current regulations, many contracting agencies began inquiring about the possibility of accessing electronic copies of the published general wage determinations. As a result, the WHD entered into an agreement with the Department of Commerce, National Technical Information Service (NTIS) to make the DBA general wage determinations available online through WDOL. However, because the paper volumes of the DBA general wage determinations were still published and because the wage determinations on the NTIS site were identical to those contained in the GPO publication, the DBA regulations were not revised to add a reference to the NTIS site.

In 2002, the GPO approached the WHD about the possibility of publishing DBA Wage determinations electronically. The GPO sought to decrease its printing workload and was willing to make DBA general wage determinations available electronically at no cost to the user. By providing free access to DBA general wage determinations, the GPO was hoping to decrease the number of paper subscriptions, thereby decreasing their printing workload. Again, because the printed wage determinations were still being published, the regulations were not changed.

The proposed rule reflects the technological advances since 1985 and the wide use of electronic communication and information sharing, and adopts the WDOL Web site as the single source for DBA general wage determinations. The proposed rule will eliminate the notices currently published in the **Federal Register**. Notice of future modifications and supersedeas general wage determinations will be posted on WDOL. The proposed rule will also eliminate references to GPO publication of general wage determinations, although GPO may continue, at their discretion, to publish general wage determinations. The proposed rule would retain the requirement in the current regulations under 29 CFR 1.5 that Federal contracting agencies request a wage determination by preparing and mailing Form SF–308 to the Department of Labor, for those infrequent situations when a DBA general wage determination is not available through WDOL. DOL processed fewer than 100 Forms SF–308 in FY 2004, and the Department does not believe providing Federal agencies with an electronic submission option in these rare cases warrants the considerable expense developing such a system would require.

29 CFR Part 4

Since 1965, the SCA implementing regulations have required that a Federal contracting agency request SCA wage determinations for each contract. Form SF–98 was developed for this request and response process. In part, this individual request and response system was employed under the SCA because of the wide variety of service contracts covered under the Act. Unlike the DBA, which applied to contracts primarily from a single industry (*i.e.*, the construction industry), the SCA applied to contracts for a much broader range of industries and occupations. While Bureau of Labor Statistics cross-industry survey data were used to establish the wage determination rates for most SCA covered contracts, the unique requirements of some contracts demanded that more specialized and targeted wage determinations be issued. The SF–98 process gave the DOL the ability to consider the specific contract services and issue the SCA wage determination that was most appropriate for those services.

In 1972, the SCA was amended and a number of new provisions affecting the issuance of SCA wage determinations were added. Among the new provisions were requirements for issuing wage determinations based upon the predecessor contractor's collective bargaining agreement, giving due consideration to Federal wage rates when issuing SCA wage determinations and mandating the issuance of wage determinations for most covered contracts. The individualized SF–98 request and response process fit with these new statutory requirements and that process was retained when the regulations were revised to reflect the

1972 SCA amendments. The SF–98–A submission requirement was added to the regulations at that time to facilitate the communication of information pertaining to the new due consideration and mandatory issuance provisions of the amended SCA. (*See* 29 CFR 4.4(b).)

Although there have not been any major changes to the regulatory SF–98 request and response process since the regulations were revised following the 1972 amendments, the DOL has continued to work with contracting agencies to develop better and more efficient mechanisms for agencies to obtain SCA wage determinations. With the advent and expansion of the Internet in the mid-1990s, several contracting agencies approached the WHD requesting the ability to access and download SCA wage determinations. The vast majority of the covered service contracts awarded by these agencies were either options or renewals, and the applicable SCA wage determinations for these contracts were well established. By this time, the WHD had developed a standard set of SCA wage determinations that applied to most of these contracts. The NTIS had posted these wage determinations on the Internet for information purposes, and the agencies requested the ability to download and use these standard wage determinations in appropriate situations. After some discussion, the WHD entered into Memoranda of Understanding (MOUs) with several agencies to allow them to use these standard wage determinations without first submitting an SF–98. Under the MOUs, the agencies agreed to train their personnel in the proper selection and use of SCA wage determinations. The agencies also agreed to monitor the SCA wage determinations database and to use any subsequent revisions of the applicable wage determinations that were issued before the applicable procurement dates specified in the SCA regulations. After the agency selected an applicable SCA wage determination, it would notify the WHD of its selection by the submission of an SF–98 after the fact.

This MOU program greatly enhanced the remedial purpose of the SCA by requiring that participating agencies monitor the SCA wage determination database and use the latest revisions published in a timely manner before award or commencement of the contract. With the paper Form SF–98, the WHD had no mechanism to follow-up and advise contracting agencies when wage determinations were revised. For example, if a solicitation were issued in May and the WHD responded to the SF–98 with the then current wage determination, the WHD would not have advised the agency of an update of the wage determination that occurred in July. As a result, the wage determination applied to the contract starting on October 1st would have been the wage determination current in May rather than the revised wage determination issued in July. The MOU program was proven to be quite successful, and it subsequently was expanded to numerous other agencies.

Following the success of the MOU program, an interagency work group composed of representatives from the Office of Management and Budget, Department of the Army, Department of the Air Force, Department of the Navy, Army Corps of Engineers, General Services Administration, NTIS and the Department of Energy began development of a new online system designed to consolidate the best practices of agencies operating under the MOU program. The work group also looked at adding non-standard wage determinations to the online system. Principal objectives of the work group were the elimination of the paper Form SF–98 and the availability of wage determinations electronically.

At the same time, the WHD was developing an electronic request and response system to replace Form SF–98. The WHD began live tests of the ''e98'' system in FY 2003. During FY 2003, the WHD received and responded to more than 12,000 ''e98'' submissions. A computer responds to a significant number of the ''e98'' requests immediately while the requester is online. The remaining requests are referred to an analyst and the response is usually sent later the same day or the next day. For all requests, the ''e98'' system is designed to track individual requests by the procurement dates listed on the request, and when a wage determination that would affect a particular procurement is revised, an amended e-mail response is sent to the contracting agency.

The site developed by the WDOL work group integrates the ''e98'' process with the best practices developed under the MOU program. WDOL offers users a number of unique features in a web-based environment. The site includes: (1) Guidance to contracting officers on selecting the appropriate wage determination for each contract action; (2) access to the most current SCA and DBA wage determinations, as well as an alert service for notification of future revisions to particular wage determinations; and, (3) access to databases containing archived wage determinations under both the SCA and DBA.

To facilitate contracting officers selecting the appropriate SCA wage determination, the WDOL site leads the requester through a ''decision tree'' consisting of a series of questions. Based upon the responses to these questions, the WDOL site will either identify an SCA wage determination or direct the requester to submit an ''e98.'' A link to the ''e98'' site is provided. In addition, the WDOL site gives the requester the option of going directly to the ''e98'' site without having to go through the ''decision tree'' selection process. If a contracting officer has any question regarding the selection of the proper SCA wage determination, the WDOL site directs the contracting officer to the ''e98.''

As clearly indicated on the WDOL Web site, compliance with the decision tree selection process and the guidance provided by the User's Guide does not relieve the contracting officer or other program user of the requirement to carefully review the contract or solicitation, the FAR and its Supplements, other Federal agency acquisition regulations or the DOL regulations related to these actions. If the DOL discovers and determines, whether before or after contract award, that the correct SCA wage determination was not included in a covered contract, the contracting officer, within 30 days of notification by the DOL, is required to include in the contract the applicable wage determination issued by the DOL. (*See* 29 CFR 4.5(c)(2).)

The proposed rule reflects the technological advances since 1972 and the wide use of electronic communication and information sharing, and replaces the paper SF–98 with an electronic ''e98'' and enables contracting agencies alternatively to use the WDOL Web site to obtain SCA wage determinations.

VI. Regulatory Flexibility, Executive Order 12866; Small Business Regulatory Enforcement Fairness Act

The proposed regulation affects Federal agency procurement procedures and 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.* The agency has certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

This proposed rule has been determined to be a significant rulemaking, although not economically significant or major, and has therefore been reviewed by OMB.

VII. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this rule does not include any Federal mandate that may result in excess of $100 million in expenditures by State, local and tribal governments in the aggregate or by the private sector.

VIII. Executive Order 13132 (Federalism)

The rule does not have federalism implications as outlined in Executive Order 13132 regarding federalism. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

IX. Executive Order 13175, Indian Tribal Governments

This rule does not have ''tribal implications'' under Executive Order 13175 and does not require a tribal summary impact statement. The rule does not have ''substantial direct effects 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.''

X. Effects on Families

The undersigned hereby certifies that the rule will not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

XI. Executive Order 13045, Protection of Children

This rule has no environmental health risk or safety risk that may disproportionately affect children.

XII. Environmental Impact Assessment

A review of this rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.*; and the Departmental NEPA procedures, 29 CFR part 11, indicate the rule will not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

XIII. Executive Order 13211, Energy Supply

This rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution or use of energy.

XIV. Executive Order 12630, Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, because it does not involve implementation of a policy ''that has takings implications'' or that could impose limitations on private property use.

XV. Executive Order 12988, Civil Justice Reform Analysis

This rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

XVI. Request for Comments

In accordance with rulemaking requirements found at 5 U.S.C. 553, the DOL is providing interested persons an opportunity to comment on these proposed rules.

List of Subjects

29 CFR Part 1

Administrative practice and procedure, Government contracts, Investigations, Labor, Minimum wages, Recordkeeping requirements, Reporting requirements, Wages.

29 CFR Part 4

Administrative practice and procedure, Government contracts, Investigations, Labor, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Signed in Washington, DC, this 9th day of December, 2004.

Alfred B. Robinson, Jr.,

Acting Administrator, Wage and Hour Division.

For the reasons set out in the preamble, the DOL proposes to amend Title 29, parts 1 and 4 as set forth below:

Title 29—Labor

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

1. The authority citation for part 1 is proposed to be revised to read as follows:

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 *et seq.*; 40 U.S.C. 3145; 40 U.S.C. 3148; and the laws listed in appendix A of this part.

2. Paragraph (e) is proposed to be added to § 1.2 to read as follows:

§ 1.2 Definitions.[1]

* * * * *

(e) The term *Wage Determinations OnLine (WDOL)* shall mean the Government Internet Web site for both Davis-Bacon Act and Service Contract Act wage determinations available at *http://www.wdol.gov*. In addition, WDOL provides compliance assistance information. The term will also apply to any other Internet Web site or electronic means that the Department of Labor may approve for these purposes.

3. Paragraphs (a) and (b) of § 1.5 are proposed to be revised to read as follows:

§ 1.5 Procedure for requesting wage determinations.

(a) The Department of Labor publishes general wage determinations under the Davis-Bacon Act on the WDOL Internet Web site. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, *Provided*, That questions concerning its use shall be referred to the Department of Labor in accordance with § 1.6(b).

(b)(1) If a general wage determination is not available, the Federal agency shall request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Form SF–308 to the Department of Labor at this address: U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Contract Wage Determination, Washington, DC 20210.

In preparing Form SF–308, the agency shall check only those classifications that will be needed in the performance of the work. Inserting a note such as ''entire schedule'' or ''all applicable classifications'' is not sufficient. Additional classifications needed that are not on the form may be typed in the blank spaces or on a separate list and attached to the form.

(2) In completing SF–308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information that may be available.

When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

* * * * *

4. Paragraphs (a)(2), (c)(3)(iv) and (c)(3)(v) of § 1.6 are proposed to be revised to read as follows:

§ 1.6 Use and effectiveness of wage determinations.

(a) * * *

(2) General wage determinations issued pursuant to § 1.5(a), notice of which is published on WDOL, shall contain no expiration date.

* * * * *

(c) * * *

(3) * * *

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3)(ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modification, notice of which is published on WDOL prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is ''published'' within the meaning of this section on the date notice of a modification or a supersedeas wage determination is published on WDOL or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first.

* * * * *

5. Items 19 and 20 in Appendix A of part 1 are proposed to be revised to read as follows:

Appendix A to Part 1

* * * * *

19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat.).

Note: Section applying labor standards provisions of the Davis-Bacon Act repealed August 21, 2002, by 116 Stat. 1318, Pub. L. 107–217.

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. 14701).

* * * * *

6. Appendix B of part 1 is proposed to be revised to read as follows:

Appendix B to Part 1

Northeast Region

For the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia and West Virginia:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Curtis Center, 170 South Independence Mall West, Room 850 West, Philadelphia, PA 19106 (Telephone: (215) 861–5800, fax: (215) 861–5840).

Southeast Region

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 61 Forsyth Street, SW., Room 7M40, Atlanta, GA 30303 (Telephone (404) 893–4531, fax: (404) 893–4524).

Midwest Region

For the States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio and Wisconsin:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, Room 530, Chicago, IL 60604–1591 (Telephone: (312) 596–7180, fax: (312) 596–7205).

Southwest Region

For the States of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 525 South Griffin Street, Suite 800, Dallas, TX 75202–5007 (Telephone: (972) 850–2600, fax: (972) 850–2601).

Western Region

For the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 71 Stevenson Street, Suite 930, San Francisco, CA 94105. (Telephone: (415) 848–6600, fax: (415) 848–6655).

Appendix C to Part 1 [Removed]

7. Appendix C of part 1 is proposed to be deleted.

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

8. The authority citation for part 4 continues to read as follows:

Authority: 41 U.S.C. 351 *et seq.*; 41 U.S.C. 38 and 39; 5 U.S.C. 301.

Subpart A—Service Contract Labor Standards Provisions and Procedures

9. In § 4.1a, paragraph (b) is proposed to be revised and paragraphs (i) and (j) are proposed to be added to read as follows:

§ 4.1a Definitions and use of terms.

* * * * *

(b) *Secretary* includes the Secretary of Labor, the Assistant Secretary for Employment Standards, and their authorized representatives.

* * * * *

(i) *Wage Determinations OnLine (WDOL)* means the Government Internet Web site for both Davis-Bacon Act and Service Contract Act wage determinations available at *http://www.wdol.gov*. In addition, WDOL provides compliance assistance information and a link to submit an ''e98'' or any electronic means the Department of Labor may approve for this purpose. The term will also apply to any other Internet Web site or electronic means that the Department of Labor may approve for these purposes.

(j) The ''e98'' means a Department of Labor approved electronic application, whereby a contracting officer submits pertinent information to the Department of Labor and requests a wage determination directly from the Wage and Hour Division. The term will also apply to any other process or system the Department of Labor may establish for this purpose.

10. In § 4.3, paragraphs (b) through (d) are proposed to be revised and paragraph (e) is proposed to be added to read as follows:

§ 4.3 Wage determinations.

* * * * *

(b) As described in subpart B of this part, two types of wage determinations are issued under the Act: *Prevailing in the locality* or *Collective Bargaining Agreement (Successorship)* wage determinations. The facts related to a specific solicitation and contract will determine the type of wage determination applicable to that procurement. In addition, different types of prevailing wage determinations may be issued depending upon the nature of the contract. While prevailing wage determinations based upon cross-industry survey data are applicable to most contracts covered by the Act, in

some cases the Department of Labor may issue industry specific wage determinations for application to specific types of service contracts. In addition, the geographic scope of contracts is often different and the geographic scope of the underlying survey data for the wage determinations applicable to those contracts may be different.

(c) Such wage determinations will set forth for the various classes of service employees to be employed in furnishing services under such contracts in the appropriate localities, minimum monetary wage rates to be paid and minimum fringe benefits to be furnished them during the periods when they are engaged in the performance of such contracts, including, where appropriate under the Act, provisions for adjustments in such minimum rates and benefits to be placed in effect under such contracts at specified future times. The wage rates and fringe benefits set forth in such wage determinations shall be determined in accordance with the provisions of sections 2(a)(1), (2), and (5), 4(c) and 4(d) of the Act from those prevailing in the locality for such employees, with due consideration of the rates that would be paid for direct Federal employment of any classes of such employees whose wages, if federally employed, would be determined as provided in 5 U.S.C. 5341 or 5 U.S.C. 5332, or from pertinent collective bargaining agreements with respect to the implementation of section 4(c). The wage rates and fringe benefits so determined for any class of service employees to be engaged in furnishing covered contract services in a locality shall be made applicable by contract to all service employees of such class employed to perform such services in the locality under any contract subject to section 2(a) of the Act which is entered into thereafter and before such determination has been rendered obsolete by a withdrawal, modification, or supersedure.

(d) Generally, wage determinations issued for solicitations or negotiations for any contract where the place of performance is unknown will contain minimum monetary wages and fringe benefits for the various geographic localities where the work may be performed which were identified in the initial solicitation. (See § 4.4(a)(3)(i).)

(e) Wage determinations will be available for public inspection during business hours at the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC, and copies will be made available on request at Regional Offices of the Wage and Hour Division. In addition, most prevailing wage determinations are available online from WDOL.

11. Section 4.4 is proposed to be revised to read as follows:

§ 4.4 Obtaining a wage determination.

(a)(1) Sections 2(a)(1) and (2) of the Act require that every contract and any bid specification therefore in excess of $2,500 contain a wage determination specifying the minimum monetary wages and fringe benefits to be paid to service employees performing work on the contract. The contracting agency, therefore, must obtain a wage determination prior to:

(i) Any invitation for bids;

(ii) Request for proposals;

(iii) Commencement of negotiations;

(iv) Exercise of option or contract extension;

(v) Annual anniversary date of a multi-year contract subject to annual fiscal appropriations of the Congress; or

(vi) Each biennial anniversary date of a multi-year contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division.

(2) As described in § 4.4(b), wage determinations may be obtained from the Department of Labor by electronically submitting an ''e98'' describing the proposed contract and the occupations expected to be employed on the contract. Based upon the information provided on the ''e98,'' the Department of Labor will respond with the wage determination or wage determinations that the contracting agency may rely upon as the correct wage determination(s) for the contract described in the ''e98.'' Alternatively, contracting agencies may select and obtain a wage determination using WDOL. (See § 4.4(c).) Although the WDOL Web site provides assistance to the agency to select the correct wage determination for the contract, the agency remains responsible for the wage determination selected.

(3)(i) Where the place of performance of a contract for services subject to the Act is unknown at the time of solicitation, the solicitation need not initially contain a wage determination. The contracting agency, upon identification of firms participating in the procurement in response to an initial solicitation, shall obtain a wage determination for each location where the work may be performed as indicated by participating firms. An applicable wage determination must be obtained for each firm participating in the bidding for the location in which it would perform the contract. The appropriate wage determination shall be incorporated in the resultant contract documents and shall be applicable to all work performed thereunder (regardless of whether the successful contractor subsequently changes the place(s) of contract performance).

(ii) There may be unusual situations, as determined by the Department of Labor upon consultation with a contracting agency, where the procedure in paragraph (a)(3)(i) of this section is not practicable in a particular situation. In these situations, the Department may authorize a modified procedure which may result in the subsequent issuance of wage determinations for one or more composite localities.

(4) In no event may a contract subject to the Act on which more than five (5) service employees are contemplated to be employed be awarded without an appropriate wage determination. (See section 10 of the Act.)

(b) ''e98'' process—

(1) The ''e98'' is an electronic application used by contracting agencies to request wage determinations directly from the Wage and Hour Division. The WHD uses computers to analyze information provided on the ''e98'' and to provide a response while the requester is online, if the analysis determines that an existing wage determination is currently applicable to the procurement. The response will assign a unique serial number to the ''e98'' and the response will provide a link to an electronic copy of the applicable wage determination(s). If the initial computer analysis cannot identify the applicable wage determination for the request, an online response will be provided indicating that the request has been referred to an analyst. Again, the online response will assign a unique serial number to the ''e98.'' After an analyst has reviewed the request, a further response will be sent to the e-mail address identified on the ''e98.'' In most cases, the further response will provide an attachment with a copy of the applicable wage determination(s). In some cases, however, additional information may be required and the additional information will be requested via e-mail. After an applicable wage determination is sent in response to an ''e98,'' the ''e98'' system continues to monitor the request and if the applicable wage determination is revised in time to affect the procurement, an amended response will be sent to the e-mail address identified on the ''e98.''

(2) When completing an ''e98,'' it is important that all information requested be completed accurately and fully. However, several sections are particularly important. Since most responses are provided via e-mail, a

correct e-mail address is critically important. Accurate procurement dates are essential for the follow-up response system to operate effectively. An accurate estimate of the number of service employees to be employed under the contract is also important because section 10 of the Act requires that a wage determination be issued for all contracts that involve more than five service employees.

(3) Since the ''e98'' system automatically provides an amended response if the applicable wage determination is revised, the e-mail address listed on the ''e98'' must be monitored during the full solicitation stage of the procurement. Communications sent to the e-mail address provided are deemed to be received by the contracting agency. A contracting agency must update the e-mail address through the ''help'' process identified on the ''e98,'' if the agency no longer intends to monitor the e-mail address.

(4) For invitations to bid, if the bid opening date is delayed by more than sixty (60) days, or if contract commencement is delayed by more than sixty (60) days for all other contract actions, the contracting agency shall submit a revised ''e98.''

(5) If the services to be furnished under the proposed contract will be substantially the same as services being furnished in the same locality by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency shall reference the union and the collective bargaining agreement on the ''e98.'' The requester will receive an e-mail response giving instructions for submitting a copy of each such collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement. After receipt of the collective bargaining agreement, the Wage and Hour Division will provide a further e-mail response attaching a copy of the wage determination based upon the collective bargaining agreement. If the place of contract performance is unknown, the contracting agency will submit the collective bargaining agreement of the incumbent contractor for incorporation into a wage determination applicable to a potential bidder located in the same geographic area as the predecessor contractor. If such services are being furnished at more than one locality and the collectively bargained wage rates and fringe benefits are different at different localities or do not apply to one or more localities, the agency shall identify the localities to which such agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the agency shall identify the employees and/or work subject to the collective bargaining agreement. In the event the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arm's-length negotiations, a full statement of the facts so indicating shall be transmitted with the copy of such agreement. (See § 4.11.)

If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Wage and Hour Division and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10 at the time of filing the ''e98.''

(6) If the proposed contract is for a multi-year period subject to other than annual appropriations, the contracting agency shall provide a statement in the comments section of the ''e98'' concerning the type of funding and the contemplated term of the proposed contract. Unless otherwise advised by the Wage and Hour Division that a wage determination must be obtained on the annual anniversary date, a new wage determination shall be obtained on each biennial anniversary date of the proposed multi-year contract in the event its term is for a period in excess of two years.

(c) WDOL process—

(1) Contracting agencies may use the WDOL Web site to select the applicable prevailing wage determination for the procurement. The WDOL site provides assistance to the agency in the selection of the correct wage determination. The contracting agency, however, is fully responsible for selecting the correct wage determination. If the Department of Labor subsequently determines that an incorrect wage determination was applied to a specific contract, the contracting agency, in accordance with § 4.5, shall amend the contract to incorporate the correct wage determination as determined by the Department of Labor.

(2) If an applicable prevailing wage determination is not available on the WDOL site, the contracting agency must submit an ''e98'' in accordance with § 4.4(b).

(3) The contracting agency shall monitor the WDOL site to determine whether the applicable wage determination has been revised. Revisions published on the WDOL site or otherwise communicated to the contracting officer within the timeframes prescribed in § 4.5(a)(2) are applicable and must be included in the resulting contract.

(4) If the services to be furnished under the proposed contract will be substantially the same as services being furnished in the same locality by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency may prepare a wage determination that references the collective bargaining agreement by incorporating that wage determination, with a complete copy of the collective bargaining agreement attached thereto, into the successor contract action. It need not submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so. If the place of contract performance is unknown, the contracting agency will prepare a wage determination on WDOL and attach the collective bargaining agreement of the incumbent contractor and make both the wage determination and collective bargaining agreement applicable to a potential bidder located in the same geographic area as the predecessor contractor. (See § 4.4(a)(3).) If such services are being furnished at more than one locality and the collectively bargained wage rates and fringe benefits are different at different localities or do not apply to one or more localities, the agency shall identify the localities to which such agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the agency shall identify the employees and/or work subject to the collective bargaining agreement. In the event the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arm's-length negotiations, a full statement of the facts so indicating shall be transmitted to the Wage and Hour Division with the copy of such agreement. (See § 4.11.) If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for

services of a similar character in the locality, the agency shall so advise the Wage and Hour Division and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10. A wage determination based upon the collective bargaining agreement must be included in the contract until a hearing or a final ruling of the Administrator determines that the collective bargaining agreement was not reached as the result of arm's-length negotiations or was substantially at variance with locally prevailing rates. Any questions regarding timeliness or applicability of collective bargaining agreements must be referred to the Department of Labor for resolution.

(5) If the proposed contract is for a multi-year period subject to other than annual appropriations, the contracting agency shall, unless otherwise advised by the Wage and Hour Division, obtain a new wage determination on each biennial anniversary date of the proposed multi-year contract in the event its term is for a period in excess of two years.

12. Section 4.5 is proposed to be amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 4.5 Contract specification of determined minimum wages and fringe benefits.

(a) Any contract in excess of $2,500 shall contain, as an attachment, the applicable, currently effective wage determination specifying the minimum wages and fringe benefits for service employees to be employed thereunder, including any document referred to in paragraphs (a)(1) or (2) of this section;

(1) Any wage determination from the Wage and Hour Division, Employment Standards Administration, Department of Labor, responsive to the contracting agency's submission of an ''e98'' or obtained through WDOL under § 4.4; or

(2) Any revision of a wage determination issued prior to the award of the contract or contracts which specifies minimum wage rates or fringe benefits for classes of service employees whose wages or fringe benefits were not previously covered by wage determinations, or which changes previously determined minimum wage rates and fringe benefits for service employees employed on covered contracts in the locality. However, revisions received by the Federal agency later than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures, shall not be effective if the Federal agency finds that there is not a reasonable time still available to notify bidders of the revision. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term), revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective provided that the contract start of performance is within 30 days of such award (or execution of an option or extension of term). If the contract does not specify a start of performance date which is within 30 days from the award, and/or if performance of such procurement does not commence within this 30-day period, the Department of Labor shall be notified and any notice of a revision received by the agency not less than 10 days before commencement of the contract shall be effective. In situations arising under section 4(c) of the Act, the provisions in § 4.1b(b) apply.

(3) For purposes of using WDOL databases containing prevailing wage determinations, the date of receipt by the contracting agency will be the date of publication on the WDOL Web site or on the date the agency receives actual notice of a revised wage determination from the Department of Labor, whichever occurs first.

(b) * * * * *

(c) Where the Department of Labor discovers and determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that the Service Contract Act did not apply to a particular procurement and/or failed to include an appropriate wage determination in a covered contract, the contracting agency, within 30 days of notification by the Department of Labor, shall include in the contract the stipulations contained in § 4.6 and any applicable wage determination issued by the Administrator or his authorized representative through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination). With respect to any contract subject to section 10 of the Act, the Administrator may require retroactive application of such wage determination. (See 53 Comp. Gen. 412, (1973); *Curtiss-Wright Corp.* v. *McLucas*, 381 F. Supp. 657 (D NJ 1974); *Marine Engineers Beneficial Assn., District 2* v. *Military Sealift Command*, 86 CCH Labor Cases ¶ 33,782 (D DC 1979); *Brinks, Inc.* v. *Board of Governors of the Federal Reserve System,* 466 F. Supp. 112 (D DC 1979), 466 F. Supp. 116 (D DC 1979).) (See also 32 CFR 1–403.)

(d) In cases where the contracting agency has filed an ''e98'' and has not received a response from the Department of Labor, the contracting agency shall, with respect to any contract for which section 10 to the Act and § 4.3 for this part mandate the inclusion of an applicable wage determination, contact the Wage and Hour Division by telephone for guidance.

Subpart B—Wage Determination Procedures

13. Section 4.50 is proposed to be revised to read as follows:

§ 4.50 Types of wage and fringe benefit determinations.

The Administrator specifies the minimum monetary wages and fringe benefits to be paid as required under the Act in two types of determinations:

(a) *Prevailing in the locality.* (1) Determinations that set forth minimum monetary wages and fringe benefits determined to be prevailing for various classes of service employees in the locality (sections 2(a)(1) and 2(a)(2) of the Act) after giving ''due consideration'' to the rates applicable to such service employees if directly hired by the Federal Government (section 2(a)(5) of the Act).

(2) The prevailing wage determinations applicable to most contracts covered by the Act are based upon cross-industry survey data. However, in some cases the Department of Labor may issue industry specific wage determinations for application to specific types of service contracts. In addition, the geographic scope of contracts is often different and the geographic scope of the underlying survey data for the wage determinations applicable to those contracts may be different. Therefore, a variety of different prevailing wage determinations may be applicable in a particular locality. The application of these different prevailing wage determinations will depend upon the nature of the contracts to which they are applied.

(b) *Collective Bargaining Agreement—(Successorship).* Determinations that set forth the wage rates and fringe benefits, including accrued and prospective increases, contained in a collective bargaining agreement applicable to the service employees who performed on a predecessor contract in the same locality. (See sections 2(a)(1) and (2) as well as 4(c) of the Act.)

14. Paragraph (b) of § 4.54 is proposed to be revised to read as follows:

§ 4.54 Locality basis of wage and fringe benefit determinations.

* * * * *

(b) Where the services are to be performed for a Federal agency at the site of the successful bidder, in contrast to services to be performed at a specific Federal facility or installation, or in the locality of such installation, the location where the work will be performed often cannot be ascertained at the time of bid advertisement or solicitation. In such instances, wage determinations will generally be issued for the various localities identified by the agency as set forth in § 4.4(a)(3)(i).

* * * * *

15. Paragraphs (a) and (b) of § 4.55 are proposed to be revised to read as follows:

§ 4.55 Issuance and revision of wage determinations.

(a) Determinations will be reviewed periodically and where prevailing wage rates or fringe benefits have changed, such changes will be reflected in revised determinations. For example, in a locality where it is determined that the wage rate which prevails for a particular class of service employees is the rate specified in a collective bargaining agreement(s) applicable in that locality, and such agreement(s) specifies increases in such rates to be effective on specific dates, the determinations would be revised to reflect such changes as they become effective. Revised determinations shall be applicable to contracts in accordance with the provisions of § 4.5(a) of subpart A.

(b) Determinations issued by the Wage and Hour Division with respect to particular contracts are required to be incorporated in the invitations for bids or requests for proposals or quotations issued by the contracting agencies, and are to be incorporated in the contract specifications in accordance with § 4.5 of subpart A. In this manner, prospective contractors and subcontractors are advised of the minimum monetary wages and fringe benefits required under the most recently applicable determination to be paid the service employees who perform the contract work. These requirements are, of course, the same for all bidders so none will be placed at a competitive disadvantage.

* * * * *

Subpart C—Application of the McNamara-O'Hara Service Contract Act

16. Paragraphs (e)(1)(iv)(A) and (e)(2)(iii)(A) of § 4.123 are proposed to be revised to read as follows:

§ 4.123 Administrative limitations, variances, tolerances and exemptions.

* * * * *

(e) * * *

(1) * * *

(iv)(A) If the Administrator determines after award of the prime contract that any of the requirements in paragraph (e)(1) of this section for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Administrator's determination. In such case, the corrective procedures in § 4.5(c) shall be followed.

* * * * *

(2) * * *

(iii)(A) If the Administrator determines after award of the prime contract that any of the requirements in paragraph (e)(2) for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the corrective procedures in § 4.5(c) shall be followed.

* * * * *

17. Section 4.144 is proposed to be revised to read as follows:

§ 4.144 Contract modifications affecting amount.

Where a contract that was originally issued in an amount not in excess of $2,500 is later modified so that its amount may exceed that figure, all the provisions of section 2(a) of the Act, and the regulations thereunder, are applicable from the date of modification to the date of contract completion. In the event of such modification, the contracting officer shall immediately obtain a wage determination from the Department of Labor using the ''e98'' application or directly from WDOL, and insert the required contract clauses and any wage determination issued into the contract. In the event that a contract for services subject to the Act in excess of $2,500 is modified so that it cannot exceed $2,500, compliance with the provisions of section 2(a) of the Act and the contract clauses required thereunder ceases to be an obligation of the contractor when such modification becomes effective.

[FR Doc. 04–27422 Filed 12–15–04; 8:45 am]

BILLING CODE 4510–27–P

Federal Register

Thursday,
December 16, 2004

Part IV

Department of Housing and Urban Development

Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4955–N–01]

Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces the availability of up to $10 million in grant funds to make emergency capital repairs to eligible multifamily projects that are owned by private nonprofit entities and designated for occupancy by elderly tenants. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants. The intent of these grants is to provide one-time assistance for emergency items that could not be absorbed within the project's operating budget, and where the tenants continued occupancy in the immediate near future would be called into question by a delay in initiating the proposed cure. The notice provides instructions for owners to request the funding and instructions for the HUD field offices to process the request.

DATES: *Effective Date:* December 16, 2004.

FOR FURTHER INFORMATION CONTACT: Aretha Williams, Director, Grant Policy and Management Division, Office of Housing, Room 6142, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202–708–3000 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) and the Consolidated Appropriations Act, 2004 (Public Law 108–199, approved January 23, 2004) authorize HUD to provide grants for substantial capital repairs to eligible multifamily projects with elderly tenants that are needed to rehabilitate, modernize, or retrofit aging structures, common areas or individual dwelling units. The Consolidated Appropriations Act, 2004 provides $25,000,000 for grants for conversion of eligible units to assisted living ''and for emergency capital repairs as determined by the Secretary'' of HUD.

This notice announces the availability of up to $10 million in grant funds to make emergency capital repairs to eligible multifamily projects that are owned by private nonprofit entities. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants. The intent of these grants is to provide one-time assistance for emergency items that could not be absorbed within the project's operating budget, and where the tenants continued occupancy in the immediate near future would be called into question by a delay in initiating the proposed cure. The notice provides instructions for owners to request the funding and instructions for the HUD field offices to process the request.

II. Definition of ''Emergency Capital Repairs''

For purposes of this notice, ''emergency capital repairs'' are defined as repairs at a project to correct a situation that presents an immediate threat to the life, health and safety of project tenants. Assistance is limited to those projects with emergency problems that are of such a magnitude that:

1. The problem poses an immediate threat to the quality of life of the tenants; and

2. The continuation of the problem could potentially result in an evacuation of the tenants or long-term tenant displacement unless the repairs were rendered.

III. Eligibility Requirements

Only private nonprofit owners of eligible multifamily assisted housing developments designated for occupancy by elderly tenants as specified in sections 683(2)(B), (C), (D), (E), (F), or (G) of the Housing and Community Development Act of 1992 (Public Law 102–550, approved October 28,1992) are eligible for emergency capital repair grants under this notice. Projects must have had final closing on or before January 1, 1999.

To be eligible for an emergency capital repair grant under this notice, a project owner must be in compliance with:

1. Its Loan Agreement, Capital Advance Agreement, Regulatory Agreement, Housing Assistance Payment contract, Project Rental Assistance Contract, Rent Supplement or LMSA contract, or any other HUD grant or contract document.

2. All fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a).

IV. Grant Requirements

A. Conditions for Assistance

The following conditions apply to emergency capital grants awarded under this notice:

1. The request for funding must clearly identify the emergency and must contain a detailed justification in support of the emergency designation.

2. Funds awarded may only be expended for approved uses.

3. Repairs must be initiated immediately upon receiving the grant award and must be sufficiently completed within six months of the initial start with final repairs completed no later than 12 months after receipt of funding. Unless there are safety concerns, tenants must be able to remain in their units while the repairs are being done.

4. The project owner must demonstrate that: (i) The project accounts have been maintained in accordance with all HUD requirements; and (ii) there are insufficient funds in the operating budget, the reserve for replacement and/or residual receipts to fund emergency capital repairs. HUD encourages owners to use residual receipts when available. Owners are required to rebuild replacement reserves to help ensure that sufficient funds will be readily available for emergency capital repairs that may be required in the future.

5. The project owner's most recent management review rating is ''satisfactory'' or above.

6. The most recent Real Estate Assessment Center (REAC) physical inspection report for the project must have a score of 60 or above. Developments scoring less than 60 are ineligible.

7. The project is well maintained except for the current emergency capital repair needs.

8. The project does not have a recent history of mortgage defaults.

9. The project owner does not have any material adverse financial or managerial actions or omissions with regard to any project that is federally assisted or financed with a loan or capital advance from or mortgage insured by an agency of the federal government.

10. Tenants must be notified of the request for the grant and must be informed of the overall plan to complete the capital repairs, if at all possible.

11. The owner's Affirmative Fair Housing Marketing Plan (AFHMP) must meet all applicable HUD requirements. If not, the owner must have an acceptable plan in place prior to completion of the repairs.

12. The project owner is in compliance with all fair housing and equal opportunity statutes or has an approved plan for compliance prior to completion of the repairs.

B. Funding

The following requirements apply to emergency capital grant amounts awarded under this notice:

1. The maximum amount an individual project owner may apply for is $500,000.
2. HUD will fund all approved applications on an as submitted basis until funds have been fully expended.
3. HUD retains the right to adjust the amount of the grant up to the maximum grant of $500,000 or down based upon review of the reasonableness of the costs for completing the repairs.
4. Project owners should be aware as they prepare their request that the prevailing wage rate requirements of the Davis-Bacon Act may be applicable.

C. Eligible Uses of Funds

Grant funds are available only for emergency capital repairs that relate to immediate health/safety needs that impact upon the quality of life of the tenants if the repairs are not made. The project owner must submit a description of the proposed use of the funds and demonstrate how the repairs relate to eliminating the immediate emergency for the tenants. The award is a one-time opportunity for correction of the threat to the tenants. Funds may be used to repair or replace systems including, but not limited to:

1. Major building and structural components that are in critical condition; and
2. Repairs or replacements to mechanical equipment to the extent they are necessary for health and safety reasons.

D. Ineligible Uses of Funds

Emergency capital repair grants may not be used for the following costs:

1. Deferred maintenance items.
2. Lead-based paint abatement.
3. Demolition and reconstruction activities.
4. Security systems.

E. Use Agreement

If there are less than 10 years remaining on the existing mortgage, owners must enter into a Use Agreement (Attachment I) to extend the remaining affordability of the project for up to 10 years. For example, if the maturity date of the mortgage is three years from the execution of the Grant Agreement, the owner must enter into a Use Agreement for seven years beyond the term of the mortgage; if the maturity date of the mortgage is 15 years, the owner will not need to execute a Use Agreement unless the mortgage is prepaid. All Use Agreements must be recorded.

V. Request Process

A. Owner Submission Requirements

An emergency categorization is critical to qualifying for participation in this program. Priority will be given to areas subject to a current declaration of ''Federal Disaster Assistance.'' Requests for grants must be submitted in accordance with the procedures described below:

1. The request must be made in writing and submitted by the project owner to the local field office (Attachment II). The request must clearly identify all repairs of an emergency nature for which funding is requested, the basis for the emergency declaration and how it impacts upon the health and safety of the tenants as well as what would happen if the emergency repair was not done immediately. *Requests signed by a consultant or management agent on behalf of the owner are not acceptable.*

Note: Repair items identified on the REAC physical inspection report are not sufficient to be classified as emergency in nature.

2. Action items should be written in a manner that specifically describes the scope of work to be performed, provides an estimate of the cost of the work to be performed, and an explanation of the basis for the estimate. The estimate provided for the cost of each action item must be reasonable.
3. The request must demonstrate that the repairs cannot be corrected at a cost that can be absorbed within the operating budget or use of the reserve for replacement and/or residual receipts funds.
4. The request must provide a project plan for completing the repairs within six months but no longer than one year from the date of the grant award.
5. The project owner must notify the tenants of the plans to apply for this grant, if possible. If applicable, the request must provide evidence that the tenants were notified and given the opportunity to make comments. Any comments received from the tenants must be submitted to the local HUD field office along with the repair request.
6. The request must provide a description of all unsuccessful attempts (if any) the owner has made to acquire funds from other sources, including letters of denial from funding sources, to complete the outstanding emergency capital repairs.
7. The request must provide a description of any previous grants or loans received by the project for repairs.

B. Field Office Processing

1. The Hub Director/Program Center Director is responsible for ensuring that the requests are promptly and thoroughly reviewed and submitted to HUD headquarters.
2. Incomplete applications will not be processed and will be returned to the owner. Owners may re-submit a revised application, but it will be processed as a new request in the order in which it is received the second time.
3. Each field office has the responsibility for conducting a comprehensive review of the project's files that may include an on-site review. The review should consist of completion of the questions in Attachment IV and may include any other concerns the field office may have about the project.

C. Approval Process

1. All approvable requests along with the Certifications from the Program Centers (Attachment III) should be sent to the Multifamily Hub Director. Hub Directors will fax the approvable request to the Office of Housing Assistance and Grant Administration in Headquarters, Attention: Willie Spearmon at (202) 708–3104. In addition, an original copy of the request should be mailed to Willie Spearmon.
2. Once Headquarters receives the approval of the request for emergency capital repairs from the Hub Director, the Office of Housing Assistance and Grant Administration will process the request and award the funds.

Note: Due to limitations of funding, approval of such recommendations are strictly based on an as submitted basis until the exhaustion of funds. HUD Headquarters reserves the right to deny or reduce any request for funds. Priority will be given to areas subject to a current declaration of ''Federal Disaster Assistance.''

3. Once the grant funds have been reserved, Headquarters will notify the Multifamily Director in the field office who will notify the owner of the grant award.
4. Headquarters will notify field staff by electronic mail at the time the reservation documents are sent to the Fort Worth Accounting Center to assign the funds. Field staff should check in LOCCS to confirm reservation of the funds. Once funds have been reserved, the Multifamily Hub/Program Center Director should execute the Grant Agreement.

VI. Environmental Review

In accordance with 24 CFR 50.19(b)(10) of HUD's regulations, this notice provides assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration. Therefore, emergency capital repair grants provided under this notice are categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*).

Dated: December 13, 2004.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

BILLING CODE 4210–27–P

Appendix I

PROJECT NAME: _____

FHA PROJECT NO: _____

CITY, STATE: _____

RENTAL USE AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2004, by and between the Secretary of Housing and Urban Development acting by and through the Federal Housing Commissioner, and _____ (Mortgagor).

The owner has entered into an agreement with the Commissioner to maintain the property as rental housing for the elderly for the remainder of the specified _____-year period;

The Commissioner has determined that continuation of the property as rental housing is clearly necessary to assure adequate rental housing opportunity for low- and moderate-income elderly tenants.

Whereas, the owner has requested a grant from the Emergency Capital Repair Program to make emergency capital repairs to the property.

Whereas, the owner is willing to agree to maintain the subject property as an affordable rental property until _____.

Whereas, in the event the owner chooses to sell or transfer the property, or prepay the loan during the period of time this Rental Use Agreement is in effect, the owner will require, as a condition, that whomever acquires the property commit to maintain the property pursuant to the terms of this Rental Use Agreement.

Now, Therefore, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the parties agree as follows:

1. The execution and recording of this Agreement shall constitute HUD's approval of grant funds from the Emergency Capital Repair Program in the amount of _____.

2. The owner agrees that during the period that it owns the property, it will maintain the property as affordable rental housing until _____. During such period, should the property be sold, the Purchaser shall not utilize project dwelling units for any purpose other than affordable rental housing for the elderly.

3. The provisions of this Agreement shall be binding upon the heirs, successors, or assigns of the owner.

4. The provisions of this Agreement relating to the rental use of the property shall run with the land and shall be binding for the benefit of, in favor of and enforceable by the Secretary and his successors in office. The Secretary and his successors in office or any third-party beneficiary shall be entitled to (a) institute legal action to enforce performance and observance of, (b) enjoin any actions which are violative of, and (c) exercise any other legal or equitable right or remedy. For the purpose of these covenants, a third-party beneficiary shall be any person eligible for occupancy in the rental project insured pursuant to the provisions of the applicable program for the elderly. These rights and remedies may be exercised separately or in combination.

In witness thereof, the parties hereto have caused this Agreement to be executed the day and year first above written.

ATTEST:

_____

OWNER:

_____

TITLE:

_____

UNITED STATES OF AMERICA
SECRETARY OF HOUSING AND
URBAN DEVELOPMENT

_____
By: Director, Multifamily
Hub/Program Center

COUNTY OF _____

STATE OF _____

On this _____ day of _____, 2004 before me, the undersigned, officer, personally appeared _____ who acknowledged himself /herself to be the _____ of _____, and that as such _____, being authorized to do so, executed the within Agreement for the purpose therein contained by signing the name of said entity by himself/herself as _____.

WITNESS my hand and Notary seal the day and year aforesaid.

SEAL

_____
Notary Public

My Commission expires_____

COUNTY OF _____

STATE OF _____

Appendix II

FIELD OFFICE CONTACT INFORMATION

HUD - BOSTON HUB **HARTFORD OFFICE** One Corporate Center 19th Floor Hartford, CT 06103-3220 (860) 240-4800 TTY Number: (860) 240-4665	**HUD - BUFFALO HUB** **BUFFALO OFFICE** Lafayette Court Building 465 Main Street, 2nd Floor Buffalo, NY 14203-1780 (716) 551-5755, ext. 5000 TTY Number: (716) 551-5787
BOSTON OFFICE Room 301 Thomas P. O'Neill, Jr. Federal Building 10 Causeway Street Boston, MA 02222-1092 (617) 994-8500 TTY Number: (617) 565-5453	**HUD - PHILADELPHIA HUB** **PHILADELPHIA OFFICE** The Wanamaker Building 100 Penn Square East Philadelphia, PA 19107-3380 (215) 656-0609 TTY Number: (215) 656-3452
MANCHESTER OFFICE 1000 Elm Street 8th Floor Manchester, NH 03101 (603) 666-7510 TTY Number: (603) 666-7518	**CHARLESTON OFFICE** Suite 708 405 Capitol Street Charleston, WV 25301-1795 (304) 347-7000 TTY Number: (304) 347-5332
PROVIDENCE OFFICE Sixth Floor 10 Weybosset Street Providence, RI 02903-2808 (401) 528-5230 TTY Number: (401) 528-5403	**NEWARK OFFICE** Thirteenth Floor One Newark Center Newark, NJ 07102-5260 (973) 622-7900 TTY Number: (973) 645-3298

HUD - NEW YORK HUB **NEW YORK OFFICE** 26 Federal Plaza, Room 3200 New York, NY 10278-0068 (212) 264-8000 TTY Number: (212) 264-0927	**PITTSBURGH OFFICE** 339 Sixth Avenue Sixth Floor Pittsburgh, PA 15222-2507 (412) 644-6428 TTY Number: (412) 644-5747
HUD - BALTIMORE HUB **BALTIMORE OFFICE** Fifth Floor City Crescent Building 10 South Howard Street Baltimore, MD 21201-2505 (410) 962-2520 TTY Number: (410) 962-0106	**HUD - ATLANTA HUB** **ATLANTA OFFICE** ATTN: Multifamily Housing 12th Floor 40 Marietta Street Five Points Plaza Atlanta, GA 30303- 2806 (404) 331- 4976 TTY Number: (404) 730-2654
RICHMOND OFFICE 600 East Broad Street Richmond, VA 23219 (804) 771-2100, ext. 3839 TTY Number: (804) 771-2038	**SAN JUAN OFFICE** Edificio Administracion de Terrenos 171 Carlos Chardon Avenue Suite 301 San Juan, PR 00918-0903 (787) 766-5401 TTY Number: (787) 766-5104
HUD - GREENSBORO HUB **GREENSBORO OFFICE** Asheville Building 1500 Pinecroft Road, Suite 401 Greensboro, NC 27407-3838 (336) 547-4000 TTY Number: (336) 547-4020	**LOUISVILLE OFFICE** 601 West Broadway Louisville, KY 40202 (502) 582-5251 TTY Number: (866) 800-0289
COLUMBIA OFFICE Strom Thurmond Federal Building 13th Floor 1835-45 Assembly Street Columbia, SC 29201-2480 (803) 765-5592 TTY Number: (803) 253-3209	**KNOXVILLE OFFICE** Third Floor, Room 315 John J. Duncan Federal Building 710 Locust Street Knoxville, TN 37902-2526 (423) 545-4384 TTY Number: (423) 545-4559

	NASHVILLE OFFICE 235 Cumberland Bend, Suite 200 Nashville, TN 37228-1803 (615) 736-5213 TTY Number: (866) 503-0267
HUD - JACKSONVILLE HUB **JACKSONVILLE OFFICE** Suite 2210 Southern Bell Tower 301 West Bay Street Jacksonville, FL 32202-5121 (904) 232-2626 TTY Number: (904) 232-2631	**HUD - DETROIT HUB** **DETROIT OFFICE** Patrick V. McNamara Federal Building 477 Michigan Avenue, Suite 1635 Detroit, MI 48226-2592 (313) 226-7900 TTY Number: (313) 226-6899
BIRMINGHAM OFFICE Medical Forum Building 950 22nd St., North Suite 900 Birmingham, AL 35203-5301 (205) 731-2630 TTY Number: (205) 731-2624	**HUD - COLUMBUS HUB** **COLUMBUS OFFICE** 200 North High Street 7th Floor Columbus, OH 43215-2499 (614) 469-5737 TTY Number: (614) 469-6694
JACKSON OFFICE Suite 910 Doctor A.H. McCoy Federal Building 100 West Capitol Street Jackson, MS 39269-1096 (601) 965-4700 TTY Number: (601) 965-4171	**CLEVELAND OFFICE** US Bank Centre 1350 Euclid Avenue Suite 500 Cleveland, OH 44115-1815 (216) 522-4058 TTY Number: (216) 522-2261
HUD - CHICAGO HUB **CHICAGO OFFICE** Ralph H. Metcalfe Federal Building 77 West Jackson Boulevard, 23rd Floor Chicago, IL 60604-3507 (312) 353-5680 TTY Number: (312) 353-5944	**HUD - MINNEAPOLIS HUB** **MINNEAPOLIS OFFICE** 920 Second Avenue South, Suite 1300 Minneapolis, MN 55402-4012 (612) 370-3000 TTY Number: (612) 370-3186

INDIANAPOLIS OFFICE 151 North Delaware Street Indianapolis, IN 46204-2526 (317) 226-6482, 6831, or 7183 TTY Number: (317) 226-7081	**MILWAUKEE OFFICE** Suite 1380 Henry S. Reuss Federal Plaza 310 West Wisconsin Avenue, Suite 1380 Milwaukee, WI 53203-2289 (414) 297-3214, ext. 8673 TTY Number: (414) 297-1423
HUD - FT. WORTH HUB **LITTLE ROCK OFFICE** Suite 900 TCBY Tower 425 West Capitol Avenue Little Rock, AR 72201-3488 (501) 324-5931 TTY Number: (501) 324-5931	**HUD – KANSAS CITY HUB** **DES MOINES OFFICE** Room 239 Federal Building 210 Walnut Street Des Moines, IA 50309-2155 (515) 284-4583 TTY Number: (515) 284-4728
NEW ORLEANS OFFICE Ninth Floor Hale Boggs Federal Building 500 Poydras Street New Orleans, LA 70130-3099 (504) 589-7200 TTY Number: (504) 589-7279	**KANSAS CITY OFFICE** Room 200 Gateway Tower II 400 State Avenue Kansas City, KS 66101-2406 (913) 551-5462 TTY Number: (913) 551-6972
FT. WORTH OFFICE 801 Cherry Street P.O. Box 2905 Fort Worth, TX 76113-2905 (817) 978-5965 TTY Number: (817) 978-5595	**OMAHA OFFICE** Executive Tower Centre 10909 Mill Valley Road Suite 100 Omaha, NE 68154-3955 (402) 492-3122 TTY Number: (402) 492-3183
HOUSTON OFFICE 1301 Fannin, Suite 2200 Houston, TX 77002 (713) 718-3199 TTY Number: (713) 718-3289	**ST. LOUIS OFFICE** Third Floor Robert A. Young Federal Building 1222 Spruce Street, Room 3.207 St. Louis, MO 63103-2836 (314) 539-6583 TTY Number: (314) 539-6331

SAN ANTONIO OFFICE 106 South St. Mary's, Suite 405 San Antonio, TX 78205 (210) 475-6800 TTY Number: (210) 475-6885	**OKLAHOMA CITY OFFICE** 301 N.W. 6th, Suite 200 Oklahoma City, OK 73102 (405) 609-8410 TTY Number: (405) 609-8480
HUD - DENVER HUB **DENVER OFFICE** UMB Bank Building 23rd Floor 1670 Broadway Denver, CO 80202 (303) 672-5343 TTY Number: (303) 672-5113	**HUD - LOS ANGELES HUB** **LOS ANGELES OFFICE** 611 West 6th Street Suite 800 Los Angeles, CA 90017-3106 (213) 894-8000 TTY Number: (213) 894-8133
HUD - SAN FRANCISCO HUB **PHOENIX OFFICE** One North Central #600 Phoenix, AZ 85004 (602) 379-7149 TTY Number: (602) 379-4557	**HUD - SEATTLE HUB** **PORTLAND OFFICE** 400 Southwest Sixth Avenue Suite 700 Portland, OR 97204-1632 (503) 326-3228 TTY Number: (503) 326-2568
SAN FRANCISCO OFFICE Philip Burton Federal Building and U.S. Courthouse 450 Golden Gate Avenue P.O. Box 36003 San Francisco, CA 94102-3448 (415) 436-8356 TTY Number: (415) 436-6594	**ANCHORAGE OFFICE** 3000 C Street, Suite 401 Anchorage, AK 99503 (503) 326-3228 TTY Number: (503) 326-2568
HONOLULU OFFICE 500 Ala Moana Boulevard Suite 3A Honolulu, HI 96813 (808) 522-8185 TTY Number: (808) 522-8193	**SEATTLE OFFICE** 909 First Avenue, Suite 200 Seattle, WA 98104-5254 (503) 326-3228 TTY Number: (503) 326-2568

Appendix III

FIELD OFFICE CERTIFICATION

Project Name: _____
Project Number: _____
Program Center: _____
Hub: _____
Amount Requested: _____

I recommend that the referenced project be considered for funding. I certify that the use of Emergency Capital Repair Grant funds for the referenced project falls within the statutory guidance and that the assistance is necessary to make emergency capital repairs at the property. Attached is a brief narrative describing the emergency capital repair needs.

_____ _____
Project Manager Date

_____ _____
Program Center Director Date

_____ _____
Hub Director Date

Appendix IV

REVIEW CHECK LIST

REVIEW CHECK LIST instructions may be found in Section V B 3. If the answer to any of the questions in the Table below is "No", please provide comments in the space for comments in the table or in the space for additional comments.

Project Name: _____
Project Number: _____
Program Center: _____

CATEGORY	YOU ARE LOOKING FOR...	ANSWER	COMMENTS
Analysis of an Emergency Situations	Is this an emergency situation requiring the immediate use of these funds?	Yes __ No __	
Project Plan	Are the specifications for capital repairs sufficiently detailed?	Yes __ No __	
Physical Inspection	Provide the score and the date of the most recent REAC physical inspection.	_____ _____ _____	

Presence of Flags	Has the owner or the management agent been "flagged" in the Active Partner Performance System (APPS)? If either the owner or agent has a "flag" the normal 2530 clearance processes are required. Since time is of the essence, the 2530 clearance process request should indicate that this information is for the Emergency Capital Repairs Grant Program and identify the request as URGENT.	Yes __ No __	
Repair costs	Are the costs for the repairs reasonable and appropriate to the needs identified in the submission and the repairs being made?	Yes __ No __	
HUD Agreements	Is the owner in compliance with the Mortgage, Regulatory Agreement Assistance contract, if applicable, etc?	Yes __ No __	
Management	Is current management satisfactory to HUD based upon review of financial statements and management and occupancy reviews? When was the last management review conducted?	Yes ___ No ___ _____	

_____

Annual Operating Expenses	Can the repairs be completed with the current funds available in the project? If not, what is the basis for the judgment that they cannot be completed with existing funds and reserves or with other non-HUD/non-project resources? Are the annual operating expenses reasonable?	Yes __ No __ Yes __ No __	
Age of the Project	What is the date of the final closing?	_____	
Replacement Reserve Requirements	Have deposits been made each month to the project's reserve account?	Yes __ No __	
	What is the Balance in the Reserve for Replacement Account? What is the required Balance?	$_____ $_____	
Residual Receipts Balance	What is the balance in the Residual Receipts Account?	$_____	

_____

Audited Financial Statement	Is the owner current with filing of the audited financial statements? Were all findings, if any, resolved within 30 days?	Yes __ No __ Yes __ No __	
Excess Income	If the project is a Section 236,is the owner in compliance with the Excess Income requirements?	Yes __ No __	
Tenant Participation	Has data from tenants been reviewed to determine if there are persistent valid tenant complaints of a serious nature?	Yes __ No __	
Civil Rights Compliance	Does the owner's AFHMP meet HUD requirements?	Yes __ No __	
	Is the owner in compliance with all FHEO statutes?	Yes __ No __	

Appendix V

ADDITIONAL COMMENTS:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____
21. _____
22. _____
23. _____
24. _____
25. _____
26. _____
27. _____
28. _____

[FR Doc. 04–27534 Filed 12–13–04; 12:22 pm]

BILLING CODE 4210–27–C

Federal Register

Thursday,
December 16, 2004

Part V

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1952

Oregon State Plan—Proposed Final State Plan Approval and Approval of Supplements to the Oregon Occupational Safety and Health State Plan; Proposed Rule and Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–027A]

RIN 1218–AC13

Oregon State Plan; Eligibility for Final Approval Determination (Excluding Temporary Labor Camps); Proposal To Grant an Affirmative Final Approval Determination; Comment Period and Opportunity To Request Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed final State plan approval; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: This document gives notice of the eligibility of the Oregon State occupational safety and health plan, as administered by the Oregon Department of Consumer and Business Services, for determination under section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the State plan should be granted. This eligibility for 18(e) determination applies to all issues covered under the plan, with the exception of temporary labor camps.

If an affirmative determination under section 18(e) is made, Federal standards and enforcement authority will no longer apply to issues covered by the Oregon plan, with the exception of temporary labor camps in agriculture, general industry, construction and logging. This notice announces that OSHA is soliciting written public comment regarding whether or not final State plan approval should be granted, and offers an opportunity to interested persons to request an informal public hearing on the question of final State plan approval.

DATES: Submit written comments and hearing requests by the following dates:

Hard Copy: Your comments and hearing requests must be submitted (postmarked or sent) by January 18, 2005.

Facsimile and electronic transmission: Your comments and hearing requests must be sent by January 18, 2005.

Please see the section entitled **PUBLIC PARTICIPATION** for additional information on submitting written comments and hearing requests.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* Submit three copies of comments, attachments, and hearing requests to the OSHA Docket Office, Docket No. T–027A, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m. E.S.T.

Please note that security-related procedures may result in significant delays in receiving comments by regular mail. Telephone the OSHA Docket Office at (202) 693–2350 for information regarding security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service.

Facsimile: Transmit hearing requests and comments (including attachments) consisting of 10 or fewer pages by facsimile to the OSHA Docket Office at (202) 693–1648.

Electronic: Submit comments and hearing requests electronically through the Internet at *http://dockets.osha.gov.*

You must include the docket number of this notice, Docket No. T–027A, in your hearing requests and comments.

For access to the docket to read or download comments or background materials, such as Oregon State Plan documents, go to OSHA's Docket Office Home Page at *http://dockets.osha.gov.* All comments, submissions and background materials are also available for inspection and copying in the OSHA Docket Office at the address above. Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available on the OSHA Web site and for assistance in using this Web site to locate docket submissions. Because comments sent to the docket or to OSHA's Web site are available for public inspection, the Agency cautions interested parties against including in these comments personal information such as social security numbers or birth dates.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact George Shaw, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, Room N–3700, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2244. Electronic copies of most information and data concerning the Oregon State Plan that have been made part of the record in this proceeding have been posted on OSHA's Docket Office Home Page at *http://dockets.osha.gov.* You may also access many of Oregon's documents referenced in this **Federal Register** document by visiting the State's Web site at *www.cbs.state.or.us/external/osha.* Electronic copies of this **Federal Register** document, as well as all post-1993 OSHA **Federal Register** notices mentioned in this document, are available on OSHA's Web site at *www.osha.gov.*

SUPPLEMENTARY INFORMATION

Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.* (the ''Act'') provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting and obtaining Federal approval of a State plan. Procedures for State Plan submission and approval are set forth in regulations at 29 CFR part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are ''at least as effective'' as Federal standards and enforcement, ''initial approval'' is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4, if it includes satisfactory assurances by the State that it will take the necessary ''developmental steps'' to meet the criteria within a three-year period (29 CFR 1902.2(b)). The Assistant Secretary publishes a ''certification of completion of developmental steps'' when all of a State's developmental commitments have been satisfactorily met (29 CFR 1902.34). Certification attests to the structural completeness of a State plan, but renders no judgment as to its performance in actual operation.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an ''operational status agreement'' with OSHA (29 CFR 1954.3(f)). A State must have enacted its enabling legislation,

promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.37 are being applied and whether final approval should be granted.

An affirmative determination under section 18(e) of the Act (usually referred to as ''final approval'' of the State plan) results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). With the exception of sections 5(a)(1) and 11(c), Federal standards and enforcement authority no longer apply in that State to issues granted final approval status under the plan. Procedures for section 18(e) determinations are found at 29 CFR part 1902, subpart D. In general, in order to be granted final approval, in addition to structural sufficiency, actual performance by the State must be ''at least as effective'' as the Federal OSHA program in all areas covered under the State plan.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall,* C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a ''fully effective'' enforcement program.

The last requirement for final approval consideration is that a State must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data on a State necessary to make an objective continuing evaluation of whether the State performance meets the statutory and regulatory criteria for final approval.

History of the Oregon Plan and of Its Compliance Staffing Benchmarks

Oregon Plan

On June 6, 1972, the Oregon occupational safety and health plan was submitted to the Assistant Secretary in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on July 20, 1972 a notice was published in the **Federal Register** (37 FR 14445) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons 30 days in which to submit data, views and arguments in writing concerning the plan.

The American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) requested a public hearing, which was held September 27, 1972, in Portland, Oregon. Comments on the plan were received from the AFL–CIO, the National Electrical Contractors, and the Oregon Construction Industry Council, Inc. In response to concerns raised by the commentors, as well as issues noted by OSHA, the State made clarifications and revisions to its plan relating to its standards and enabling legislation. The standards issues concerned the effectiveness of some standards, product standards, variance procedures, hazard communication, protection from exposure to hazards (requirements for personal protective equipment), and access to employee exposure records. Legislative issues concerned criminal penalty v. civil damage lawsuits, protection for employees filing complaints, and sanctions for alleged ''red tag'' notice violations. Thereafter, on December 28, 1972, the Assistant Secretary published a **Federal Register** notice (37 FR 28628) granting initial approval of the Oregon plan as a developmental plan and adopting Subpart D of Part 1952 containing the decision and describing the plan.

The Oregon Occupational Safety and Health Division (OR–OSHA) in the Department of Consumer and Business Services is designated as the agency having responsibility for administering the plan throughout the State under the authority of the Oregon Safe Employment Act (Oregon Revised Statutes, Chapter 654). The plan covers all private sector employers with the exception of private sector establishments on Indian reservations and tribal trust lands, including tribal and Indian-owned enterprises; Federal agencies; the U.S. Postal Service and its contractors; contractors on U.S. military reservations, except those working on U.S. Army Corps of Engineers dam construction projects; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals. Such employers remain subject to Federal OSHA jurisdiction. The State's coverage also extends to all State and local government employers as required by section 18(c)(6) of the OSH Act. The plan provides for the adoption by Oregon of standards which are at least as effective as the Federal occupational safety and health standards. The plan requires employers to furnish employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the State agency. Employees are required to comply with all standards and regulations applicable to their conduct.

The plan contains provisions similar to Federal procedures governing: Inspection and citation procedures; emergency temporary standards; imminent danger proceedings; coverage under the State's equivalent of the general duty clause; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. Notices of contest of citations and penalties are heard by the Oregon Workers' Compensation Board, an independent administrative board. Decisions of the Workers' Compensation Board may be appealed to the Oregon appellate court. Complaints of discrimination are investigated by the Oregon Bureau of Labor and Industries, which also makes final determinations through settlement agreements and contested case hearings. Employees who allege discrimination have a private right of action in the circuit courts of Oregon, but may pursue both administrative and civil remedies only if they file a suit in court after BOLI has investigated and rejected their claim. The Assistant Secretary's initial approval of the Oregon developmental plan, a general description of the plan, a schedule of required developmental steps, and a provision for the exercise of discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart D, 37 FR 28628, December 28, 1972).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and documentation submitted for OSHA approval on or before December 28, 1975. These ''developmental steps'' included enactment of the Oregon Safe Employment Act, promulgation of State occupational safety and health standards at least as effective as the Federal standards, development of administrative rules and procedures, hiring and training of inspectors, establishment of specific occupational safety and health goals, development and implementation of an affirmative action program, and development and implementation of administrative rules concerning a public sector consultation program. In completing these developmental steps, the State developed and submitted for Federal approval all components of its program including, among other things: The Oregon Safe Employment Act; the Oregon State Poster; an Affirmative Action Plan; personnel merit system rules; a Statement of Goals and Objectives; the Oregon State Compliance Manual; regulations for inspections, citations and penalties, variances, employee complaints, and posting of citations and notices; recordkeeping and reporting regulations; Oregon occupational safety and health standards; and public sector consultation program rules.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Oregon Subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.102).

On September 15, 1982, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Oregon had satisfactorily completed all developmental steps (47 FR 42105, September 24, 1982). In certifying the plan, the Assistant Secretary found the structural components of the plan—the statutes, standards, regulations, and written procedures for administering the Oregon program—to be at least as effective as corresponding Federal provisions. Certification does not, however, entail findings or conclusions by OSHA concerning the adequacy of the plan in actual performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine in accordance with section 18(e) of the Act whether the statutory or regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On January 23, 1975, OSHA and the State of Oregon entered into an Operational Status Agreement which suspended the exercise of Federal concurrent enforcement authority in Oregon in all except specifically identified areas. (*See* 40 FR 18427.)

The State has submitted plan supplements describing changes to its program since plan approval. OSHA's approval of major plan changes has been announced in **Federal Register** notices published periodically. Approval of a fully updated State plan document containing all current structural components (legislation, regulations, policies and procedures manuals) and an updated plan narrative is published elsewhere in today's **Federal Register.**

Oregon Benchmarks

Under the terms of a 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In 1980, in response to the Court Order, OSHA established benchmarks for all approved State plans, including benchmarks of 47 safety and 60 health compliance officers for Oregon. The 1978 Court Order noted that new information might warrant an adjustment by OSHA of the fully effective benchmarks. In October, 1992, Oregon, in conjunction with OSHA, completed a reassessment of the levels resulting in a proposed revised health compliance staffing benchmark of 28 health compliance officers. The State determined that there was no compelling reason to revise the existing 1980 safety benchmark of 47 safety compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994 (59 FR 42493).

Determination of Eligibility

This **Federal Register** document announces the eligibility of the Oregon plan for final approval determination under section 18(e) for all issues, with the exception of temporary labor camps in agriculture, general industry, construction and logging, which issue is being excluded from final approval at this time pending resolution of OSHA's concerns regarding the effectiveness of the State's temporary labor camps standards. OSHA intends to work with the State to resolve all effectiveness issues with regard to its two temporary labor camp standards so that final approval may be extended to all covered issues within a reasonable timeframe. 29 CFR 1902.39(c) requires that notice of this determination of eligibility be published in order to seek public input prior to the Assistant Secretary's decision. The determination of eligibility is based upon OSHA's findings that:

(1) The Oregon plan has been monitored in actual operation for at least one year following certification. The results of OSHA's monitoring of the plan since the commencement of plan operations are contained in written evaluation reports which are made available to the State and to the public. The results of OSHA's most recent post-certification monitoring are set forth in a comprehensive evaluation report covering the period of October 1, 2002 through September 30, 2003, which has been made part of the record of the present proceedings and is available in Docket T–027A, together with all previous evaluation reports since 1983.

(2) The plan meets the State's revised benchmarks for enforcement staffing. On August 11, 1994, pursuant to the terms of the Court Order and the 1980 Report to the Court in *AFL–CIO* v. *Marshall,* OSHA approved revised fully effective benchmarks of 47 safety and 28 health compliance officers for Oregon based on an assessment of State-specific characteristics and historical experiences. Oregon has allocated safety positions in excess of these numbers, as evidenced by its FY 2005 *Application for Federal Assistance* in which the State has committed itself to funding the State share of salaries for 44 safety and 23 health compliance officers, with an additional 8 safety and 5 health compliance officers that are funded with 100% State monies. Total compliance officer staffing in both FY 2004 and FY 2005 is 52 safety and 28 health. Both the FY 2004 and FY 2005 grant applications have been made part of the record in the present proceeding.

Oregon provides State funds for its program well in excess of the required 50% match of Federal funding. The additional funds have allowed the State to expand staffing and activities in both its enforcement and voluntary compliance programs. Oregon also operates a 100% State-funded on-site consultation program for public and private employers that is separate from its Federally-funded consultation program under section 21(d). As this State-funded program differs in several

significant ways from the Federal requirements, its private sector component is not considered to be part of the State plan and is evaluated primarily to assure no negative impact on the required functions of the approved State plan.

(3) Oregon participates and has assured its continued participation in the computerized Integrated Management Information System (IMIS) developed and administered by OSHA.

As required of all States with approved plans, Oregon has developed a five-year Strategic Plan (currently covering the period FY 2001 to FY 2005) to guide its efforts to improve occupational safety and health in the State. The State's strategic goals (improve workplace safety and health, change workplace culture, and assure public confidence) are similar to those of Federal OSHA and are directed to the overall goal of reducing workplace injuries, illnesses and fatalities. Oregon's efforts are expected to contribute to the achievement of OSHA's national injury/illness/fatality reduction goals. Oregon's FY 2001–2005 Strategic Plan and its FY 2004 and FY 2005 Annual Performance Plans are available in Docket T–027A, as a part of Oregon's FY 2004 and 2005 grants.

Issues for Determination in the 18(e) Proceedings

The Oregon plan is now at issue before the Assistant Secretary for determination as to whether the criteria of section 18(c) of the Act are being applied in actual operation in a manner at least as effective as the Federal program. 29 CFR 1902.37(a) requires the Assistant Secretary, as part of the final approval process, to determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in § 1902.37(b). OSHA believes that the results of its evaluation of the Oregon program as described in the most recent evaluation report, considered in light of these regulatory criteria and the criteria in section 18(c) of the Act, indicate that the regulatory indices and criteria are being met. The Assistant Secretary accordingly has made an initial determination that the Oregon plan is eligible for an affirmative section 18(e) determination for all issues covered by the plan with the exception of temporary labor camps as regulated by two state standards applicable to both agriculture and general industry (including construction and logging). This notice initiates proceedings by which OSHA expects to elicit public comment on the issue of granting an affirmative section 18(e) determination to Oregon. In order to encourage the submission of informed and specific public comment, a summary of current evaluation findings with respect to these criteria is set forth below.

(a) Standards and Variances

Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. A State is required to adopt, in a timely manner, all Federal standards and amendments or to develop and promulgate State standards and amendments at least as effective as the Federal standards. See §§ 1902.37(b)(3), 1902.3(c), 1902.4 (a) and (b). Although Oregon does not automatically adopt standards which are identical to the Federal standards, it usually adopts Federal standards by reference and sometimes adds a few State-initiated provisions under the State's regulatory numbering system. Oregon also adopts independent standards which do not have a direct Federal counterpart. Oregon OSHA adopts standards through a promulgation process that provides notification to the public of its intent to adopt a standard: It publishes the standard that it proposes in the Secretary of State's Bulletin, it asks for comments and it may hold hearings. After review of all comments and appropriate revision, the standard is formally adopted and its effective date established. When Oregon OSHA is considering substantive standard revisions, a committee of affected employers, employees, and other experts is convened to provide input and draft language before comments are requested from the public. Thus, OR-OSHA's standards development process is similar to Federal OSHA's and provides full opportunity for public input.

Some Oregon standards and related enforcement policies differ from the Federal, such as the State's enforcement policy requiring employers to pay for personal protective equipment, Oregon's additional rules for personal protective equipment and for explosives and blasting agents, and the State's different rules for air contaminants, bloodborne pathogens (needlestick devices), spray finishing, concrete and masonry construction, and fall protection in construction. Oregon has also adopted a number of standards which do not have Federal counterparts, including workplace safety committees, crane operator training, thiram, reinforced plastics manufacturing, ornamental tree and shrub services, and extensive forest activities (logging) requirements. [18(e) Evaluation Report, pp. 20–21]

Where a State adopts Federal standards, the State's interpretation and application of such standards must be consistent with Federal interpretation and application. Where a State develops and promulgates its own standards, interpretation and application must ensure protection at least as effective as comparable Federal standards and enforcement procedures. While acknowledging the effectiveness of individual standards, this requirement stresses that State standards, in actual operation, must be at least as effective as the Federal standards. See §§ 1902.37(b)(4), 1902.3(c)(1), 1902.3(d)(1), 1903.4(a), and 1902.4(b)(2). As already noted, the Oregon plan provides for adoption of standards identical to or at least as effective as the Federal standards. Oregon also generally adopts Federal interpretations or more stringent requirements and thus assures at least as effective worker protection.

The State is required to take the necessary administrative, judicial or legislative action to correct any deficiency in its program caused by an administrative or judicial challenge to any State standard, whether the standard is identical to the Federal standards or developed by the State. See § 1902.37(b)(5). There have been administrative and judicial challenges to State standards in Oregon, but they have all been satisfactorily resolved. The State legislature has periodically enacted legislation requiring changes in the State's standards, such as for safety committees, hazard communication in agriculture, live-line bare-handed electrical work, sanitation in construction, and most recently for steel erection. For example, the steel erection legislation resulted in a required modification to Oregon's more stringent fall protection provisions in its steel erection standard to make them identical to the Federal.

When granting permanent variances from standards, the State is required to ensure that the employer provides as safe and healthful working conditions as would have been provided if the standard were in effect. See §§ 1902.37(b)(6) and 1902.4(b)(2)(iv). Oregon granted three permanent variances during the 18(e) evaluation period. The granted variances were processed in accordance with State procedures. [18(e) Evaluation Report, p. 21] Where a temporary variance is granted, the State must ensure, among other things, that the employer complies with the standard as soon as possible and provides appropriate interim employee protection. See

§§ 1902.37(b)(7) and 1902.4(b)(2)(iv). The Oregon temporary variance procedures require that any employer granted a temporary variance must have an effective program for coming into compliance with the standard as soon as possible. During the section 18(e) evaluation period, no temporary variances were granted. [18(e) Evaluation Report. p. 21]

(b) Enforcement

Section 18(c)(2) of the Act requires State plans to maintain an enforcement program which is at least as effective as that conducted by Federal OSHA. Section 18(c)(3) requires the State plan to provide for right of entry and inspection of all work places at least as effective as that in section 8 of the Act.

Inspection Targeting. The State inspection program must provide for sufficient resources to be directed to designated target industries while providing adequate protection to all other workplaces covered under the plan. See §§ 1902.37(b)(8), 1902.3(d)(1), and 1902.4(c). Oregon relies on injury and illness claims data from the State workers' compensation system as the primary means to identify employers for high-hazard, programmed safety and health inspections. This site-specific targeting is augmented by workers' compensation claim severity classifications, an employer's history, and other factors to arrive at a ranking on an inspection list. Separate lists are made for general industry, construction, logging, and health.

Oregon's strategic plan for FY 2001–2005 focuses on reducing silica exposures, lead in construction exposures, and fall hazards. The State has targeted inspections in the following industries: agriculture, construction, lumber/wood, food/kindred products, and health care. OR-OSHA conducted 4,569 safety inspections during FY 2003. Of that total, 3,494 (76%) were programmed. In the same period, 789 health inspections were conducted, of which 350 (44%) were programmed, for a combined programmed inspections average of 72%. This is consistent with previous years' inspections and exceeds the Federal experience of 56% programmed inspections. Fourteen percent (14%) of State inspections are in response to complaints and 4% are in response to accidents. There are no backlogs of such inspections.

During the evaluation period, the percentage of OR-OSHA programmed safety inspections with serious, willful or repeat violations was 40% for Oregon compared to 60% for Federal OSHA and a national (State and Federal OSHA data combined) three-year average of 49%. The percentage of OR-OSHA programmed health inspections with serious, willful or repeat violations was 25% for Oregon compared to 46% for Federal OSHA and a national three-year average of 40%. State officials assert that fewer serious violations per inspection are expected in Oregon because of a higher frequency of inspections, workplace safety committee (and employer safety and health program) requirements, and a large consultation program. (See discussion under Identifying and Citing Hazards.)

Denials of Entry. In cases of refusal of entry, the State must exercise its authority, through appropriate means, to enforce the right of entry and inspection. See §§ 1902.37(b)(9), 1902.3(e) and (f), and 1902.4(c)(2)(i) and (ix). Section 654.067 of the Oregon Safe Employment Act provides for an inspector's right of entry during regular hours to any place of employment. During the evaluation period, there were 14 denials of entry. Entry was achieved in all cases, the same as for Federal OSHA during the period. [18(e) Evaluation Report, p. 22]

Inspection Procedures. Inspections must be conducted in a competent manner following approved enforcement procedures, which include the requirement that inspectors acquire information adequate to support any citation issued. See §§ 1902.37(b)(10), 1902.3(d)(1), and 1902.4(c)(2). Procedures for the Oregon occupational safety and health compliance program are set out in the Oregon Field Inspection Reference Manual (FIRM), which is patterned after OSHA's FIRM and other compliance documents. The Oregon FIRM is supplemented by program directives. The State in actual operation has demonstrated its adherence to inspection procedures, including documentation, which are similar to Federal procedures. [18(e) Evaluation Report p. 22]

Oregon uses multi-employer workplace citation guidelines that are different from the Federal multi-employer policy. Oregon's guidelines allow employers on multi-employer sites to be cited if they create hazards, expose employees to hazards, or control the worksite, provided certain conditions are met, whereas the Federal policy is broader and also allows citations for employers responsible for correcting a hazard. Only Oregon employers that have knowledge of the hazardous conditions and exercise direct control over the work practices of employees exposed to such conditions may be cited. However, Oregon's guidelines encourage the use of Orders to Correct for employers that are not cited.

Identifying and Citing Hazards. In FY 2003, Oregon compliance officers found 2.9 violations per inspection, which is the same as the Federal average of 2.95 violations per inspection, but lower than the three-year national (State and Federal data combined) average of 3.5. Oregon also cited an average of 1.1 serious, willful or repeat violations per inspection. The comparable Federal data was 2.2 and the national three-year average was 2.0. For other-than-serious violations, the respective averages were 1.81 for Oregon, .75 for Federal, and 1.5 for the three-year national average. In addition to issuing citations, the State issues ''Orders to Correct'' to require correction in certain circumstances. For example, orders may be used when a citation has not been issued within 180 days of the opening conference, when legal estoppel issues interfere with issuing a citation or when a small employer, who is required by rule to have a safety committee but does not, agrees to implement an ''innovative'' committee following the OR-OSHA guidelines for small employers. Citations for failure-to-abate and repeat violations can be issued on an Order to Correct. Almost all Orders to Correct have dealt with small employer implementation of safety committee requirements.

Although Oregon OSHA finds as many violations per inspection as does Federal OSHA, its percentage of programmed inspections with serious, willful or repeat violations is lower than both the Federal and national averages (see Inspection Targeting). State officials assert that Oregon's lower percent of serious, willful or repeat violations is attributable to the fact that Oregon has a much higher frequency of inspections compared to Federal and national averages. With 157,117 private sector establishments (per Oregon FY 2004 annual performance plan, p. 4), Oregon's 5,082 private sector inspections in FY 2003 represent one inspection for every 29 establishments, compared to one inspection for every 82 private sector establishments at the national (State and Federal OSHA data combined) level. [18(e) Evaluation Report, pp. 21–22]

Oregon has also required employer safety and health programs through workplace safety committees since 1982. Besides conducting workplace inspections, investigating accidents and recommending to the employer how to eliminate hazards, these safety committees assist the employer in evaluating the employer's safety and health program and make written

recommendations to improve the program. In addition, Oregon has a large, independent consultation program whose private sector component operates outside of the approved State plan and a large employer recognition and exemption program which meets Federal requirements, as well as other cooperative compliance assistance activities. These programs emphasize assisting employers in improving their safety and health programs. (84% of Oregon consultations in FY 2003 involved working with safety committees.) These factors may have the effect of reducing the numbers of serious hazards present in the workplace and therefore the number of serious violations per inspection. Oregon's accepted workers' compensation disabling claims rate and Bureau of Labor Statistics lost workday injury/illness rate have also been steadily declining over the past decade, demonstrating fewer injuries. (See Injury/Illness Rates section.) [18(e) Evaluation Report, pp. 10–12, and Appendix A, SOAR Report, pp. A–1 and A–3]

Though Oregon has a lower percentage of violations that are willful (.02% vs. .49% Federal), Oregon's statutory provisions for criminal willful penalties at ORS 654.991(a) contain two additions not found in the Federal OSH Act which should enhance Oregon's ability to successfully pursue criminal willful violations. A willful violation in Oregon that materially contributes to the death of an employee may also be subject to criminal prosecution, as well as a willful violation that causes a death. The Oregon Act also includes a definition of ''willful''.

Advance Notice. State plans must include a prohibition on advance notice of inspections, and exceptions must be no broader than those allowed by Federal OSHA procedure. See § 1902.3(f). Oregon has adopted approved procedures for advance notice similar to the Federal procedures. During the evaluation period, Oregon did not grant any advance notice of inspections.

Employee Participation. State plans must provide for inspections in response to employee complaints, and must provide an opportunity for employee participation in State inspections. See § 1902.4(c)(i) through (iii). The State has procedures similar to those of Federal OSHA which require that either an employee representative be provided an opportunity to accompany the compliance officer on the walk-around or that a reasonable number of employees be interviewed. In addition, inspection reports are provided to employee representatives and complainants. In each of the 18 accompanied visit inspections with OSHA monitors during the evaluation period, employees or their representatives actively participated. No problems have been noted concerning employee participation. [18(e) Evaluation Report, p. 22]

Response to Complaints. Oregon's procedures for processing and responding to complaints are essentially identical to OSHA's. Imminent danger complaints are to be responded to by inspection within 24 hours and serious complaints within 5 working days. Other-than-serious complaints may be responded to by inspection (within 30 working days), letter, fax or telephone. During the evaluation period the State was timely in initiating responses to employee imminent danger complaints 98% of the time, serious complaints 95% of the time, and other-than-serious complaints 99% of the time. In addition, OR–OSHA provided complainants with timely response letters 94% of the time and sent timely letters 100% of the time to family members when fatalities were involved. During FY 2003 Oregon responded to 59 imminent danger complaints (8%), 379 serious complaints (52%) and 291 other-than-serious complaints (40%); these figures are virtually unchanged from FY 2002. [18(e) Evaluation Report, pp. 22–23 and Appendix A, SOAR Report, p. 12]

Non-discrimination. State plans must also provide protection for employees against discrimination similar to that found in section 11(c) of the Federal Act. See § 1902.4(c)(2)(v). Section 654.062(5) of the Oregon Safe Employment Act provides for discrimination protection equivalent to that provided by Federal OSHA. Under Oregon law, the Bureau of Labor and Industries (BOLI) has jurisdiction for discrimination cases. Oregon OSHA contracts with BOLI for discrimination complaint processing. A total of 54 complaints alleging discrimination were investigated during the evaluation period, four of which were found to be meritorious. Oregon met the 90-day time limit for completing discrimination investigations 67% of the time. The State's goal is to complete investigations within 90 days in 85% of cases. Oregon OSHA is actively working with BOLI to improve case determination timeliness, to ensure that a review of the ''prima facie'' elements is conducted in every instance when determining the merits of 11(c) complaints, and to provide file documentation of the reasons why no investigation is conducted. The administrator of the Civil Rights Division of BOLI has expressed BOLI's commitment to addressing OSHA's concerns, and OR–OSHA will be reviewing discrimination case files for appropriate case file documentation, including prima facie analysis, during quarterly audits. BOLI takes appropriate action through administrative and court litigation on merit cases where the employer does not voluntarily comply with the State's proposed remedy. OR–OSHA pays BOLI for each occupational safety and health-related discrimination investigation it conducts. At the time the evaluation report was prepared, BOLI had 12 investigators. [18(e) Evaluation Report, pp. 26–28]

Although the State's non-discrimination program is working to resolve several issues, employees in Oregon continue to have the right to dually file a discrimination complaint with Federal OSHA to preserve their right to further Federal investigation and prosecution should it be necessary. As Federal authority under section 11(c) is not affected by an 18(e) determination, this protection would be unaffected by this proposed action. Oregon complainants also have a private right of action and may file a civil suit in State or Federal court if they are not satisfied with BOLI's decision or if their case is dismissed. For a discussion of Oregon's discrimination rules, see ''Oregon State Plan; Approval of Plan Supplements; Revised State Plan'' published elsewhere in today's **Federal Register**.

Citations and Proposed Penalties. The State is required to issue, in a timely manner, citations, proposed penalties, and notices of failure to abate. See §§ 1902.37(b)(11), 1902.3(d), and 1902.4(c)(2) (x) and (xi). The time from an inspection opening conference to citation issuance for safety inspections in Oregon was 38 days during FY 2003. This is better than the national average of 47 days but longer than the Federal average of 29 days. For health inspections, however, OR–OSHA averaged 74 days while the national average was 63 days and the Federal average was 40 days. As a result of State attention to this issue, by the end of the second quarter of FY 2004 lapse times were 34 days (safety) and 69 days (health). [18(e) Evaluation Report, p. 24]

The State must propose penalties in a manner that is at least as effective as the penalties under the Federal program, which includes first instance violation penalties and consideration of factors comparable to those required in the Federal program in calculating penalties. See §§ 1902.37(b)(12), 1902.3(d), and 1902.4(c) (x) and (xi). Oregon's authority includes the use of

first instance sanctions with maximum statutory penalty amounts identical to the Federal with the exception of an optional $1,000 maximum penalty for posting violations vs. the Federal mandatory $7,000. This difference is not considered significant, however, as Oregon has also established a minimum posting penalty of $100–$200 and in practice, although OSHA may cite for failure to post a citation or annual summary, it does not usually issue citations for failure to post the OSHA poster (OSHA Directive CPL 02–00–111 (CPL 2.111), ''Citation Policy for Paperwork and Written Program Requirement Violations'', November 27, 1995). Unlike OSHA, Oregon also has statutory civil penalties of $100 to $2,500 for false statements (in addition to criminal penalties), red tag penalties of $100 to $5,000, and field sanitation penalties of $250 to $2,500. By regulation, Oregon also has raised the statutory minimum penalty amounts for various violations.

OR–OSHA's procedures for penalty calculation contain a number of differences from OSHA's, including lower base penalty amounts used in calculation of a probability/severity-based (gravity-based) penalty, and differences in calculations for combined or grouped violations and in penalty adjustment factors. For example, while Federal OSHA allows a penalty reduction of up to 60% for employer size, Oregon allows a penalty reduction of only 10% for small employers. Oregon also allows penalty reductions for a low lost workday injury rate which Federal OSHA does not. In addition, Oregon's procedures generally allow a lower minimum penalty for failure-to-abate violations ($50 per day for other-than-serious and $250 per day for serious, with higher minimum in unusual circumstances, vs. Federal policy of $1,000 per day minimum for either serious or other-than-serious unabated violations). Oregon does not allow penalty adjustments for repeat or willful violations, while OSHA allows an adjustment for employer size. Although these differences in penalty calculation result in lower average penalties in Oregon, no deficiencies in program operations attributable to these differences were noted during this evaluation period. Oregon's penalties for serious violations averaged $365 in FY 2003. The national average penalty for serious violations was $1,331 and the Federal average was $821. Oregon believes that its practice of conducting much more frequent inspections (see Inspection Targeting) and the fact that its final assessed penalties are reduced less after appeal than are Federal OSHA's result in equivalent worker protection as demonstrated by declining injury/illness rates. [18(e) Evaluation Report, pp. 24–25]

Abatement. The State must ensure abatement of hazards cited including issuance of notices of failure to abate and appropriate penalties. See §§ 1902.37(b)(13), 1902.3(d), and 1902.4(c)(vii) and (xi). A joint OSHA/OR–OSHA special study of case files with serious violations found that satisfactory abatement verification documentation existed in 90% (80 of 88) of the case files. [18(e) Evaluation Report, p. 24] Ninety-six percent (96%) of safety violations had abatement periods of less than 30 days and 97% of health violations had abatement periods of less than 60 days. This surpasses Federal performance of 80% and 90%, respectively. [18(e) Evaluation Report, Appendix B, FY 2003 Interim State Indicator Report, #C.4] Oregon also requires abatement verification when it issues an Order to Correct, and a Failure to Abate citation, with penalties, can be issued for non-abatement. (See discussion of Orders to Correct under Identifying and Citing Hazards.)

Whenever appropriate, the State must seek administrative and judicial review of adverse adjudications. Additionally, the State must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. See §§ 1902.37(b)(14) and 1902.3 (d) and (g). There was no Oregon OSHA appellate level contested case activity during this reporting period. OR–OSHA has had a number of appellate challenges in prior years, and has been successful in upholding basic employee rights (*e.g.*, complainant confidentiality and participation in inspections) as well as program authorities (*e.g.*, inspection targeting and expansion of inspection scope). OR–OSHA had fewer violations vacated (9% vs. 22%), fewer serious violations reclassified (3% vs. 13%) and less reduction in penalties amounts (45% vs. 49%) after appeal than Federal OSHA during this same period. [18(e) Evaluation Report, p. 25]

(c) Staffing and Resources

The State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. See section 18(c)(4) of the Act; 29 CFR 1902.37(b)(1), 1902.3(d) and 1902.3(h). A State must also direct adequate resources to administration and enforcement of the plan. See section 18(c)(5) of the Act and § 1902.3(I). The number of safety compliance positions authorized by the State exceeds the enforcement staffing benchmark for safety (52 authorized with a safety benchmark of 47). For health compliance positions, the number authorized equals the health benchmark (28 authorized with a health benchmark of 28). At the close of the evaluation period, 97% of the authorized enforcement positions were filled—98% of safety compliance positions and 96% of health compliance positions. These allocations are consistent with prior years' approved 23(g) grant agreements. In addition to the central office in Salem, the State maintains field offices in Portland, Salem, Medford, Eugene, Pendleton and Bend. [18(e) Evaluation Report, p. 28]

Oregon has consistently provided State matching funds well in excess of Federal funding. In the Fiscal Year 2005 initial grant award, the State has provided 72.6% of the total budget for its occupational safety and health program. Total funding for the State program in Fiscal Year 2005 is $18,604,237. ($5,105,000 Federal, $13,499,237 State).

Oregon staff are trained by internally developed and conducted training sessions as well as by courses offered through the OSHA Training Institute. Development plans are created annually for each staff member to meet individual needs. In addition, the State develops a biennial training plan which provides the State with a process through which major rule changes and shifts in technology can be addressed division-wide.

(d) Other Requirements

Public Employees. States which have approved plans must provide a safety and health program for State and local employees which must be as effective as the State's plan for the private sector. See § 1902.3(j). The Oregon plan provides a program in the public sector which is identical to that in the private sector, including proposed penalties for first instance violations. The same policies and procedures apply to both sectors in terms of inspections, complaints, citations, penalties, and employer/employee rights. During this evaluation period, the State conducted 265 (4.94%) of its total inspections in the public sector. The results of these inspections were comparable to those in the private sector. [18(e) Evaluation Report, p. 25]

Injury/Illness Rates. As a factor in its section 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available

Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those under the Federal program. See § 1902.37(b)(15). Bureau of Labor Statistics injury-illness data for 2002 are not directly comparable to 2001 or prior years due to OSHA's change in its recordkeeping requirements effective January 1, 2002.

Although Oregon's injury/illness rates are somewhat higher than the national rates, they have declined steadily during the past decade, at a rate greater than the national experience. Oregon's lost workday case incidence rate declined from 5.6 in 1988 to 3.2 in 2001, while the national rate declined from 4.0 in 1989 to 2.8 in 2001. Oregon's lost workday case rate has declined by 43% while the national rate has declined by 30%. Oregon's lost workday case rate for the private sector remained at 3.2 for 2001 and 2002, slightly higher than the national rate of 2.8 for both years. Oregon's total case rate was also slightly higher than the national rate in both 2001 (6.2 vs. 5.7 national) and 2002 (6.0 vs. 5.3 national). In construction, Oregon's lost workday case rate dropped from 4.3 in 1999 and 2000 to 3.8 in 2001, remaining below the national rate for all three years, but was slightly higher than the national rate in 2002 (4.0 Oregon vs. 3.8 national).

In manufacturing, Oregon's lost workday case rate was 4.3 in 2001, slightly higher than the 4.1 national rate, while in 2002 Oregon's rate of 4.1 was identical to the national. Oregon's lost workday case rate for public sector employment was 2.9 in 2001 and 3.1 in 2002, still comparing favorably to its 3.2 private sector rate. [18(e) Evaluation Report, p. 29 and Appendix A, SOAR Report, p. A–1.]

Oregon's number of accepted disabling workers' compensation claims has also declined steadily over the past decade, from 31,530 in 1994 to 23,482 in 2002 [18(e) Evaluation Report, Appendix A, SOAR Report, p. A–3], and the accepted disabling claims rate declined from 1.7 in 1998 to 1.5 in 2002.

Required Reports. State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect. See section 18(c)(7) of the Act; 29 CFR 1902.3(k). The plan must also provide assurance that the designated agency will make such reports to the Secretary in such form and containing such information as he or she may from time to time require. Section 18(c)(8) of the Act; 29 CFR 1902.4(1). Oregon's recordkeeping requirements are identical to those of Federal OSHA with regard to the recording and reporting of injuries, illnesses and fatalities including all recent Federal revisions, but differ in other areas. In response to comments from OSHA, in March 2002, the State modified its rules to reflect certain Federal rulemaking changes which were necessary to be at least as effective as OSHA's, and in April 2004 added certain clarifying interpretive notes regarding bloodborne accidents and various definitions. OR–OSHA has regulations comparable to OSHA's for reporting workplace fatalities and catastrophes. The State participates in the BLS Annual Survey of Occupational Illness and Injuries and the Census of Fatal Occupational Injuries. Oregon OSHA has elected not to participate in the OSHA Data Initiative, but has access to workers' compensation claims rates for employer-specific injury/illness information. As noted previously, the State has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA, and submits other information and reports as required. [18(e) Evaluation Report, p. 29]

Voluntary Compliance. Section 1902.4(c)(2)(xiii) requires States to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees. Oregon operates an on-site consultation program funded under section 21(d) of the Occupational Safety and Health Act which is separate from its OSHA-approved State plan. This program provides consultation services to private sector employers focusing on small, high hazard employers. Two safety and two health positions are allocated for Oregon under this contract. During the evaluation period, Oregon's 21(d) consultants conducted 130 visits of which 93 were health consultations and 37 were safety consultations. These consultants played an important role in the implementation of a required employer recognition and exemption program by participating with State-funded consultants in 28 Safety and Health Achievement Recognition Program (SHARP) evaluation teams during the evaluation period.

Oregon provides additional consultative services to public and private employers with 19 safety and 13 health consultants that are 100% State-funded. (About 13% of OR–OSHA's annual consultations are conducted in the public sector.) This large State-funded consultation program does not make referrals to enforcement and does not require the posting of hazards and therefore the private sector aspect of this program is not considered part of the approved State plan. It is evaluated to assure that it does not have a negative impact on the mandated State program activities. The State believes that this program has added to the overall effectiveness of Oregon OSHA and, to date, no negative impact on the Oregon State plan has been identified. [18(e) Evaluation Report, p. 30]

Oregon OSHA offers on its website an extensive inventory of training opportunities: on-line registration for a large variety of workshop classes, on-line training modules for Hispanic workers and for loggers, classes jointly developed with labor and the construction industry, and on-line interactive courses. On-line compliance assistance resources include a Spanish-English Dictionary of Occupational Safety and Health Terms, technical publications in Spanish, training materials, and an ergonomics web page. OR–OSHA also offers special assistance for small business, including ''brown bag'' safety and health program workshops and on-line resources. During FY 2003 14,927 participants, including 6,286 from five targeted industries, attended OR–OSHA training sessions and conferences. [18(e) Evaluation Report, Appendix A, SOAR Report, p. 7]

Oregon's employer recognition programs include Voluntary Protection Programs, with 7 certified sites; and its Safety and Health Achievement Recognition Program (SHARP), with 82 sites, and 84 additional employers working towards SHARP. OR–OSHA also has 20 partnerships, alliances and other cooperative agreements.

In 1999, the Oregon legislature enacted legislation which affords employers the right to withhold the results of voluntary safety and health self-audits conducted by private sector consultants hired by employers from outside their organizations. Although Federal OSHA by policy (65 FR 46498) does not routinely seek disclosure of such self-audits, it does retain the authority to gain access to voluntary self-audits where necessary to fulfill its enforcement responsibility. However, the Oregon legislation allows access by OR–OSHA to self-audits that are in any way related to the investigation of an occupational accident or injury; audits that are done in fulfillment of any requirement of an OR–OSHA standard; and discussions between employees, which would include records of the meetings, inspections, evaluations and recommendations of the workplace safety committees required in Oregon.

In a letter dated August 26, 2004, Peter De Luca, Administrator of the Oregon OSHA program, has explained the narrow scope of this legislation, the fact that it has never been invoked, and that there has been no negative impact on the State's ability to identify and cite violations. Further, Oregon has pledged to seek legislative reconsideration of the law should it ever negatively impact the State plan and its required performance. For further discussion of this legislation, see ''Oregon State Plan; Approval of Plan Supplements; Revised State Plan'' published elsewhere in today's **Federal Register**. While OSHA and the U.S. Department of Labor continue to believe that a self-audit privilege is inappropriate and unnecessary, such a policy in Oregon, as limited, does not present a sufficient basis for finding the State plan deficient or for withholding final approval status.

Effect of Section 18(e) Determination

If the Assistant Secretary, after review of the written comments received and the results of any informal hearing if requested and held, determines that the statutory and regulatory criteria for State plans are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to all issues covered by the Oregon plan (with the exception of temporary labor camps in both agriculture and general industry, including construction and logging), as provided by section 18(e) of the Act and 29 CFR 1902.42(c). Oregon has excluded private sector establishments on Indian reservations and tribal trust lands, including tribal and Indian-owned enterprises; the U.S. Postal Service and its contractors; contractors on U.S. military reservations, except those working on U.S. Army Corps of Engineers dam construction projects; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals. In addition, the plan does not have jurisdiction over Federal agencies. Thus, Federal coverage of these areas would be unaffected by an affirmative section 18(e) determination.

In the event an affirmative section 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the **Federal Register** in accordance with 29 CFR 1902.43; the notice will specify the issues as to which Federal standards and enforcement authority is withdrawn and provide notice that Federal authority with respect to enforcement under section 5(a)(1) of the Act and discrimination complaints under section 11(c) of the Act remains in effect. The notice would state that if continuing evaluations show that the State has failed to maintain a compliance staff which meets the revised fully effective benchmarks, or has failed to maintain a program which is at least as effective as the Federal, or that the State has failed to submit program change supplements as required by 29 CFR Part 1953, the Assistant Secretary may revoke or suspend final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State plan. At the same time, Subpart D of 29 CFR Part 1952, which codifies OSHA decisions regarding approval of the Oregon plan, would be amended to reflect the section 18(e) determination if an affirmative determination is made.

Documents of Record

All information and data presently available to OSHA relating to the Oregon section 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. Most of these documents have been posted electronically on OSHA's Docket Office Home Page at *http://dockets.osha.gov.* The contents of the record are also available for inspection and copying at the following locations: OSHA Docket Office, Room N–2625, Docket No. T–027A, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–2350; Office of the Regional Administrator, U.S. Department of Labor—OSHA, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212, (206) 553–5930, fax (206) 553–6499; and Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter Street NE., Room 430, Salem, OR 97310, (503) 378–3272, fax (503) 947–7461. To date, the record on final approval determination includes copies of all **Federal Register** documents regarding the plan (other than standards approvals), including notices of plan submission, initial Federal approval, certification of completion of developmental steps, codification of the State's operational status agreement, and other plan supplements. The record also includes: the State plan document (submitted September 2003 and updated through August 2004), which includes a plan narrative, State legislation, regulations and procedures, and an organizational chart for State staffing; the State's FY 2004 and FY 2005 Federal grants; and the October 1, 2002 through September 30, 2003 18(e) Evaluation Report and all previous, post-certification evaluation reports (since 1983).

Public Participation

Request for Public Comment and Opportunity To Request Hearing

The Assistant Secretary is directed under § 1902.41 to make a decision whether an affirmative section 18(e) determination is warranted. As part of the Assistant Secretary's decision-making process, consideration must be given to the application and implementation by Oregon of the requirements of section 18(c) of the Act and all specified criteria and indices of effectiveness as presented in 29 CFR 1902.3 and 1902.4. These criteria and indices must be considered in light of the factors in 29 CFR 1902.37(b)(1) through (15). However, this action will be taken only after all the information contained in the record, including OSHA's evaluation of the actual operations of the State plan, and information presented in written submissions and during an informal public hearing, if held, is reviewed and analyzed. OSHA is soliciting public participation in this process so as to assure that all relevant information, views, data and arguments related to the indices, criteria and factors presented in 29 CFR Part 1902, as they apply to Oregon's State plan, are available to the Assistant Secretary during this administrative proceeding.

Interested persons are invited to submit written data, views, and comments with respect to this proposed section 18(e) determination. These comments must be received on or before January 18, 2005, and submitted in duplicate to the Docket Officer, Docket No. T–027A, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the positions taken with respect to each issue. Comments limited to 10 pages or fewer may also be transmitted by FAX to: (202) 693–1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter. Electronic comments may be submitted through the Internet at *http://dockets.osha.gov.* The State of Oregon will be afforded the opportunity to respond to each submission.

Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed section 18(e) determination. Such requests also must be received on

or before January 18, 2005, and should be submitted in duplicate to the Docket Officer, Docket No. T–027A, at the address noted above. Such requests must present particularized written objections to the proposed section 18(e) determination. The Assistant Secretary will decide within 30 days of the last day for filing written views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish his decisions in the **Federal Register.** All written and oral submissions, as well as other information gathered by OSHA, will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing and all materials submitted in response to this notice and at any subsequent hearing, will be available for inspection and copying in the Docket Office, Room N–2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

Federalism

Executive Order 13132, ''Federalism,'' emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal government must follow as it carries out policies which affect State or local governments. OSHA has included in the Background section of today's request for public comments a detailed explanation of the relationship between Federal OSHA and the State plan States under the Occupational Safety and Health Act. Although it appears that the specific consultation procedures provided in section 6 of Executive Order 13132 are not mandatory for final approval decisions under the OSH Act, which neither impose a burden upon the State nor involve preemption of any State law, OSHA has nonetheless consulted extensively with Oregon throughout the period of 18(e) evaluation. OSHA has reviewed the Oregon final approval decision proposed today, and believes it is consistent with the principles and criteria set forth in the Executive Order.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in Oregon under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Occupational Safety and Health Administration.

(Sec. 18 of the Occupational Safety and Health Act of 1970, 84 Stat. 1608 (29 U.S.C. 667): 29 CFR Part 1902, Secretary of Labor's Order No. 5–2002 (67 FR 65008, October 22, 2002).

Signed at Washington, DC, this 10th day of December, 2004.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 04–27565 Filed 12–15–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Oregon State Plan; Approval of Plan Supplements; Revised State Plan

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval; supplements to Oregon occupational safety and health state plan.

SUMMARY: This document gives notice of OSHA's approval of supplements to Oregon's occupational safety and health state plan. These supplements were submitted in September 2003 as a revised state plan and later updated through August 2004. OSHA is approving the revised state plan, which updates and documents all structural components of the Oregon program. This includes a revised narrative description of the current program, legislation, administrative rules, interagency jurisdictional agreements, a compliance manual, policy directives, a consultation manual, and a technical manual relating to the Oregon state plan. (Oregon's safety and health standards are approved in separate notices.)

DATES: *Effective Date:* December 16, 2004.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact George Shaw, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3700, Washington, DC 20210; telephone (202) 693–2244. You may access many of Oregon's documents referenced in this **Federal Register** notice by visiting the state's Web site at *www.cbs.state.or.us/external/osha.* Electronic copies of this **Federal Register** notice, as well as all OSHA **Federal Register** notices and related press releases mentioned in this document, are available on OSHA's Web site at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Oregon Occupational Safety and Health State Plan was initially approved under section 18(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(b)) (hereinafter referred to as the OSH Act) and 29 CFR Part 1902 on December 22, 1972 (37 FR 28628). The exercise of concurrent federal enforcement jurisdiction was suspended on January 23, 1975 (40 FR 18427). The program was subsequently certified as having completed all its developmental steps and being structurally complete on September 15, 1982 (47 FR 42105). 29 CFR Part 1953 provides procedures for the review and approval of state plan change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

II. Description of Revised State Plan

Oregon submitted a revised state plan document on September 17, 2003, and later updated it through August, 2004. The revised state plan includes a program narrative and current copies of all key documents relating to Oregon's occupational safety and health program. All these documents are described below and are being approved in this notice, with the exception of Oregon's safety and health standards, which are addressed in separate **Federal Register** approval notices—the most recent being March 1, 2004 (69 FR 9643).

A. Plan Narrative

The Oregon state plan is administered by the Oregon Division of Occupational Safety and Health (OR–OSHA) of the Department of Consumer and Business Services. OR–OSHA was established in 1973 by the Oregon Safe Employment Act (Oregon Act). OR–OSHA adopts and enforces occupational safety and health standards under authority of the Oregon Act that are at least as effective as Federal OSHA's, and covers both private sector and state and local government employees. The plan narrative provides a general overview of OR–OSHA's legal authority (including interagency and jurisdictional agreements), standards and variances, enforcement policies and procedures, management systems, voluntary compliance activities (including compliance assistance programs, expanded consultative services, and training and education), an occupational safety and health laboratory, personnel policies and procedures, recordkeeping and reporting requirements, budget, staffing and funding, and programs and services for which there is no direct federal parallel.

B. Legislation

The Oregon Safe Employment Act, Oregon Revised Statutes (ORS) section 654, 2001 Edition, was most recently amended at ORS 654.035 in 2003 by House Bill 3010 concerning fall protection in steel erection. The Oregon Act contains authority for inspections, right of entry, citations and proposed penalties for first instance violations, employee rights, non-discrimination, compliance assistance, etc., all of which have been determined to provide authority equivalent to that of the OSH Act and to meet the criteria and indices for plan approval contained in 29 CFR part 1902.

The Oregon Safe Employment Act contains a number of differences or additional requirements from the OSH Act. The more significant of these are listed below. Items 1, 3, 5 and 9 contain differences from federal statute or policy; the remaining items (2, 4, 6–8 and 10–13) reflect additional state requirements.

1. Private Right of Action for Discrimination. An employee who files a discrimination complaint for protected safety and health activities may also file a suit in any circuit court in Oregon under certain circumstances, per ORS 654.062(5)(b). (See discussion of discrimination program differences in section II.C, Regulations.)

2. Red Warning Notice. A red warning notice provision at ORS 654.082 allows OR-OSHA to prohibit use of a machine, equipment or place of employment in imminent danger or other situations if use would violate a statute, rule or standard, with a civil penalty up to $5,000 against any person who violates this provision (ORS 654.086(g)). Federal OSHA does not have red warning notice authority, but can obtain a temporary restraining order from U.S. district court in an imminent danger situation.

3. Failure to Post Penalty. The civil penalties section provides for a discretionary posting requirements penalty of up to $1,000 (ORS 654.086(f)), compared to federal statutory authority for a mandatory posting penalty of up to $7,000. In practice, federal OSHA cites for not posting a citation or annual summary of injuries and illnesses, but usually does not issue a citation for failure to post the OSHA poster. OSHA's average initial penalties for posting violations range from $51 to $1200. Oregon has established minimum penalties for such violations which in some cases exceed the federal. (See penalties discussion in section II.C, Regulations.) Although Oregon lacks the parallel statutory authority, in practice it does not appear that this negatively impacts the Oregon program.

4. Loss Control Programs. All insurers for workers' compensation must provide free safety and health loss control consultative services. Self-insured employers must implement safety and

health loss control programs (ORS 654.097).

5. Self-Audits. The Oregon Act was amended in 1999 to include, for the first time, a provision permitting employers to withhold from OR–OSHA certain voluntary safety and health consultation reports (ORS 654.101). The federal statute does not have a corresponding provision, although federal OSHA has adopted a policy (65 FR 46498) under which it, like Oregon OSHA, does not routinely request self-audit reports and does not use such reports to identify hazards for purposes of an inspection. Federal OSHA does, however, retain the authority to gain access to voluntary self-audits when necessary to fulfill its enforcement responsibilities.

The Oregon statute generally permits an employer to refuse to disclose, and to prevent other persons from disclosing, safety and health consultation reports. However, the employer may disclose such a report voluntarily. The law also contains some expansive exceptions to the employer's right to refuse. First, reports that an employer is required to prepare under an OR–OSHA rule or standard or as a matter of law, *e.g.*, PSM process hazard analyses, construction accident prevention program evaluations, medical monitoring records, and many others, are not protected and are available to OR–OSHA. Second, OR–OSHA has access, under the statute, to any reports that stem from the investigation of occupational accidents, illnesses, or diseases. OR–OSHA interprets this exception to apply even if the scope of the investigation or report is broader than the particular circumstances of the accident, illness or disease that generated the audit in the first place. Third, the privilege afforded by the statute is limited to reports prepared by private outside consultants; any reports or discussions generated by an employer's own employees are subject to disclosure to OR–OSHA. And fourth, Oregon's self-audit provision does not apply in the context of criminal investigations or prosecutions for alleged violations of the Oregon Act. Notably, in an August 26, 2004 letter from Peter De Luca, Administrator, to Richard Terrill, Regional Administrator—X, which has been incorporated into the revised state plan being approved today, OR–OSHA adopted broad interpretations of each of these four exemptions. The state plan explained that because of the broad exemptions in the self-audit provision, the privilege afforded by the law has only very limited practical application.

Moreover, Oregon requires most employers to establish and maintain safety committees, and those committees are required by law and by regulation to keep minutes of their meetings and to include, in those minutes, information about workplace hazard assessments. *See* ORS 654.176 and 182, and OAR 437–001–0765. So even if a particular consultant's report is protected by the self-audit privilege, OR–OSHA can generally obtain all of the information it needs about that report through the agency's rights to interview employees and to access records of the company's safety committee meetings, inspections, evaluations and recommendations.

The state plan has represented to federal OSHA that because of the law's broad exemptions, and because of Oregon's unique safety committee rules, the self-audit provision has not in any way impeded OR–OSHA's ability to effectively enforce the Oregon Act. Indeed, in the five years since the self-audit provision was added to the Oregon statute, not a single employer has invoked its protections—and no willful violations have been jeopardized. OR–OSHA estimates that most self-audits are available to the agency. Therefore, while federal OSHA continues to believe that a self-audit privilege is inappropriate and unnecessary, Oregon's very limited privilege does not present a sufficient basis for finding that the right of entry and inspection under the state plan is any less effective than what is provided for in section 8 of the federal OSH Act. OR–OSHA has pledged to seek legislative reconsideration of the law if it is found, in the future, to have a negative impact on the state plan or its required performance.

6. Toilets. Flushable toilets plus washing facilities must be provided at large construction projects costing $1 million or more (ORS 654.150 and 160).

7. High Voltage Lines. No employer shall require an employee to work bare-handed or rubber-gloved on high voltage lines (ORS 654.165).

8. Safety Committees. Every public or private employer of more than 10 employees must establish and administer a safety committee. Employers with 10 or fewer employees with a high lost workday case rate or high workers' compensation premium rate must also establish safety committees (ORS 654.176 and 182). Although Oregon does not have a standard mandating safety and health programs, the committees are expected to evaluate accident and illness prevention programs.

9. Grants. OR–OSHA administers an occupational safety and health grant program that awards grants, funded from civil penalties, to employer or employee organizations to develop employee training programs and promote the development of employer-sponsored safety and health programs (ORS 654.189 and 191).

10. Hazard Communication. Piping systems must be labeled about hazardous chemicals contained in the system or about asbestos used as a pipe insulation material, and every employer must post a sign informing employees about their right to information on hazardous substances in their workplace (ORS 654.196).

11. Scholarships. OR–OSHA provides Workers' Memorial Scholarships for the education of spouses and children of fatally or seriously injured workers. These scholarships are funded from the interest earned on a special account established by statute using $250,000 from civil penalties (ORS 654.200).

12. Agricultural Workers. Agricultural employers must give their employees basic safety and health information developed by OR–OSHA in a variety of languages (ORS 654.770 and 780.)

13. Criminal Willful Penalties. Oregon's criminal willful penalties provisions contain two provisions in addition to those found in the OSH Act. A willful violation in Oregon that ''materially contributed to the death of any employee'' may also be subject to criminal prosecution, as well as a willful violation that results in death. Oregon also includes a definition of a ''willful'' violation at ORS 654.991(1) as one committed ''* * * knowingly by an employer or supervisory employee who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a regulation, rule, standard or order.''

C. Regulations

1. General Administration. OR–OSHA's General Administrative Rules, Oregon Administrative Rules (OAR) section 437 Division 1, were most recently amended by OR–OSHA Administrative Order 6–2003, adopted and effective November 26, 2003. They parallel federal OSHA regulations at 29 CFR part 1903 on inspections, citations and proposed penalties; 29 CFR part 1904 on injury/illness recordkeeping and reporting; and 29 CFR part 1905 on variances. These Oregon rules have been determined to be at least as effective as OSHA's and continue to meet the indices and criteria of plan approval contained in 29 CFR part 1902. The main differences concern penalties and recordkeeping. In addition, Oregon's administrative rules contain requirements for workplace safety committees and for loss prevention

activities by workers' compensation insurers and self-insured employers that federal OSHA does not have, as well as a training grant program funded by civil penalty money.

• Penalties. Unlike OSHA's rules or policies, Oregon's penalties rules at OAR 437–001–0135 to 0203 establish a mandatory minimum proposed penalty for repeat violations ($200) as well as optional minimum penalties of $200 for failure to post a citation or annual summary and $100 for failure to post the OSHA poster. (Both agencies have a $100 minimum penalty for serious violations.) Unlike OSHA, OR–OSHA's rules also require penalties of $100–$5,000 for red tag violations, $250–$2,500 for field sanitation violations, and a civil penalty of $100–$2,500 for making false statements (in addition to criminal penalties identical to OSHA's). Penalty calculation methods are addressed in detail in Oregon's compliance policy manual. (See discussion in section II.E.)

• Recordkeeping. As required by 29 CFR 1904.37, Oregon's recordkeeping requirements at OAR 437–001–0700 through 0742 are the same as federal OSHA's concerning which injuries and illnesses are recordable and how they are recorded. Oregon's rules contain slight differences in wording, do not employ the federal question/answer format, and include two non-mandatory appendices concerning hearing loss recording criteria. 1904.37 also provides that other state recordkeeping provisions may be more stringent or include supplemental requirements. In addition to the federal requirements for reporting a fatality or the hospitalization of three or more employees within 8 hours, Oregon requires the reporting of any overnight hospitalization within 24 hours. In conjunction with its bloodborne pathogens standard (OAR 437–002–1035), Oregon requires all employers to maintain a needlestick sharps injury log. (Federal OSHA does not require a sharps log for employers who are otherwise partially exempt from the 1904 recordkeeping requirements due to small size or type of industry.)

2. Settlement and Abatement. Oregon's rules for Contested Cases, at OAR 438–085, have been amended through WCB 3–1997, adopted December 12, 1997, effective March 1, 1998. These rules are administered by the Workers' Compensation Board, which handles appeals of Oregon OSHA citations and penalties. This regulation parallels 29 CFR parts 2200–2499, ''Occupational Safety and Health Review Commission'', and has been determined to provide at least as effective procedures for review and adjudication of contested cases. There are two differences. Under OAR 438–085–0305, the Workers' Compensation Board defers action on a Request for Hearing for 90 days while OR-OSHA continues to seek informal settlement—unless there is an express waiver of participation in OR–OSHA's informal settlement conference process. Like Oregon, federal OSHA continues to seek an informal settlement after an appeal is filed before the Review Commission, but there is no specified deferral period to encourage settlement before the case is reviewed by an administrative law judge. In addition, for serious or willful violations, the filing of an appeal in Oregon (unlike OSHA) has no effect upon the start of the abatement period. The employer must begin abating the alleged violation during this 90 day period.

3. Non-discrimination. Discrimination Rules at OAR 839 Division 3 (''Civil Rights Complaint Procedures''), Division 4 (''Retaliation for Opposition to Health and Safety Hazards''), and Division 50 (''Contested Case Hearing Rules''), adopted by the Oregon Bureau of Labor and Industries (BOLI), were last revised by BLI Administrative Order 10–2002, adopted and effective May 17, 2002 (Divisions 3 & 4) and by BLI Administrative Order 2–2000, adopted and effective January 27, 2000 (Division 50). These rules to protect workers from discrimination for engaging in protected safety and health activities under the Oregon Act are administered by the Civil Rights Division of the Bureau of Labor and Industries through an agreement with Oregon OSHA. (BOLI investigates complaints under all of Oregon's civil rights laws.) If BOLI is unable to reach a settlement in a merit (''substantial evidence'') case, it issues formal charges and presents the case before a BOLI hearing examiner (administrative law judge) who prepares a final order issued by the Commissioner of Labor. BOLI can enforce a settlement agreement or Commissioner's order through the courts if the employer does not voluntarily comply. These discrimination rules parallel OSHA's rules at 29 CFR 1977 and have been determined to provide at least as effective procedures for review and adjudication of safety and health discrimination complaints. There are, however, several differences. All BOLI settlements are required to be no-fault (OAR 839–003–0055(2)(a)). In addition, BOLI lacks the authority to settle cases unilaterally (*e.g.*, with just the employer). BOLI dismisses the complaint if the employer is willing to settle but the complainant is not (OAR 839–003–0050(3) and –0055(2)). However, the complainant can then invoke a private right of action and file a civil suit in state court (OAR 839–003–0020(2)). A civil suit may be filed subsequent to a complaint being filed with BOLI. However, under Oregon law, a person filing a civil suit initially waives the right to later file an administrative complaint with BOLI. Under OSHA, there is no private right of action in federal court for alleged discrimination.

D. Interagency Agreements

Oregon OSHA currently has 11 jurisdictional agreements with other state and federal agencies. The latest is an April 9, 2004 interagency agreement with federal OSHA Region X on emergency response in the event of a natural disaster or terrorist event. Other agreements with OSHA are Oregon's Operational Status Agreement, which delineates the areas of federal enforcement in the state; and an agreement concerning the Umatilla Chemical Agent Disposal Facility. Oregon OSHA also has chosen to implement national agreements signed by federal OSHA with various other federal agencies. In addition, Oregon OSHA has signed agreements for coordination of enforcement with the U.S. Environmental Protection Agency (worker protection standard, Clean Air Act) and with these state agencies: Bureau of Labor and Industries (discrimination and farm worker camps), Department of Environmental Quality (asbestos), Fire Marshall (fire and hazardous materials), Department of Agriculture (pesticides), and the Oregon Health Division (ionizing radiation).

Note: Two interagency agreements with the Oregon Department of Agriculture and with the U.S. Environmental Protection Agency concern pesticides enforcement and are considered by OSHA to be outside of the Oregon state plan. OSHA's section 23(g) grant restrictions prohibit the expenditure of federal or matching state funds for programs coming within the jurisdiction of and/or funded by another federal agency, including pesticides enforcement in agriculture.

E. Manuals and Directives

1. Compliance Manual. OR–OSHA's Field Inspection Reference Manual (FIRM) was issued July 1, 1995, re-issued January 1, 2003, and revised through Change 1, September 1, 2003. Oregon's compliance manual parallels federal OSHA's current FIRM, issued September 26, 1994, and other federal implementing compliance policy directives. It has been determined to

provide at least as effective policy and procedures for the conduct of OR–OSHA's enforcement program and continues to meet the criteria and indices for plan approval contained in 29 CFR 1902. The Oregon FIRM provides guidance to the OR–OSHA compliance staff concerning pre-inspection procedures (inspection scheduling and priorities, complaints and other unprogrammed inspections, inspection preparation), inspection procedures (conduct of the inspection, opening conference, physical examination of the workplace, follow-up inspections, fatality/catastrophe investigations, imminent danger investigations, construction inspections), inspection documentation (types of violations, violation of general duty clause, writing citations, grouping and combining of violations), post-inspection procedures (abatement, citations, penalties, post-citation process), and disclosure (policy and procedures, specific guidelines). In addition, program directives establish detailed compliance procedures on a number of issues. (See section II.E.2.)

• Penalty calculation. OR–OSHA's procedures for penalty calculation contain a number of differences from OSHA's, including lower base penalty amounts used in calculation of a probability/severity-based (gravity-based) penalty (from $300 to $1,250 for a serious violation, vs. federal $1,500 to $5,000), and differences in calculations for combined or grouped violations and in penalty adjustment factors. For example, while federal OSHA allows a penalty reduction of up to 60% for employer size, Oregon allows a penalty reduction of only 10% for small employers. Oregon also allows penalty reductions for a low lost workday injury rate which federal OSHA does not. In addition, Oregon's procedures generally allow a lower minimum penalty for failure-to-abate violations ($50 per day for other-than-serious and $250 per day for serious, with higher minimum in unusual circumstances, vs. federal policy of $1,000 per day minimum for either serious or other-than-serious unabated violations). Oregon does not allow penalty adjustments for repeat or willful violations, while OSHA allows an adjustment for employer size. Although these and other differences in penalty calculation result in lower average penalties in Oregon, no deficiencies in program operations attributable to these differences have been noted. Oregon believes that its practice of conducting much more frequent inspections and the fact that its final assessed penalties are reduced less after appeal than are federal OSHA's result in equivalent worker protection as demonstrated by declining injury/illness rates.

• Orders to Correct. In addition to issuing citations, Oregon issues ''Orders to Correct'' to require correction of safety and health hazards in certain circumstances. For example, orders may be used when a citation has not been issued within 180 days of the opening conference, when legal estoppel issues interfere with issuing a citation, or when a small employer, who is required by rule to have a safety committee but does not, agrees to implement an ''innovative'' committee following the OR–OSHA guidelines for small employers. Citations for failure-to-abate and repeat violations can be issued on an Order to Correct. Almost all Orders to Correct have dealt with small employer implementation of safety committee requirements. Oregon's use of Orders to Correct in most circumstances is comparable to OSHA's De Minimis Violations, where the employer complies with the clear intent of a standard but deviates from its particular requirements in a manner that has no direct or immediate relationship to employee safety or health.

• Multi-employer guidelines. Oregon's different Multi-Employer Workplace Citation Guidelines, effective January 1, 2003 and re-issued March 8, 2004, are referenced in OR–OSHA's FIRM but are contained in a stand-alone enforcement guidance document posted on the OR–OSHA website that has been determined to be at least as effective as OSHA's policy (OSHA Instruction CPL 2–0.124, December 10, 1999). Under OR–OSHA's guidelines, only employers that have direct knowledge of the hazardous conditions and exercise, or have the right to exercise, direct control over the work practices of employees who could reasonably have been exposed to such conditions may be cited. The federal policy is broader and also allows citations for employers responsible for correcting a hazard. However, Oregon's guidelines encourage the use of Orders to Correct for employers who are not cited.

2. Program Directives. OR–OSHA Program Directives, as updated through May, 2004, provide guidance to Oregon compliance officers to enforce and interpret standards and administrative rules, and have been found to be at least as effective as OSHA's program guidance documents and continue to meet the indices and criteria of 29 CFR part 1902. While most Oregon program directives concern the enforcement of individual standards, 26 directives provide broader compliance guidance for the operation of the Oregon state plan, covering issues such as citing corporate officers; egregious violations; paperwork and written program violations; process for splitting violations; complaint policies and procedures; inspection criteria (for construction and logging safety inspections, for random construction inspections and for temporary employment and leasing agencies); inspection exemptions for small agricultural employers; scheduling lists for safety and health inspections; state-wide settlement agreements; video and audio tapes case file documentation guidelines; independent contractors, LLCs, partnerships and corporate officers; jurisdictional issues and agreements; local emphasis programs (agriculture and reforestation worker housing, falls in construction, field sanitation, and struck-by hazards in logging); special emphasis programs (silicosis, lead in construction); safety and health program review; and tuberculosis.

3. Consultation Manual. OR–OSHA's Consultative Services Reference Guide, dated February 5, 2002, parallels OSHA's Consultation Policies and Procedures Manual issued August 6, 2001 and contains provisions as established by 29 CFR part 1908. Oregon's consultation manual has been found to be at least as effective as OSHA's and meets the indices and criteria of 29 CFR part 1902. Oregon operates an on-site consultation program for small private sector employers pursuant to section 21(d) of the federal OSH Act which is staffed by 4 consultants and is separate from its OSHA-approved state plan. In addition, as also documented in OR–OSHA's consultation manual, Oregon operates a separate consultation program funded with 100% state funds and staffed by 32 consultants which provides similar services to both private and public sector employers but does not conform to all of the requirements of the federal program, including required abatement of serious hazards. Because of these differences, the private sector aspect of this program is not considered a part of the approved state plan but is evaluated to the extent appropriate to assure it has no negative impact on the effectiveness of the approved state plan.

4. Technical Manual. The Oregon Technical Manual, updated through April, 2001, is a reference document that is also part of Oregon's revised state plan. It is identical to the OSHA Technical Manual (OSHA Instruction TED 1–0.15A, January 20, 1999) except for section 1, sampling, which was updated by the state in 2001 to reflect

its current laboratory practices. The Technical Manual provides technical information to OR–OSHA compliance officers on occupational safety and health topics to assist them in hazard recognition and to provide guidance in accident prevention. Topics addressed include sampling and measurement methods, health hazards (polymers, indoor air, ventilation, heat stress, noise, lasers), safety hazards (oil well derricks, petroleum refining, pressure vessel guidelines, industrial robots), construction operations (demolition, excavations, lead exposure), health care facilities, ergonomics, and chemical protective clothing.

F. Budget and Personnel

The revised Oregon state plan contains the current FY 2005 grant application for the Oregon program which includes an organization chart and detailed information on staffing and funding. The Oregon plan is currently funded at $5,105,000 in initial federal section 23(g) funds, $5,105,000 in matching state funds, and $8,394,237 in 100% state funds, for a total initial federal and state award of $18,604,237. OR–OSHA has a staff of 184 with 52 safety and 28 health compliance officers, 2 safety and 2 health consultants funded under 21(d), and 19 safety and 13 health consultants in a 100% state-funded program. The approved compliance staffing benchmarks for the Oregon program pursuant to a 1978 court order in *AFL–CIO* v. *Marshall* (C.A. No. 74–406) are 47 safety and 28 health. OR–OSHA personnel are employed under a merit system in compliance with Oregon law, personnel rules, and the state's collective bargaining contract with the Oregon Public Employees Union.

III. Decision

After careful review and consideration, the Oregon revised state plan and its components described above are found to be in substantial conformance with comparable federal provisions and in some cases to go beyond federal requirements and are hereby approved under 29 CFR Part 1953 as providing a revised state plan for the development and enforcement of standards which continues to be ''at least as effective as'' the federal program, as required by section 18(b) of the OSH Act. The right to reconsider this approval is reserved should substantial objections or other information become available to the Assistant Secretary regarding any of the plan change's components. OSHA's decision today incorporates the requirements and implementing regulations applicable to state plans generally.

IV. Location of Basic State Plan Documentation

Copies of the revised Oregon state plan are maintained at the following locations; specific documents are available upon request. Contact the Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212, (206) 553–5930, fax (206) 553–6499; Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Salem, Oregon 97310, (503) 378–3272, fax (503) 947–7461; and the Office of State Programs, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N3700, Washington, D.C. 20210, (202) 693–2244, fax (202) 693–1671.

Most of the Oregon revised state plan documents referenced above are posted on the state's Web site at *www.cbs.state.or.us/external/osha.* Oregon's contested cases rules at OAR 438–085 are posted on the state of Oregon's rules Web site at *http://arcweb.sos.state.or.us/rules/alpha_index.html*, under Department of Consumer and Business Services, Workers' Compensation Board. The Bureau of Labor and Industries' discrimination rules at OAR 839–003, 839–004 and 839–050 may be accessed through the same Web site.

An electronic copy of this **Federal Register** notice and related press release are available on OSHA's Web site, *www.osha.gov.*

V. Public Participation

Under 29 CFR 1953.6(c), OSHA generally ''will seek public comment if a State program component differs significantly from the comparable Federal program component and OSHA needs additional information on its compliance with the criteria in section 18(c) of the Act, including whether it is at least as effective as the Federal program * * *''. Based on the information presently available, the Assistant Secretary finds that the Oregon revised state plan described above is consistent with federal requirements and with commitments contained in the plan and previously made available for public comment. Public participation for the purpose of providing additional information about the effectiveness of the Oregon state plan is therefore unnecessary. Moreover, all legislative and regulatory components of the revised plan as well as many of the policy documents were adopted under procedural requirements of state law, which included appropriate opportunity for public participation. Good cause is therefore found for approval of these supplements (which constitute the revised state plan), and further public participation would be repetitious and unnecessary.

Authority: Sec. 18 of the Occupational Safety and Health Act of 1970, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902; Secretary of Labor's Order No. 5–2002 (67 FR 65008, October 22, 2002).

Signed in Washington, DC, this 10th day of December, 2004.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 04–27566 Filed 12–15–04; 8:45 am]

BILLING CODE 4510–26–P

Reader Aids

Federal Register

Vol. 69, No. 241

Thursday, December 16, 2004

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

69805–70050 1
70051–70178 2
70179–70350 3
70351–70536 6
70537–70870 7
70871–71338 8
71339–71690 9
71691–72108 10
72109–74404 13
74405–74946 14
74947–75222 15
75223–75450 16

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7850 70351
7851 70353
7852 71689
7853 74945
7854 74947

Executive Orders:
12473 (Amended by EO 13365) 71333
13286 (See EO 13362) 70173
13289 (See EO 13363) 70175
13303 (Amended by EO 13364) 70177
13315 (See EO 13364) 70177
13350 (See EO 13364) 70177
13362 70173
13363 70175
13364 70177
13365 71333

Administrative Orders:
Memorandums:
Memorandum of October 21, 2004 70349
Memorandum of December 8, 2004 74935
Memorandum of December 8, 2004 74937
Memorandum of December 8, 2004 74939
Memorandum of December 8, 2004 74941
Presidential Determinations:
No. 2005–07 of November 29, 2004 72109
No. 2005–08 of November 29, 2004 74931
No. 2005–09 of December 6, 2004 74933

5 CFR

317 70355
352 70355
359 70355
451 70355
530 70355
531 70355
534 70355
575 70355
841 69805
842 69805
843 69805

6 CFR

Proposed Rules:
5 70402

7 CFR

210 .....70871, 70872
220 70872
319 71691
354 71660
457 74405
905 70874
1005 71697
1006 71697
1007 71697
1464 70367
1775 70877
1951 70883

Proposed Rules:
319 71736
929 69996
930 71744
983 71749
989 71753

9 CFR

166 70179
317 74405
381 74405
430 70051

10 CFR

25 74949
95 74949

Proposed Rules:
25 75007
95 75007

11 CFR

Proposed Rules:
300 71388

12 CFR

Proposed Rules:
226 70925

13 CFR

121 70180

Proposed Rules:
121 70197

14 CFR

23 .....70885, 74407
39 .....69807, 69810, 70368, 70537, 70539, 71339, 71340, 71342, 71344, 71347, 71349, 71351, 71353, 74411, 74412, 75223, 75225, 75228, 75231, 75233, 75236
71 .....70053, 70185, 70371, 70372, 70541, 70542, 71701, 71702, 72111, 72112, 74953, 74954, 74955
73 .....70887, 72113
91 74413
95 74413
97 74415

Proposed Rules:
39 .....69829, 69832, 69834, 69836, 69838, 69842, 69844, 70202, 70204, 70564, 70566, 70568, 70571, 70574, 70936, 70938, 72134, 72136, 74461, 74463, 74465, 75267, 75270, 75273, 75275, 75277, 75280, 75282
61 74898
63 74898
65 74898
67 74898
71 .....70208, 71756
91 74898
121 74898
135 74898

15 CFR

6 74416
732 71356
734 71356
740 71356
742 71356
744 71356
750 69814
772 71356
806 70543
Proposed Rules:
710 70754
711 70754
712 70754
713 70754
714 70754
715 70754
716 70754
717 70754
718 70754
719 70754
720 70754
721 70754
722 70754
723 70754
724 70754
725 70754
726 70754
727 70754
728 70754
729 70754

17 CFR

240 70852
248 71322
275 72054
279 72054
Proposed Rules:
240 .....71126, 71256
242 71126
249 71126

18 CFR

11 71364
Proposed Rules:
Ch. 1 70077

21 CFR

1 .....71562, 71655
10 74418
11 71562
510 70053
520 .....70053, 74418
522 .....70054, 70055
558 70056
880 70702
1310 74957
Proposed Rules:
165 70082
1301 70576

22 CFR

122 70888
129 70888

23 CFR

650 74419
655 69815

24 CFR

200 74894
206 75204
570 70864
Proposed Rules:
206 70244
970 75188
2004 70868
3280 70016

25 CFR

Proposed Rules:
542 69847

26 CFR

1 .....70547, 70550
25 70547
31 .....69819, 70547
53 70547
55 70547
156 70547
301 70547
602 .....70547, 70550
Proposed Rules:
1 .....70578, 71757
26 70404
301 71757

27 CFR

9 .....70889, 71372

28 CFR

16 72114
906 75243

29 CFR

570 75382
579 75382
580 75382
1926 70373
4011 69820
4022 .....69820, 74973
4044 .....69821, 74973
Proposed Rules:
1 75408
4 75408
1952 75436

30 CFR

18 70752
938 .....71528, 71551

31 CFR

103 74439

32 CFR

635 75245
Proposed Rules:
637 75287

33 CFR

100 .....70551, 70552
117 .....70057, 70059, 70373, 71704, 71706, 74441, 74975
165 .....70374, 71708, 71709, 74442
Proposed Rules:
100 70578
110 .....71758, 75009
117 .....70091, 70209, 72138, 75011, 75013
165 .....70211, 71758, 75009

35 CFR

Ch. I 71375

36 CFR

13 70061
242 70074
1228 74976
Proposed Rules:
242 70940

37 CFR

201 70377
253 69822

38 CFR

21 74977

40 CFR

9 70552
52 .....69823, 70893, 70895, 71375, 71712, 72115, 72118
63 74979
180 .....70897, 71714
228 75256
271 .....70898, 74444
300 74448
712 70552
Proposed Rules:
52 .....69863, 70944, 70945, 71390, 71764
60 .....69864, 71472
63 .....69864, 75015
93 72140
271 .....70946, 74467
272 71391
300 74467
721 70404

41 CFR

Proposed Rules:
51-2 70214
51-3 70214
51-4 70214

42 CFR

1003 74451
Proposed Rules:
1001 71766

43 CFR

44 70557
1880 70557

44 CFR

64 70377
65 .....70185, 71718, 72128
67 .....70191, 70192, 71721, 72131
Proposed Rules:
67 .....72156, 72158

45 CFR

Proposed Rules:
650 71395

46 CFR

310 74454

47 CFR

0 70316
1 .....70378, 72020, 75144
2 .....71380, 72020
4 70316
11 72020
15 .....71380, 72020
18 70562
21 72020
22 75144
24 75144
27 .....70378, 72020, 75144
54 74985
63 70316
64 71383
73 .....71384, 71385, 71386, 71387, 72020, 74988
74 .....70378, 72020
76 72020
78 72020
79 72020
90 .....70378, 75144
101 .....70378, 72020
Proposed Rules:
1 .....72046, 75174
22 75174
24 75174
27 .....72046, 75174
73 .....71396, 75016, 75017
90 74174

48 CFR

App. I 74995
Ch. 35 75266
203 74989
206 74990
209 74989
212 74991
213 74991
217 74992
219 74995
225 74991
236 75000
237 75000
252 .....74989, 74991
909 75001
970 75001
Proposed Rules:
901 75017
970 75017

49 CFR

171 .....70902, 75208
172 75208
173 .....70902, 75208
174 70902
175 .....70902, 75208
176 70902
177 70902
178 70902
219 72133
571 .....70904, 74848
585 70904
586 70904
589 70904
590 70904
596 70904
597 70904
Proposed Rules:
571 75020
572 70947
1507 71767

50 CFR

14 70379

17.....70382, 71723
100.....70074
222.....69826
223.....69826
300.....71731
622.....70196
635 .....70396, 71732, 71735
648.....70919, 70923
679 .....69828, 70924, 74455, 75004, 75005

Proposed Rules:
17 .....69878, 70412, 70580, 70971, 71284, 72161, 74468
20.....71770
100.....70940
226.....71880, 74572
229.....70094
635.....71771
648.....70414
660.....70973
679 .....70589, 70605, 70974

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 16, 2004

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 11-16-04
Water programs:
Water quality standards—
Coastal and Great Lakes recreation waters; bacteriological criteria; establishment; published 11-16-04

PANAMA CANAL COMMISSION
Acquisition regulations:
Commission termination and CFR Chapter removed; notification; published 12-16-04

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell Helicopter Textron Canada; published 12-1-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
Raisins produced from grapes grown in—
California; comments due by 12-20-04; published 12-10-04 [FR 04-27162]
Spearmint oil produced in—
Far West; comments due by 12-20-04; published 10-21-04 [FR 04-23628]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Pine shoot beetle; comments due by 12-20-04; published 10-20-04 [FR 04-22220]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Telecommunications specifications and standards:
Materials, equipment and construction—
Cable splicing connectors; comments due by 12-20-04; published 10-20-04 [FR 04-23477]

COMMERCE DEPARTMENT
Industry and Security Bureau
National security industrial base regulations:
Defense priorities and allocations system; rated orders rejection; electronic transmission of reasons; comments due by 12-22-04; published 11-22-04 [FR 04-25718]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic surfclams, ocean quahogs, and Maine mahogany ocean quahogs; comments due by 12-20-04; published 11-18-04 [FR 04-25640]
Northeast multispecies; comments due by 12-20-04; published 11-19-04 [FR 04-25722]
Summer flounder, scup and black sea bass; comments due by 12-21-04; published 12-6-04 [FR 04-26724]
West Coast States and Western Pacific fisheries—
Pacific sardine; comments due by 12-23-04; published 12-8-04 [FR 04-26953]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT
Acquisition regulations:
Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

ENERGY DEPARTMENT
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Commercial and industrial equipment; energy efficiency program:
Test procedures and efficiency standards—
Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 12-20-04; published 11-19-04 [FR 04-25625]
Oregon; comments due by 12-22-04; published 11-22-04 [FR 04-25628]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Solid waste:
Land disposal restrictions—
Chemical Waste Management, Chemical Services, LLC; site-specific treatment standard variance for selenium waste; comments due by 12-20-04; published 11-19-04 [FR 04-25716]
Chemical Waste Management, Chemical Services, LLC; site-specific treatment standard variance for selenium waste; comments due by 12-20-04; published 11-19-04 [FR 04-25717]
Toxic substances:
Preliminary assessment information reporting; addition of chemicals; comments due by 12-21-04; published 12-7-04 [FR 04-26821]
Water pollution control:
National Pollutant Discharge Elimination System—
Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Salmonella; shell egg producers to implement prevention measures; comments due by 12-21-04; published 9-22-04 [FR 04-21219]
Meetings; comments due by 12-21-04; published 10-7-04 [FR 04-22476]
Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Practice and procedure:

Applications for grants and other financial assistance; electronic submission; comments due by 12-23-04; published 11-23-04 [FR 04-25893]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Endangered and threatened species:

Boulder darter and spotfin chub; reintroduction to Shoal Creek, AL and TN; comments due by 12-20-04; published 10-21-04 [FR 04-23587]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

SOCIAL SECURITY ADMINISTRATION

Social Security benefits:

Federal old age, survivors, and disability insurance—

Administrative review process; incorporation by reference of oral findings of fact and rationale in wholly favorable written decisions; comments due by 12-20-04; published 10-20-04 [FR 04-23357]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

B-series combustion heaters, models B1500, B2030, B3040, B3500, B4050, and B4500; comments due by 12-20-04; published 10-22-04 [FR 04-23620]

Boeing; comments due by 12-20-04; published 11-3-04 [FR 04-24540]

Hartzell Propeller Inc.; comments due by 12-20-04; published 10-20-04 [FR 04-23366]

McDonnell Douglas; comments due by 12-20-04; published 11-5-04 [FR 04-24729]

Airworthiness standards:

Special conditions—

Cessna Model 172 series airplanes; comments due by 12-22-04; published 11-22-04 [FR 04-25697]

Thielert Aircraft Engines modified Cessna Model 172 series airplanes; comments due by 12-20-04; published 11-19-04 [FR 04-25698]

Class E airspace; comments due by 12-20-04; published 11-3-04 [FR 04-24461]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Rear impact guards; comments due by 12-20-04; published 11-5-04 [FR 04-24737]

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:

Timely mailing of documents and payments treated as timely filing and paying; comments due by 12-20-04; published 9-21-04 [FR 04-21218]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2655/P.L. 108–449

To amend and extend the Irish Peace Process Cultural and Training Program Act of 1998. (Dec. 10, 2004; 118 Stat. 3469)

H.R. 4302/P.L. 108–450

District of Columbia Mental Health Civil Commitment Modernization Act of 2004 (Dec. 10, 2004; 118 Stat. 3472)

S. 437/P.L. 108–451

Arizona Water Settlements Act (Dec. 10, 2004; 118 Stat. 3478)

S. 1466/P.L. 108–452

Alaska Land Transfer Acceleration Act (Dec. 10, 2004; 118 Stat. 3575)

S. 2192/P.L. 108–453

Cooperative Research and Technology Enhancement (CREATE) Act of 2004 (Dec. 10, 2004; 118 Stat. 3596)

S. 2486/P.L. 108–454

Veterans Benefits Improvement Act of 2004 (Dec. 10, 2004; 118 Stat. 3598)

S. 2873/P.L. 108–455

To extend the authority of the United States District Court for the Southern District of Iowa to hold court in Rock Island, Illinois. (Dec. 10, 2004; 118 Stat. 3628)

S. 3014/P.L. 108–456

To reauthorize the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, and for other purposes. (Dec. 10, 2004; 118 Stat. 3630)

Last List December 13, 2004

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.