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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV04–905–1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxing Limits on the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes weekly limits on small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee), which locally administers the order, recommended this action. This rule relaxes the weekly limitation set for shipments of small-sized red seedless grapefruit entering the fresh market from 40 percent to 50 percent during the last week of the 22-week regulatory period. This action provides an additional volume of small red seedless grapefruit to address current marketing conditions without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns.

DATES: Effective February 9, 2004; comments received by February 10, 2004, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule relaxes limits on the volume of small red seedless grapefruit entering the fresh market. This rule allows for an additional volume of sizes 48 and 56 fresh red seedless grapefruit to be shipped during the last week of the 22-week percentage of size regulation period for the 2003–04 season. This rule supplies an additional volume of small red seedless grapefruit to address current marketing conditions without saturating all markets with these small sizes. This action should help stabilize the market and improve grower returns.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size a handler may ship during a particular week is established as a percentage of the total shipments of such variety shipped by that handler during a prior period, established by the Committee and approved by USDA.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 22 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is

calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This rule relaxes limits on the volume of sizes 48 (3$^{9}/_{16}$ inches minimum diameter) and 56 (3$^{5}/_{16}$ inches minimum diameter) red seedless grapefruit entering the fresh market by increasing the weekly percentage established for week 22 (February 9 through February 15, 2004), from 40 percent to 50 percent. The Committee unanimously recommended this change during a January 22, 2004, telephone meeting.

On July 1, 2003, the Committee recommended regulating all 22 weeks (September 15, 2003–February 15, 2004). The Committee recommended that the weekly percentages be set at 45 percent for the first 2 weeks, 35 percent for weeks 3 through 19, and 40 percent for the remaining 3 weeks. These percentages were established following informal rulemaking procedures, with an interim final rule published in the **Federal Register** on September 9, 2003 (68 FR 53015), and a final rule published in the **Federal Register** on November 14, 2003 (68 FR 64494).

The Committee believes that the over shipment of small-sized red seedless grapefruit has a detrimental effect on the market. While there is a market for small-sized red seedless grapefruit, the availability of large quantities oversupplies the fresh market with these sizes and negatively impacts the market for all sizes. These smaller sizes, 48 and 56, normally return the lowest prices when compared to the other larger sizes. However, when there is too much volume of the smaller sizes available, the overabundance of small-sized fruit pulls the prices down for all sizes.

In its discussion of the relaxation of the percentage for the last week when percentage size limitations apply, the Committee reviewed the percentages previously recommended and the current state of the crop. The Committee also considered some additional information that was not available during its earlier meeting. On January 12, 2004, USDA released information regarding fruit size distribution developed from a December size survey. The size survey showed that more small sizes were available than anticipated. The release stated that the mean size indicated that only two other seasons during the past ten years have had smaller sizes. According to the survey, more than 50 percent of the remaining crop is size 48 and smaller. This compares to only 34 percent at this time last season.

The Committee had not expected small sizes to represent such a large portion of the available crop by this time in the season. With small sizes representing a significant amount of this year's crop, larger sizes are in shorter supply. Growers have spot picked their groves twice looking for larger sizes and to spot pick again would be cost prohibitive. Also, with the expectation that the fruit size will not improve, there will continue to be a shortage of large sizes. This means that there will be a sizable amount of small sizes available at the end of the regulated period.

With a limited number of larger sizes available, there has also been market pressure to use small sizes to serve markets that traditionally take larger sizes. However, at the same time, markets that traditionally demand small sizes are also demanding fruit. There are indications that importers of small-sized fruit began purchasing fruit earlier than in past seasons. Export shipments for the week ending January 18 were nearly 20 percent higher than for the same week last season. These factors have made supplies of available allotment of small-sized fruit tight.

The Committee offices have been receiving calls from members of the industry asking that the weekly percentages be increased. The Committee staff has also been actively working with handlers on allotment loans and transfers to accommodate the needs of handlers desiring to ship more small-sized red seedless grapefruit. Requests for loans and transfers have been increasing from 3 requests during week 15, to 19 for week 17, to 24 requests during week 18.

However, while the percentage of size regulation does provide allowances for over shipments, loans, and transfers of allotment during regulation weeks 1 through 21, there are no allowances for loans or over shipment for week 22 because it is the end of the regulation period. The Committee agreed that some increase in the percentage was necessary for the last week of regulation to recognize that some handlers would be having to reduce their allotment to cover any over shipments from the previous week and that no additional over shipments would be permitted.

There is also concern in the industry that if there is not some relaxation in the percentage, a large volume of small-sized fruit may be pushed into the market following the end of the regulation period. This would negatively impact prices and undermine the success of the regulation to this point. During the 2001–02 season, small sizes also represented a significant percentage of the crop at the end of the regulation period. The Committee had recommended a relaxation in the percentages for the last few weeks of the season, but, due to rulemaking time frames, the percentage changes were not implemented. Following the end of the regulation period, sizable quantities of small sizes were dumped onto the market. This contributed to a 35 cent per carton reduction in the f.o.b. price. The Committee believes that relaxing the percentage for the last week of regulation may help relieve some of the volume of small sizes and provide for a smoother transition to the end of the regulation period.

The Committee discussed several alternatives ranging from maintaining the percentages at their current rate, increasing week 21 to 45 percent and week 22 to 50 percent, and just increasing the percentage rate for week 22. The Committee agreed it would be difficult to get a change to week 21 in place prior to that regulation week, and recommended increasing the percentage for week 22 from 40 percent to 50 percent. Such a change represents an additional industry allotment of 72,174 cartons for the last week of regulation. The Committee believes this will provide the industry with some additional flexibility and help with the transition from the end of the 22-week regulation period to the unrestricted shipment of small sizes.

Members agreed that one of the most important goals of percentage of size regulation was to create some discipline in the way fruit was packed and marketed. However, considering the size survey results, and the other information discussed, the Committee decided that increasing the weekly percentage for week February 9 through February 15 will address the goals of this regulation, while providing handlers with some additional marketing flexibility.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red seedless grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, including handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2002–03 season was approximately $7.24 per 4/5-bushel carton, and total fresh shipments for the 2002–03 season are estimated at 22.9 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 75 percent of the grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

On July 1, 2003, the Committee recommended limiting the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by setting weekly percentages for each of the 22 weeks, beginning September 15, 2003. Weekly percentages were established at 45 percent for weeks 1 and 2, 35 percent for week 3 through week 19, and at 40 percent for weeks 20, 21, and 22. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the percentages set. This rule relaxes the weekly limitation set for shipments of small-sized red seedless grapefruit entering the fresh market from 40 percent to 50 percent during the last week of the 22-week regulatory period. This action provides an additional volume of small red seedless grapefruit to address current marketing conditions without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns. This rule uses the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order. The Committee unanimously recommended this action during a telephone meeting on January 22, 2004.

This rule will increase the weekly percentage set for the last week of regulation. The Committee made this recommendation to address the issue that the majority of the remaining crop is made up of small sizes. By increasing the percentage, more small sizes are available for shipment. This should help handlers meet their market needs and provide for some additional flexibility without putting too many small sizes on the market. This should benefit both handler and producer returns.

The purpose of percentage of size regulation is to help stabilize the market and improve grower returns. This change provides a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This action is not expected to decrease the overall consumption of red seedless grapefruit. It is expected to benefit all red seedless grapefruit growers and handlers regardless of their size of operation.

The Committee considered several alternatives when discussing this action, including maintaining the percentages at their current rate, increasing week 21 to 45 percent and week 22 to 50 percent, and just increasing the percentage rate for week 22. The Committee agreed it would be difficult to get a change to week 21 in place prior to that regulation week, and recommended increasing the percentage for week 22 from 40 percent to 50 percent to provide the industry with some additional flexibility and provide a smooth transition to the period without percentage size limitations.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, while the meeting on January 22, 2004, was a telephone meeting, interested persons outside the Committee had an opportunity to provide input in the decision. The Committee manager provided a notice to the industry and anyone had the opportunity to participate in the call. Like all Committee meetings, the January 22, 2004, meeting provided both large and small entities the opportunity to express views on this issue. Also, the weekly percentage size regulation has been an ongoing issue that has been discussed at numerous public meetings so that interested parties have had the opportunity to express their views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on relaxing limits on the volume of small red seedless grapefruit entering the fresh market during the last week of the 22-week percentage of size regulation for the 2003–04 season. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule needs to be in place when the regulatory week begins February 9, 2004, so handlers can meet

the market needs of their customers. The industry has been discussing this issue for the last two weeks, and the Committee has kept the industry well informed.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 905.350 [Amended]

■ 2. In § 905.350, the weekly percentage for "(v) 2/9/04 through 2/15/04" is changed from "40" to "50".

Dated: February 3, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–2653 Filed 2–4–04; 11:02 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2003–14972; Special Federal Aviation Regulation No. 98]

RIN 2120–AH83

Construction or Alteration in the Vicinity of the Private Residence of the President of the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments on interim final rule.

SUMMARY: On April 22, 2003, the FAA adopted requirements concerning proposed construction or alteration of structures in the vicinity of the private residence of the President of the United States in Crawford, Texas. The rule requires that notice be filed with the FAA for the proposed construction or alteration of any object that exceeds 50 feet above ground level (AGL) and is within the existing lateral confines of the prohibited airspace over the private residence of the President of the United States (P–49). The rule was adopted for purposes of national defense and will assist in protecting the President of the United States. The rule does not apply to prior construction or alteration of objects and the rule will terminate at the end of the President's term in office. This action is a summary and disposition of comments received on the interim final rule.

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

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Background

On March 26, 2001, the FAA published a final rule in the **Federal Register** establishing prohibited airspace (P–49) over the private residence of the President in Crawford, Texas (66 FR 16391). [The FAA subsequently modified P–49 by relocating the center of the prohibited area approximately one-half mile east, southeast (68 FR 7917; February 19, 2003.)] The airspace designation is necessary to enhance security in the immediate vicinity of the presidential residence and assist the SSPPD in accomplishing its mission of providing security for the President of the United States. While that rule prohibits unauthorized aircraft from flying within the designated airspace, it does not address certain flight safety and national security issues concerning the transport of the President.

The President's private residence in Crawford, Texas has several landing areas for Presidential aircraft. Each landing area must be accessible by flying several different approaches, depending on the weather, threat conditions, aircraft being used, and departure location. Also, the special operating procedures used by the United States Marine Corps (USMC) and the Secret Service Presidential Protective Division (SSPPD), including the use of multiple aircraft, non-standard flight techniques and other special security provisions, require the airspace surrounding the landing areas to be clear of obstructions that could affect these operating procedures and the safety of the President. Obstructions above 50 feet AGL in certain locations within the designated area could inhibit the flexibility of these special operating procedures and could compromise the safe transportation and the security of the President, particularly in emergency situations.

Discussion of Comments

The FAA received three comments on the Construction or Alteration in the Vicinity of the Private Residence of the President of the United States interim final rule (Special Federal Aviation Regulation (SFAR) No. 98).

All of the commenters opposed the regulation. The commenters were concerned that the regulation would only be in effect for the term of the current President and that the regulation might have a detrimental effect on the local business community. In addition, one commenter questioned whether the FAA would pass a rule like this one for every future President. If not, the commenter questioned why the FAA was enacting this rule for one man.

The FAA appreciates the commenters concerns. It is significant that the rule does not explicitly prohibit all proposed construction within the affected area. Certain new construction or alteration to existing structures that would exceed 50 feet AGL may in fact be compatible with the safe and secure transport of the President. Under the adopted process, the proponent of the construction/alteration must submit detailed information regarding the proposed construction/alteration. If the FAA, in consultation with the USMC and the SSPPD, determines that it would not adversely affect safety and not result in a hazard to air navigation, the FAA

would issue a Determination of No Hazard.

As noted by commenters, the interim final rule that the FAA published on April 22, 2003 (68 FR 19730) will be in effect only for the duration of President George W. Bush's term of office. The FAA recognizes that all Presidents' private residences raise safety and national security concerns. However, the protections necessary to ensure the safe ingress and egress of the President may vary substantially depending on the nature and location of each President's residence. As we stated in SFAR No. 98, we anticipate that similar rules, tailored to the security concerns of the Presidential residence, may be needed at other locations to protect the transportation of future Presidents.

Conclusion

After consideration of the comments submitted in response to the interim final rule, the FAA has determined that no further rulemaking action is necessary. SFAR No. 98 remains in effect as adopted.

Issued in Washington, DC, on January 29, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–2450 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30403; Amdt. No. 3088]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective February 6, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2004.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on January 16, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97— STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective February 19, 2004*

Chicago, IL, Chicago Midway Intl, ILS OR LOC/DME RWY 13C, Orig
Chicago, IL, Chicago Midway Intl, ILS OR LOC/DME RWY 31C, Orig
Chicago, IL, Chicago Midway Intl, RNAV (GPS) RWY 13C, Orig
Chicago, IL, Chicago Midway Intl, RNAV (GPS) RWY 31C, Orig
Chicago, IL, Chicago Midway Intl, ILS RWY 13C, Amdt 40B, CANCELLED
Chicago, IL, Chicago Midway Intl, ILS RWY 31C, Amdt 5F, CANCELLED
Baton Rouge, LA, Baton Rouge Metropolitan Ryan Field, RNAV (GPS) RWY 13, Orig
Baton Rouge, LA, Baton Rouge Metropolitan Ryan Field, RNAV (GPS) RWY 22R, Orig
Baton Rouge, LA, Baton Rouge Metropolitan Ryan Field, RNAV (GPS) RWY 31, Orig
Baton Rouge, LA, Baton Rouge Metropolitan Ryan Field, GPS RWY 31, Orig-B, CANCELLED
Norwood, MA, Norwood Memorial, LOC RWY 35, Amdt 10
Norwood, MA, Norwood Memorial, NDB RWY 35, Amdt 10
Norwood, MA, Norwood Memorial, RNAV (GPS) RWY 35, Orig
Norwood, MA, Norwood Memorial, GPS RWY 35, Orig, CANCELLED
Plymouth, MA, Plymouth Muni, LOC/DME RWY 6, Orig
Cadillac, MI, Wexford County, ILS OR LOC RWY 7, Orig
Springfield, MO, Springfield-Branson Regional, RNAV (GPS) RWY 2, Orig
Springfield, MO, Springfield-Branson Regional, RNAV (GPS) RWY 14, Amdt. 1 Orig
Springfield, MO, Springfield-Branson Regional, RNAV (GPS) RWY 20, Orig
Springfield, MO, Springfield-Branson Regional, RNAV (GPS) RWY 32, Amdt. 1 Orig
Springfield, MO, Springfield-Branson Regional, GPS RWY 2, Orig, CANCELLED
Grants, NM, Grants-Milan Muni, RNAV (GPS) RWY 31, Orig
Grants, NM, Grants-Milan Muni, GPS RWY 31, Orig-C, CANCELLED
Statesville, NC, Statesville Muni, RNAV (GPS) RWY 28, Orig
Ponca City, OK, Ponca City Rgnl, ILS OR LOC/DME RWY 17, Amdt 1
Ponca City, OK, Ponca City Rgnl, LOC RWY 17, Orig, CANCELLED
Seminole, OK, Seminole Muni, NDB RWY 16, Amdt 3A
Hilton Head Island, SC, Hilton Head, LOC/DME RWY 21, Amdt 4

** * * Effective March 18, 2004*

West Memphis, AR, West Memphis Muni, ILS OR LOC RWY 17, Amdt 4

** * * Effective April 15, 2004*

Montgomery, AL, Montgomery Regional (Dannelly Field), VOR–A, Amdt 3B
Montgomery, AL, Montgomery Regional (Dannelly Field), NDB RWY 10, Amdt 18D
Montgomery, AL, Montgomery Regional (Dannelly Field), ILS OR LOC RWY 10, Amdt 23D
Montgomery, AL, Montgomery Regional (Dannelly Field), ILS OR LOC RWY 28, Amdt 9
Montgomery, AL, Montgomery Regional (Dannelly Field), RNAV (GPS) RWY 3, Orig
Montgomery, AL, Montgomery Regional (Dannelly Field), RNAV (GPS) RWY 10, Orig
Montgomery, AL, Montgomery Regional (Dannelly Field), RNAV (GPS) RWY 28, Orig
Montgomery, AL, Montgomery Regional (Dannelly Field), VOR/DME RNAV OR GPS RWY 3, Amdt 5A, CANCELLED
Muscle Shoals, AL, Northwest Alabama Regional, VOR/DME RWY 11, Amdt 6
Muscle Shoals, AL, Northwest Alabama Regional, VOR RWY 29, Amdt 27
Muscle Shoals, AL, Northwest Alabama Regional, ILS OR LOC RWY 29, Amdt 4
Muscle Shoals, AL, Northwest Alabama Regional, RNAV (GPS) RWY 11, Orig
Muscle Shoals, AL, Northwest Alabama Regional, RNAV (GPS) RWY 18, Orig
Muscle Shoals, AL, Northwest Alabama Regional, RNAV (GPS) RWY 29, Orig
Muscle Shoals, AL, Northwest Alabama Regional, RNAV (GPS) RWY 36, Orig
Eau Claire, WI, Chippewa Valley Regional, ILS OR LOC RWY 22, Amdt 7
Viroqua, WI, Viroqua Muni, RNAV (GPS) RWY 11, Orig
Viroqua, WI, Viroqua Muni, RNAV (GPS) RWY 29, Orig

[FR Doc. 04–2434 Filed 2–5–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30404; Amdt. No. 3089]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective February 6, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2004.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale

by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

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

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

Conclusion

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

List of Subjects in 14 CFR part 97

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

Issued in Washington, DC, on January 30, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective February 19, 2004*

Oneida, TN, Scott Muni, RNAV (GPS) RWY 23, Orig
Oneida, TN, Scott Muni, RNAV (GPS) RWY 5, Orig
Oneida, TN, Scott Muni, NDB RWY 23, Amdt 5

** * * Effective March 18, 2004*

Sand Springs, OK, William R. Pogue Muni, NDB RWY 35, Amdt 2D

** * * Effective April 15, 2004*

Manokotak, AK, Manokotak, RNAV (GPS)–A, Orig
Napaskiak, AK, Napaskiak, RNAV (GPS) RWY 2, Orig
Napaskiak, AK, Napaskiak, RNAV (GPS) RWY 20, Orig
Platinum, AK, Platinum, RNAV (GPS) RWY 13, Orig
Platinum, AK, Platinum, GPS RWY 13, Orig, CANCELLED
Apple Valley, CA, Apple Valley, RNAV (GPS) RWY 18, Orig
Apple Valley, CA, Apple Valley, GPS RWY 18, Orig–A CANCELLED
Iowa City, IA, Iowa City Muni, NDB OR GPS–A, Orig–A, CANCELLED
Iowa City, IA, Iowa City Muni, NDB RWY 30, Amdt 1A, CANCELLED
Boise, ID, Boise Air Terminal (Gowen Field), MLS RWY 28L, Amdt 1
Boise, ID, Boise Air Terminal (Gowen Field), RNAV (GPS) RWY 28L, Amdt 1
Boise, ID, Boise Air Terminal (Gowen Field), RNAV (GPS) RWY 28R, Orig
Burley, ID, Burley Muni, VOR/DME–B, Amdt 4
Burley, ID, Burley Muni, RNAV (GPS) RWY 20, Orig
Burley, ID, Burley Muni, VOR/DME RNAV OR GPS RWY 20, Amdt 2, CANCELLED
Burley, ID, Burley Muni, VOR–A, Amdt 4
Sparta, IL, Sparta Community-Hunter Field, NDB RWY 18, Amdt 1
Sparta, IL, Sparta Community-Hunter Field, RNAV (GPS) RWY 18, Orig
Frankfort, IN, Frankfort Muni, NDB RWY 9, Amdt 3
Frankfort, IN, Frankfort Muni, RNAV (GPS) RWY 9, Orig
Frankfort, IN, Frankfort Muni, RNAV (GPS) RWY 27, Orig
Frankfort, IN, Frankfort Muni, GPS RWY 9, Orig–A, CANCELLED
Frankfort, IN, Frankfort Muni, GPS RWY 27, Amdt 1A, CANCELLED
Raymond, MS, John Bell Williams, NDB RWY 12, Amdt 1A
Raymond, MS, John Bell Williams, RNAV (GPS) RWY 30, Orig–A
Raymond, MS, John Bell Williams, RNAV (GPS) RWY 12, Orig–A
Sunriver, OR, Sunriver, VOR/DME RWY 18, Amdt 1
Sunriver, OR, Sunriver, RNAV (GPS) RWY 18, Orig
San Marcos, TX, San Marcos Muni, NDB RWY 13, Amdt 5
San Marcos, TX, San Marcos Muni, ILS OR LOC RWY 13, Amdt 6
San Marcos, TX, San Marcos Muni, RNAV (GPS) RWY 13, Orig

San Marcos, TX, San Marcos Muni, GPS RWY 12, Orig, CANCELLED
Rhinelander, WI, Rhinelander-Oneida County, VOR RWY 9, Amdt 4D
Rhinelander, WI, Rhinelander-Oneida County, VOR/DME RWY 27, Orig–E
Rhinelander, WI, Rhinelander-Oneida County, RNAV (GPS) RWY 9, Orig
Rhinelander, WI, Rhinelander-Oneida County, RNAV (GPS) RWY 15, Orig
Rhinelander, WI, Rhinelander-Oneida County, RNAV (GPS) Y RWY 27, Orig
Rhinelander, WI, Rhinelander-Oneida County, RNAV (GPS) Z RWY 27, Orig
Rhinelander, WI, Rhinelander-Oneida County, RNAV (GPS) RWY 33, Orig

[FR Doc. 04–2435 Filed 2–5–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, 736, 740, 746, 748, 750 and 752

[Docket No. 031212313–3313–01]

RIN 0694–AC24

Revisions and Clarifications to the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by making certain corrections and clarifications, including insertion of material inadvertently omitted from previous rules.

DATES: This rule is effective February 6, 2004.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: This rule makes the following corrections and clarifications:

1. In part 730, paragraph 730.8(c) is revised to correctly state names of offices, addresses, phone and facsimile numbers, and, in Supplement No. 3 to Part 730 (Other Government Departments and Agencies with Export Control Responsibilities), the office title, description of items processed, phone number, and fax number of the Department of Energy is revised.

2. In paragraph 732.3(h)(2) (Steps regarding the ten general prohibitions), old terminology is removed, *i.e.*, OTS, STS, and SUD.

3. In Supplement Nos. 1 and 2 to part 732, the flowcharts entitled "Am I Subject to the EAR" and "Export Control Decision Tree" are replaced with simpler and easier to read versions.

4. In paragraph 734.1(a) (Introduction to the Scope of the EAR), a correction is made to clarify the meaning of the fifth sentence.

5. In paragraph 734.3(b)(4) (Items subject to the EAR), a correction is made by replacing the word "greater" with the word "less". This will clarify that foreign made items that have less than the *de minimis* U.S. content based on the principles described in § 734.4, are *not* subject to the EAR.

6. In paragraph 734.4(d) (*De minimis* U.S. content), the citation reference to paragraph (b) is replaced with the correct citation reference to paragraph (c).

7. In paragraph 736.2(b)(3)(i)(General Prohibition Three—Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software), a phrase is added to clarify that exports, reexports, or exports from abroad of items subject to the scope of General Prohibition three to Cuba, Libya, or a destination in Country Group D:1 are permitted under the authority of a license or eligible License Exception.

8. In Part 740, language is added to the description of the scope of items eligible for License Exceptions GBS (740.4), CIV (740.5), TSR (740.6), to clarify that items eligible for these License Exceptions are those that *require a license* for national security reasons only.

9. In paragraph 740.9(a)(2)(viii)(3)(B) (Temporary Exports), the title and room number is corrected for the Office of Export Enforcement located in Room H4616.

10. In paragraph 740.12(b)(5)(iii), a citation is corrected.

11. In paragraph 740.13(a)(1) (Operation technology and software under TSU), a clarification is made by replacing the word "products" with the words "commodities or software".

12. In paragraphs 746.2(a)(1)(ii) (License Exceptions for Cuba) and 746.4(b)(2)(ii)(B) (Reexports to Libya), clarifying language is added to correctly describe the scope of operation technology and software eligible under License Exception TSU to Cuba and Libya. The word "products" is revised to read "commodities or software".

13. In paragraph 746.4(b)(2) (Reexports to Libya), two citations are corrected: "734.2(b)(2)" to read "734.3(a)(3)", and "734.2(b)(3)" to read "734.3(a)(4)".

14. In paragraph 746.4(c)(2)(vii)(A) (License Policy for Libya), a typographical error is fixed to correctly describe the capacity of the pumps to transport crude oil and natural gas that generally are subject to a denial policy. The phrase "equal to or larger than 3500 cubic meters per hour" now reads "equal to or larger than 350 cubic meters per hour".

15. In paragraph 746.7, Iran, the first sentence of the introductory paragraph is revised to update the authority references for the section.

16. In paragraph 748.2(a), a revision is made to correctly state names of offices, addresses, phone and facsimile numbers.

17. Section 750.7 is amended by revising paragraph (c)(1)(viii) to allow the exporter to revise the wording of the item description on a license (although not necessary for the purpose of conforming to an official revision in the CCL) without having to obtain a replacement license. This revision will not allow an actual change in the item to be shipped.

18. In paragraphs 752.3(a)(2) and (a)(3) (Eligible Items for export and reexport under the Special Comprehensive License) references to ECCNs were corrected. ECCNs 1E350 and 1E351 were removed from paragraph (a)(2). ECCNs 1E350 and 1E351 were added to paragraph (a)(3).

19. Supplement No. 3 to part 774, "Cross-Reference", is removed because it is no longer necessary and has become confusing since the implementation of Wassenaar revisions to the Commerce Control List.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the notice of August 7, 2003, (68 FR 47833, August 11, 2003), continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the PRA. This collection has been approved by OMB under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these

collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Foreign trade, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 732, 740, 748, 750, and 752

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Parts 736 and 774

Exports, Foreign Trade.

15 CFR Part 746

Embargoes, Exports, Foreign Trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 730, 732, 734, 736, 740, 746, 748, 750, 752, and 774 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 7, 2003, 68 FR 47833, August 11, 2003; Notice of October 29, 2003, 68 FR 62209, October 31, 2003.

■ 2. Section 730.8(c) is amended by revising the phrase "Santa Clara Branch Office, U.S. Department of Commerce, 5201 Great America Parkway, Suite 333, Santa Clara, California 95054, Telephone number: (408) 748–7450, Facsimile number: (408) 748–7470" to read "U.S. Export Assistance Center, Bureau of Industry and Security, 152 North Third Street, Suite 550, San Jose, California 95112–5591, Telephone number: (408) 998–7402, Facsimile number: (408) 998–7470"

■ 3. In part 730, Supplement No. 3 is amended by revising the Government Agency, address, and phone/fax numbers under "Nuclear Technology; Technical Data for Nuclear Weapons/ Special Nuclear Materials" to read as follows:

Supplement No. 3 to PART 730—OTHER U.S. GOVERNMENT DEPARTMENTS AND AGENCIES WITH EXPORT CONTROL RESPONSIBILITIES

* * * * *

Nuclear Technologies and Services Which Contribute to the Production of Special Nuclear Material (Snm). Technologies Covered Include Nuclear Reactors, Enrichment, Reprocessing, Fuel Fabrication, and Heavy Water Production.

Department of Energy Office of Export Control Policy & Cooperation (NA–24) Tel. (202) 586–2331, Fax (202) 586–1348, 10 CFR part 810

* * * * *

PART 732—[AMENDED]

■ 4. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 5. Section 732.3 is amended by revising paragraph (h)(2), to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(h) * * *

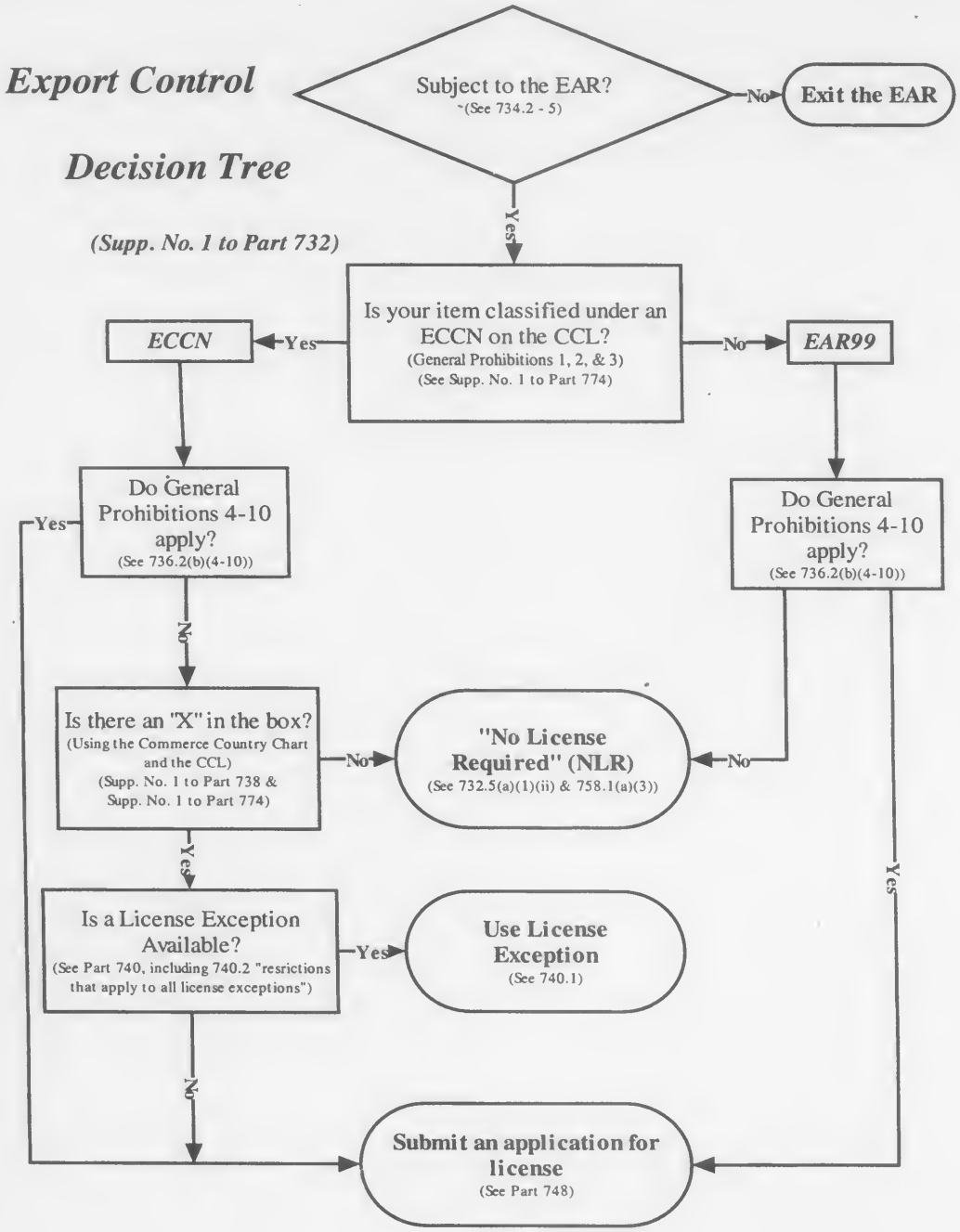
(2) Under License Exception TSU (§ 740.13 of the EAR), operation technology and software, sales technology, and software updates overcome General Prohibition Five (End-Use and End-User) (§ 736.2(b)(5) of the EAR) if all terms and conditions of these provisions are met by the exporter or reexporter.

* * * * *

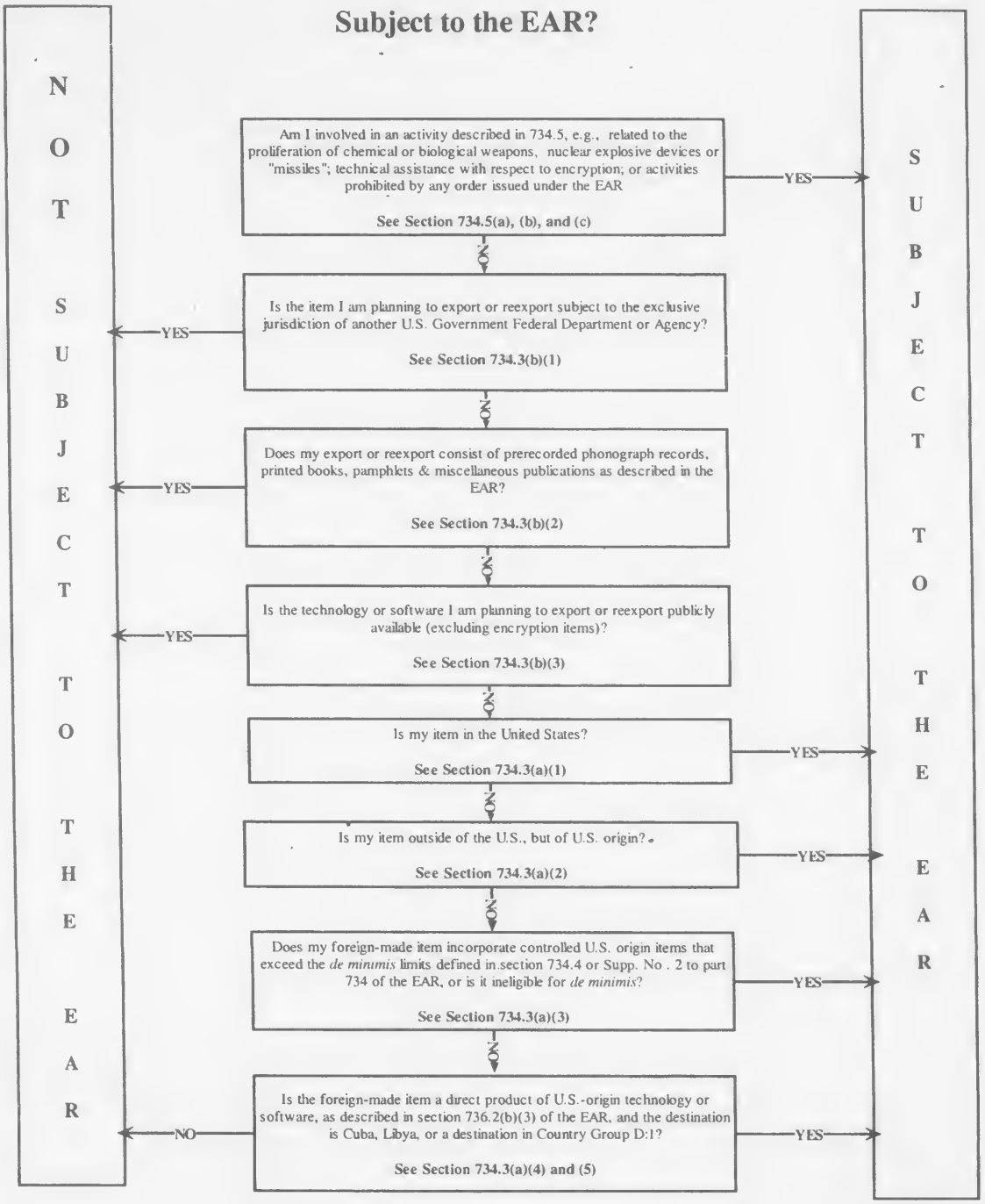
■ 6. Supplement Nos. 1 and 2 to part 732 are revised to read as follows:

BILLING CODE 3510–33–P

SUPPLEMENT NO. 1 TO PART 732 - EXPORT CONTROL DECISION TREE



SUPPLEMENT NO. 2 TO PART 732 - AM I SUBJECT TO THE EAR



BILLING CODE 3510–33–C

PART 734—[AMENDED]

■ 7. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003; Notice of October 29, 2003, 68 FR 62209, October 31, 2003.

■ 8. Section 734.1 is amended by revising the phrase "If your item or activity is not subject to the EAR," to read "If neither your item nor your activity is subject to the EAR," in the fifth sentence of paragraph (a).

■ 9. Section 734.3 is amended by revising the phrase "Foreign made items that have greater than the *de minimis* U.S. content based on the principles described in § 734.4 of this part." to read "Foreign made items that have less than the *de minimis* percentage of controlled U.S. content based on the principles described in § 734.4 of this part." in paragraph (b)(4).

■ 10. Section 734.4 is amended by revising the introductory text to paragraph (d), as follows:

§ 734.4 *De minimis* U.S. content.

* * * * *

(d) Except as provided in paragraph (a) and (b) of this section for certain computers and items controlled for EI reasons, for all other countries not included in paragraph (c) of this section the following reexports are *not* subject to the EAR:

* * * * *

PART 736—[AMENDED]

■ 11. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003; Notice of October 29, 2003, 68 FR 62209, October 31, 2003.

■ 12. Section 736.2 is amended by revising the phrase "You may not export, reexport, or export from abroad items subject to" to read "You may not, without a license or License Exception, reexport or export from abroad items subject to" in paragraph (b)(3)(i).

PART 740—[AMENDED]

■ 13. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 14. Section 740.4 is amended by revising the phrase, "commodities controlled to the ultimate destination for national security reasons only and identified" to read "commodities where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified".

■ 15. Section 740.5 is amended by revising the phrase, "reexports controlled to the ultimate destination" to read "reexports where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination" in the first sentence.

■ 16. Section 740.6 is amended by revising the phrase "software controlled to the ultimate destination" to read "software where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination" in the first sentence of paragraph (a).

■ 17. Section 740.9 is amended by revising the phrase "Office of Enforcement Support, Room H4069," to read "Office of Export Enforcement, Room H4616," in paragraph (a)(2)(viii)(B).

■ 18. Section 740.12 is amended by revising the citation "746.2(a)(3)" to read "746.2(b)(1)" in paragraph (b)(5)(iii).

■ 19. Section 740.13(a)(1) is amended by revising:

■ a. The phrase "repair of those products" to read "repair of those commodities or software"; and

■ b. The phrase "efficient use of the product." to read "efficient use of the commodity or software."

PART 746—[AMENDED]

■ 20. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 21. Part 746 is amended by revising:

■ a. The phrase "legally exported commodities" to read "legally exported commodities or software" in the following two sections: 746.2(a)(1)(ii), and 746.4(b)(2)(ii)(B).

■ b. The citation "§ 734.2(b)(2)" to read "§ 734.3(a)(3)" and the citation "§ 734.2(b)(3)" to read "§ 734.3(a)(4)" in section 746.4(b)(2);

■ c. The phrase "larger than 3500 cubic meters" to read "larger than 350 cubic meters" in section 746.4(c)(2)(vii)(A); and

■ d. The first sentence of the introductory paragraph to section 746.7 to read as follows:

§ 746.7 Iran.

The Treasury Department's Office of Foreign Assets Control (OFAC) administers a comprehensive trade and investment embargo against Iran under the authority, inter alia, of the International Emergency Economic Powers Act of 1977, as amended, section 505 of the International Security and Development Cooperation Act of 1985, and Executive Order 13059 of August 19, 1997, which consolidates the provisions of Executive Orders 12613, 12957 and 12959. * * *

* * * * *

PART 748—[AMENDED]

■ 22. The authority citation for 15 CFR part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 23. Section 748.2 is amended by revising the undesignated paragraph following paragraph (a) to read as follows:

§ 748.2 Obtaining forms; mailing addresses.

(a) * * *

Outreach and Exporter Services Division

U.S. Department of Commerce, 14th Street and Pennsylvania Ave., NW., Room H1099D, Washington, DC 20230, Telephone Number: (202) 482–4811, Facsimile Number: (202) 482–3617.

Western Regional Offices

U.S. Department of Commerce, 3300 Irvine Avenue, Suite 345, Newport Beach, CA 92660, Telephone Number: (949) 660–0144, Facsimile Number: (949) 660–9347.

U.S. Export Assistance Center

Bureau of Industry and Security, 152 North Third Street, Suite 550, San Jose, California 95112–5591, Telephone Number: (408) 998–7402, Facsimile Number: (408) 998–7470.

* * * * *

PART 750—[AMENDED]

■ 24. The authority citation for 15 CFR part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 25. Section 750.7 is amended by revising paragraph (c)(1)(viii) to read as follows:

§ 750.7 Issuance of licenses.

* * * * *

(c) * * *

(1) * * *

(viii) Change in ECCN, unit of quantity, or unit price, where necessary only for the purpose of conforming to an official revision in the CCL; or wording of the item description. This does not cover an actual change in the item to be shipped, or an increase in the total price or quantity on the license; or

* * * * *

PART 752—[AMENDED]

■ 26. The authority citation for 15 CFR part 752 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 27. Section 752.3 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 752.3 Eligible items.

(a) * * *

(2) Items controlled by ECCNs 1C351, 1C352, 1C353, 1C354, 1C991, 1E001, 2B352, 2E001, 2E002, and 2E301 on the CCL controlled for CB reasons;

(3) Items controlled by ECCNs 1C350, 1C995, 1D390, 1E350, 1E351, 2B350, and 2B351 on the CCL that can be used in the production of chemical weapons precursors and chemical warfare agents, to destinations listed in Country Group D:3 (*see* Supplement No. 1 to part 740 of the EAR);

* * * * *

Dated: January 13, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–1737 Filed 2–5–04; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960–AF82

Interrelationship of Old-Age, Survivors and Disability Insurance Program With the Railroad Retirement Program

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are issuing these final rules to conform our regulations to a self-implementing provision in current law that affects benefit coordination between the Railroad Retirement Act and title II of the Social Security Act. The amendments modified a Railroad Retirement Act requirement involving the period of service in the railroad industry needed to satisfy certain annuity eligibility requirements. We refer to that requirement herein as the "vesting requirement." For affected persons, this provision established a Railroad Retirement Act vesting requirement of 5 or more years of service, all of which accrue after December 31, 1995, as an alternative to the existing vesting requirement of 10 years of service. As a result of this provision, certain railroad workers who meet the alternative 5-year vesting requirement, and other affected persons, will now receive benefits under the Railroad Retirement Act rather than under title II of the Social Security Act. The amendments made by this provision were effective on or after January 1, 2002, for all individuals in the affected categories. Railroad retirement benefits payable on the basis of this provision are not retroactive and are not payable for months prior to January 2002, but are payable beginning January 1, 2002, to those with 5 years of service after 1995. Railroad employees previously denied benefits for insufficient service would have to file a new application for railroad benefits in order to be considered under the new vesting rules.

DATES: These regulations are effective February 6, 2004.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office, *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Marylin Buster, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–2490 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

The Railroad Retirement Act provides a system of benefits for railroad employees, their dependents and survivors. It is integrated with the Social Security Act to provide a coordinated system of retirement, survivor, dependent, and disability benefits payable on the basis of an individual's work in the railroad industry and in employment and self-employment covered by the Social Security Act.

The Railroad Retirement Act distinguishes between "career" railroad workers and individuals who may be considered "casual" railroad workers by vesting people who have specified amounts of railroad work. For a vested worker, railroad compensation generally remains under the Railroad Retirement Board (RRB) and is used to compute railroad retirement and survivor annuities for the worker. For a non-vested worker, railroad compensation is transferred from RRB to SSA and is combined with any social security covered wages and self-employment to determine the worker's eligibility for and the amount of title II benefits. Section 103 of Pub. L. 107–90, the Railroad Retirement and Survivors' Improvement Act of 2001, modified the rules involving the period of railroad industry service needed in order to satisfy certain annuity eligibility requirements under section 2 of the Railroad Retirement Act. It affects individuals who have attained retirement age as defined in the Social Security Act. It also affects individuals who have attained age sixty-two and have completed less than 30 years of railroad service, and individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment. The new vesting requirement similarly affects the eligibility and entitlement of spouses of individuals who performed railroad service. Finally, the amendments affect the eligibility and entitlement of survivors; *i.e.*, widows, children, and parents of deceased individuals who performed railroad service.

Under the new amendments, the vesting requirement for affected individuals is either 10 years of railroad service or, for individuals with less than

10 years of service, at least 5 years of service, all of which accrue after December 31, 1995. Railroad retirement benefits payable on the basis of this provision are not retroactive and are not payable for months prior to January 2002, but are payable beginning January 1, 2002, to those with 5 years of service after 1995. Employees previously denied benefits for insufficient service would have to file a new application for benefits in order to be considered under the new vesting rules. SSA must use the revised vesting requirement in determining eligibility for, or the amount of benefits under, title II of the Social Security Act in cases involving potential or actual entitlement to a railroad annuity. It also affects certification by SSA for payment purposes, under appropriate circumstances to RRB as required by the Social Security Act.

Explanation of Changes

We are deleting § 404.1403 and revising §§ 404.1401, 404.1402, 404.1405, and 404.1413 to make it clear that the railroad vesting requirement is either 10 years of service under the Railroad Retirement Act or 5 or more years of service, all of which accrue after December 31, 1995. Railroad retirement benefits payable on the basis of this provision are not retroactive and are not payable for months prior to January 2002, but are payable beginning January 1, 2002, to those with 5 years of service after 1995. Employees previously denied benefits for insufficient service would have to file a new application for benefits in order to be considered under the new vesting rules.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of these final rules, we have determined that, under 5 U.S.C. 553 (b)(B), good cause exists for dispensing with the notice and public comment procedures on these rules because such procedures are unnecessary. Good cause exists because these regulations merely conform our rules on title II benefits for railroad workers to the self-implementing vesting provisions in section 103 of Public Law 107–90 that we have been following operationally since January 2002. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, these revisions conform our rules on title II benefits for railroad workers to current law. However, without these changes, our rules will conflict with current law and may mislead the public. Therefore, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations will impose no additional reporting or record keeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors and Disability Insurance; Reporting and record keeping requirements; Social Security.

Dated: January 29, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons stated in the preamble, subpart O of part 404 is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart O—[Amended]

■ 1. The authority citation for subpart O of part 404 continues to read as follows:

Authority: Secs. 202(l), 205(a), (c)(5)(D), (i), and (o), 210(a)(9) and (1)(4), 211(c)(3), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(l), 405(a), (c)(5)(D), (i), and (o), 410(a)(9) and (l)(4), 411(c)(3), and 902(a)(5)).

■ 2. § 404.1401 is revised to read as follows:

§ 404.1401 What is the interrelationship between the Railroad Retirement Act and the Old-Age, Survivors and Disability Insurance Program of the Social Security Act?

(a) *Background.* The Railroad Retirement Act provides a system of benefits for railroad employees, their dependents and survivors, and is integrated with the Social Security Act to provide a coordinated system of retirement, survivor, dependent and disability benefits payable on the basis of an individual's work in the railroad industry and in employment and self-employment covered by the Social Security Act. With respect to the coordination between the two programs, the Railroad Retirement Act distinguishes between "career" or "vested" railroad workers and those individuals who may be considered "casual" or "non-vested" railroad workers based on the total amount of railroad service credited to the worker, as explained in paragraph (b) of this section. The Railroad Retirement Board transfers to the Social Security Administration (SSA) the compensation records of workers who at the time of retirement, onset of disability or death, are non-vested and meet certain other requirements. Any compensation paid to non-vested workers for service after 1936 becomes wages under the Social Security Act (to the extent they do not exceed the annual wage limitations described in § 404.1047). Any benefits payable to non-vested workers, their dependents, and their survivors, are computed on the basis of the combined compensation and social security covered earnings creditable to the workers' records. Once a railroad worker meets the vesting requirements, the record of the worker's railroad service and compensation generally may not be used for benefit purposes under the Social Security Act, but under certain circumstances may be transferred after the worker's death to SSA for use in determining social security benefit entitlement for the

railroad worker's survivors (*see* § 404.1407). Under certain circumstances (*see* § 404.1413), certification of benefits payable under the provisions of the Social Security Act will be made to the Railroad Retirement Board. The Railroad Retirement Board will certify such benefits to the Secretary of the Treasury.

(b) *Who is a vested railroad worker?* You are a vested railroad worker if you have:

(1) Ten years or more of service in the railroad industry, or

(2) Effective January 1, 2002, you have at least 5 years of service in the railroad industry, all of which accrue after December 31, 1995.

(c) *Definition of years of service.* As used in paragraph (b) of this section, the term *years of service* has the same meaning as assigned to it by section 1(f) of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(f)).

■ 3. § 404.1402 is revised to read as follows:

§ 404.1402 When are railroad industry services by a non-vested worker covered under Social Security?

If you are a non-vested worker, we (the Social Security Administration) will consider your services in the railroad industry to be "employment" as defined in section 210 of the Social Security Act for the following purposes:

(a) To determine entitlement to, or the amount of, any monthly benefits or lump-sum death payment on the basis of your wages and self-employment income;

(b) To determine entitlement to, or the amount of, any survivor monthly benefit or any lump-sum death payment on the basis of your wages and self-employment income provided you did not have a "current connection" with the railroad industry, as defined in section 1(o) of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(o)), at the time of your death; (in such cases, survivor benefits are not payable under the Railroad Retirement Act);

(c) To determine entitlement to a period of disability (*see* subpart B of this part) on the basis of your wages and self-employment income; or

(d) To apply the provisions of section 203 of the Social Security Act concerning deductions from benefits under the annual earnings test (*see* subpart E of this part).

■ 4. § 404.1403 is removed.

■ 5. § 404.1405 is amended by revising the section heading and paragraph (b) to read as follows:

§ 404.1405 If you have been considered a non-vested worker, what are the situations when your railroad industry work will not be covered under Social Security?

* * * * *

(b) *You continue to work in the railroad industry after establishing entitlement to old-age insurance benefits under section 202(a) of the Social Security Act.* If your service in the railroad industry is used to establish your entitlement to, or to determine the amount of, your old-age insurance benefits under section 202(a) of the Social Security Act, but you become vested after the effective date of your benefits, your railroad service will no longer be deemed to be in "employment" as defined in section 210 of the Act. Your benefits and any benefits payable to your spouse or child under section 202(b), (c), or (d) of the Act will be terminated with the month preceding the month in which you become a vested worker. However, if you remain insured (*see* subpart B of this part) without the use of your railroad compensation, your benefits will instead be recalculated without using your railroad compensation. The recalculated benefits will be payable beginning with the month in which you become a vested worker. Any monthly benefits paid prior to the month you become a vested worker are deemed to be correct payments.

■ 6. § 404.1413 is revised to read as follows:

§ 404.1413 When will we certify payment to the Railroad Retirement Board (RRB)?

(a) *When we will certify payment to RRB.* If we find that you are entitled to any payment under title II of the Social Security Act, we will certify payment to the Railroad Retirement Board if you meet any of the following requirements:

(1) You are a vested worker; or

(2) You are the wife or husband of a vested worker; or

(3) You are the survivor of a vested worker and you are entitled, or could upon application be entitled to, an annuity under section 2 of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(a)); or

(4) You are entitled to benefits under section 202 of the Social Security Act on the basis of the wages and self-employment income of a vested worker (unless you are the survivor of a vested worker who did not have a current connection, as defined in section 1(o) of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(o)) with the railroad industry at the time of his or her death).

(b) *What information does certification include?* The certification we make to the Railroad Retirement Board for individuals entitled to any payment(s) under title II will include your name, address, payment amount(s), and the date the payment(s) should begin.

(c) *Applicability limitations.* The applicability limitations in paragraphs (a)(1) through (4) of this section affect claimants who first become entitled to benefits under title II of the Social Security Act after 1974. (*See* also § 404.1810.)

[FR Doc. 04–2410 Filed 2–5–04; 8:45 am]
BILLING CODE 4191–02–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 262 and 263

[Docket Nos. 2002–1 CARP DTRA3 and 2001–2 CARP DTNSRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations that set rates and terms for the public performance of a sound recording made pursuant to a statutory license by means of certain eligible nonsubscription transmissions and digital transmissions made by a new type of subscription service. The final rule also announces rates and terms for the making of related ephemeral recordings. The rates and terms are for the 2003 and 2004 statutory licensing period, except in the case of a new subscription service, in which case the license period runs from 1998 through 2004.

DATES: *Effective Date:* March 8, 2004.

Applicability Dates: The regulations govern the license period which commenced on January 1, 2003, and ends on December 31, 2004, except in the case of a new subscription service, in which case the regulations govern the license period which commenced on October 28, 1998, and ends on December 31, 2004.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: With the passage of the Digital Performance Right in Sound Recordings Act of 1995, as amended by the Digital Millennium Copyright Act of 1998, copyright owners of sound recordings have enjoyed an exclusive right to perform their works publicly by means of certain digital audio transmissions, subject to certain limitations. 17 U.S.C. 114. Among these limitations are certain exemptions and a statutory license which allows for the public performance of sound recordings as part of "eligible nonsubscription transmissions" and digital transmissions made by "new subscription services." [1]

The section 114 statutory license, however, does not necessarily cover all the rights needed to effectuate a digital transmission. It is often necessary for the licensee to first make a number of digital copies of the sound recording in order to bring about the transmission. For this reason, Congress created a new statutory license in 1998 with the passage of the Digital Millennium Copyright Act of 1998, Public Law 105–304, to allow for the making of ephemeral reproductions for the purpose of facilitating certain digital audio transmissions pursuant to the section 114 statutory license, including those transmissions made by eligible nonsubscription services and new subscription services. *See* 17 U.S.C. 112(e).

The procedure for setting the rates and terms for these two statutory licenses is a two-step process. 17 U.S.C. 112(e)(3), (4), and (6) and 17 U.S.C. 114(f)(2). The first step requires the Librarian of Congress to initiate a voluntary negotiation period in order to give interested parties an opportunity to reach consensus with respect to the applicable rates and terms through an informal process. However, in the event the parties are unable to reach an agreement during this period, sections 112(e)(4) and 114(f)(2)(B) direct the Librarian of Congress to convene a three-person Copyright Arbitration Royalty Panel ("CARP") for the purpose of determining the rates and terms for the compulsory license, provided that an interested party files a petition in accordance with 17 U.S.C. 803(a)(1), requesting the formal proceeding.

The initial schedule of rates and terms for the sections 112 and 114 licenses applicable to eligible nonsubscription services for the period from October 28, 1998, to December 31, 2002, was published on July 8, 2002, after a formal hearing before a CARP. *See* 67 FR 45239 (July 8, 2002). Yet, this announcement did not settle the matter for long. It only established rates and terms for the license period ending December 31st of that year.

For this reason, the Library initiated a new proceeding to adjust the rates and terms applicable to eligible nonsubscription transmissions for the 2003–2004 license period by publishing a notice in the **Federal Register** in January 2002 announcing the six-month voluntary negotiation period that commences a rate adjustment proceeding. *See* 67 FR 4472 (January 30, 2002). The Librarian took this step even though the rates for 1998–2002 had not been announced, in order to comply with the timetable set forth in sections 112(e)(7) and 114(f)(2)(C)(i)(II). Specifically, these sections require the Librarian to publish a notice commencing the negotiation process in the first week of January 2000 and at two year intervals thereafter, unless the parties have agreed to an alternative schedule during the settlement phase of the process. In any event, the parties did not negotiate a proposed settlement during the specified period to cover the next license period and opted instead to file petitions with the Office, requesting that the Librarian of Congress convene a CARP to adjust the rates and terms for the license period 2003–2004. Two such petitions were filed with the Copyright Office. The Recording Industry Association of America, Inc. ("RIAA") filed one of the two petitions, and IOMedia Partners, Inc., 3WK, Digitally Imported Radio, IM Networks, Inc., Beethoven.com, LLC, All Bass Radio, Discombobulated, LLC, Wolf FM and Integrity Media Group, Inc. d/b/a Boomer Radio, filed jointly a second petition on behalf of certain licensees.

Likewise, in accordance with the time frame set forth in the law for the purpose of setting rates and terms for use of the section 114 license by new subscription services, the Library initiated a six-month voluntary negotiation period to adjust the rates and terms for new subscription services. *See* 66 FR 9881 (February 12, 2001). Again, no settlement was reached by the end of the six-month period. Consequently, Music Choice and the RIAA filed separate petitions with the Copyright Office requesting that a CARP be convened in order to set the rates and terms for the public performance of sound recordings by new subscription services.

Proposed Settlement Agreements

The parties in both proceedings continued to negotiate in good faith beyond the statutorily mandated six-month negotiation periods in hopes of reaching an industry wide settlement. Ultimately, they succeeded, as evidenced by the adoption of the proposed rates and terms as final rules. The process, however, required the consideration of three separate agreements, explained herein.

On May 1, 2003, the Copyright Office published a notice in the **Federal Register,** requesting comment on proposed regulations that set rates and terms for the use of sound recordings in certain eligible nonsubscription transmissions made pursuant to section 114 during the 2003 and 2004 statutory licensing period, as well as for the making of ephemeral recordings necessary for the facilitation of such transmissions in accordance with the section 112(e) license. The proposal also included rates and terms for the use of sound recordings in transmissions made by new subscription services from 1998 through December 31, 2004, and the making of the related ephemeral recordings under these same statutory licenses. 68 FR 23241 (May 1, 2003). These proposed rates and terms were part of a settlement agreement negotiated by SoundExchange, a division of the RIAA, the American Federation of Television and Radio Artists ("AFTRA"), the American Federation of Musicians of the United States and Canada ("AFM"), and the Digital Media Association ("DiMA") and were submitted to the Copyright Office on April 14, 2003, along with a petition requesting that the Office publish the proposed rates and terms pursuant to § 251.63(b) of title 37 of the Code of Federal Regulations, which the Office did. *Id. See* 68 FR 23241 (May 1, 2003).

The April 14 proposal was later superseded by a second proposal which was submitted to the Copyright Office on May 8, 2003. The new agreement amended the proposal in the April 14 submission with the approval of the parties to the first agreement and included, for the first time, rates and terms for simulcasts of AM and FM radio broadcast programming. These new rates were the result of an agreement between SoundExchange,

[1] For purposes of the section 114 license, an "eligible nonsubscription transmission" is a noninteractive digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. *See* 17 U.S.C. 114(j)(6). A "new subscription service" is "a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription or a preexisting satellite digital audio radio service." 17 U.S.C. 114(j)(8).

AFM, and AFTRA (collectively, "Copyright Owners and Performers"), on the one hand, and Broadcasters,[2] on the other hand. The May 8 agreement also included proposed rates and terms applicable to business establishment services that make ephemeral phonorecords pursuant to section 112(e) for the purpose of transmitting a public performance of a sound recording under the limitation on exclusive rights specified by section 114(d)(1)(C)(iv). These rates and terms were agreed to by the Copyright Owners and Performers and Music Choice, the only business establishment service participating in this proceeding, and cover the 2003 and 2004 statutory license period. As before, the Petitioners requested that the Office publish the amended proposed rates and terms for public comment pursuant to 37 CFR 251.63(b). *See* 68 FR 27506 (May 20, 2003).

On July 3, 2003, SoundExchange, the American Council on Education, and the Intercollegiate Broadcasting System, Inc., jointly with Harvard Radio Broadcasting Co., Inc. submitted the third and final proposal to the Copyright Office. It proposed rates and terms for use of the section 112 and section 114 statutory licenses by noncommercial licensees during the 2003–2004 license period that are identical to the statutory rates and terms adopted by the Librarian for the period ending December 31, 2002. *See* 67 FR 45239 (July 8, 2002). It should be noted, however, that many noncommercial webcasters will not be using these rates and terms for this time period. Instead, certain noncommercial licensees will operate under the rate structure adopted in a separate license, negotiated with RIAA in accordance with the Small Webcaster Settlement Act of 2002. *See* 68 FR 35008 (June 11, 2003).

Objections to the Proposed Rates and Terms

The Copyright Office received objections to the proposals announced in the May 20 and the August 21 notices from four entities: Live365.com, Lester Chambers ("Chambers"), Royalty Logic, Inc. ("RLI") and SRN Broadcasting & Marketing, Inc. ("SRN"). Specifically, Live365.com objected to the rates and terms applicable to commercial webcasters, but withdrew its objections early in the process, obviating the need to consider its concerns further. Similarly, SRN objected to these same rates. However, SRN was eventually dismissed from the proceedings for its failure to comply with the Orders issued in this proceeding and the rules governing this process. *See* Order in Docket No. 2002–1 CARP DTRA3, dated August 15, 2003. That left the objections of RLI and RLI's client, Lester Chambers, which, in both cases, concerned the appointment and responsibilities of those agents designated to collect and distribute the royalty fees.

An objection, however, can only be considered if the party filing the objection has a significant interest in the outcome of the proceeding. In the case of RLI, the Office determined that RLI had no independent standing to pursue its own objections but held that RLI could represent the interests of its client, Lester Chambers, provided that Chambers expressly authorized RLI to represent its interest in these proceedings. *See* Order in Docket Nos. 2002–1 CARP DTRA3 and 2001–2 CARP DTNSRA, dated August 18, 2003. Consequently, at the beginning of the hearing phase of this proceeding, Chambers, as represented by RLI, was the only remaining party that had filed an objection to the proposed rates and terms. This objection, however, became moot on January 8, 2003, when RLI filed a notice with the Copyright Office withdrawing its Notice of Intent to Participate in these proceedings and its Direct Case.

Because there are no longer any parties objecting to the proposed rates and terms, the Librarian is adopting as final regulations the rates and terms for the section 112(e) and section 114 licenses proposed in the May 20 and August 21 notices. The rates and terms apply to the public performance of a sound recording by means of certain eligible nonsubscription transmissions and digital transmissions made by a new type of subscription service. The final rules also announce rates and terms for the making of related ephemeral recordings. The rates and terms are for the 2003 and 2004 license period, except in the case of new subscription services, in which case the license period runs from 1998 through 2004.

Adoption of the rules presented herein as final regulations concludes the above-captioned proceedings.

List of Subjects in 37 CFR Parts 262 and 263

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Final Regulation

■ In consideration of the foregoing, the Copyright Office adds parts 262 and 263 to 37 CFR to read as follows:

PART 262—RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

Sec.

Authority: 17 U.S.C. 112(e), 114, 801(b)(1).

§ 262.1 General.

(a) *Scope.* This part 262 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by certain Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period 2003–2004 and in the case of Subscription Services 1998–2004 (the "License Period").

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114 shall comply with the requirements of those sections, the rates and terms of this part and any other applicable regulations.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services shall apply in lieu of the rates and terms of this part to transmissions within the scope of such agreements.

§ 262.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Aggregate Tuning Hours* means the total hours of programming that the Licensee has transmitted during the relevant period to all Listeners within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions or noninteractive digital audio transmissions as part of a new subscription service, less the actual

[2] Those entities who negotiated on behalf of the broadcasters include Bonneville International Corporation, Clear Channel Communications, Inc., the National Religious Broadcasters Music License Committee, Salem Communications Corporation, and Susquehanna Radio Corporation.

running time of any sound recordings for which the Licensee has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a service transmitted one hour of programming to 10 simultaneous Listeners, the service's Aggregate Tuning Hours would equal 10. If 30 minutes of that hour consisted of transmission of a directly licensed recording, the service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one Listener listened to a service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the service's Aggregate Tuning Hours would equal 10.

(b) *Broadcast Simulcast* means

(1) A simultaneous Internet transmission or retransmission of an over-the-air terrestrial AM or FM radio broadcast, including one with previously broadcast programming substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained and one with substitute advertisements, and

(2) An Internet transmission in accordance with 17 U.S.C. 114(d)(2)(C)(iii) of an archived program, which program was previously broadcast over-the-air by a terrestrial AM or FM broadcast radio station, in either case whether such Internet transmission or retransmission is made by the owner and operator of the AM or FM radio station that makes the broadcast or by a third party.

(c) *Business Establishment Service* means a service making transmissions of sound recordings under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv).

(d) *Copyright Owner* is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) or 114.

(e) *Designated Agent* is the agent designated by the Librarian of Congress as provided in § 262.4(b).

(f) *Ephemeral Recording* is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) or for the purpose of facilitating a transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

(g) *Licensee* is a person or entity that

(1) Has obtained a compulsory license under 17 U.S.C. 114 and the implementing regulations therefor to make eligible nonsubscription transmissions, or noninteractive digital audio transmissions as part of a new subscription service (as defined in 17 U.S.C. 114(j)(8)), or that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings for use in facilitating such transmissions, or

(2) Is a Business Establishment Service that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings, but not a person or entity that:

(i) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(ii) Has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

(iii) Is a State or possession or any governmental entity or subordinate thereof, or the United States or District of Columbia, making transmissions for exclusively public purposes.

(h) *Listener* is a player, receiving device or other point receiving and rendering a transmission of a public performance of a sound recording made by a Licensee, irrespective of the number of individuals present to hear the transmission.

(i) *Nonsubscription Service* means a service making eligible nonsubscription transmissions.

(j) *Performance* is each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or retransmission (*e.g.*, the delivery of any portion of a single track from a compact disc to one Listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.*, the sound recording is not copyrighted);

(2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(k) *Performers* means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

(l) *Subscription Service* means a new subscription service (as defined in 17 U.S.C. 114(j)(8)) making noninteractive digital audio transmissions.

(m) *Subscription Service Revenues* shall mean all monies and other consideration paid or payable, including the fair market value of non-cash or in-kind consideration paid or payable by third parties, from the operation of a Subscription Service, as comprised of the following:

(1) Subscription fees and other monies and consideration paid for access to the Subscription Service by or on behalf of subscribers receiving within the United States transmissions made as part of the Subscription Service;

(2) Monies and other consideration (including without limitation customer acquisition fees) from audio or visual advertising, promotions, sponsorships, time or space exclusively or predominantly targeted to subscribers of the Subscription Service, whether

(i) On or through the Subscription Service media player, or on pages accessible only by subscribers or that are predominantly targeted to subscribers, or

(ii) In e-mails addressed exclusively or predominantly to subscribers of the Subscription Service, or

(iii) Delivered exclusively or predominantly to subscribers of the Subscription Service in some other manner, in each case less advertising agency commissions (not to exceed 15% of those monies and other consideration) actually paid to a recognized advertising agency not owned or controlled by Licensee;

(3) Monies and other consideration (including without limitation the proceeds of any revenue-sharing or commission arrangements with any fulfillment company or other third party, and any charge for shipping or handling) from the sale of any product or service directly through the Subscription Service media player or through pages or advertisements

accessible only by subscribers or that are predominantly targeted to subscribers (but not pages or advertisements that are not predominantly targeted to subscribers), less

(i) Monies and other consideration from the sale of phonorecords and digital phonorecord deliveries of sound recordings,

(ii) The Licensee's actual, out-of-pocket cost to purchase for resale the products or services (except phonorecords and digital phonorecord deliveries of sound recordings) from third parties, or in the case of products produced or services provided by the Licensee, the Licensee's actual cost to produce the product or provide the service (but not more than the fair market wholesale value of the product or service), and

(iii) Sales and use taxes, shipping, and credit card and fulfillment service fees actually paid to unrelated third parties; provided that:

(A) The fact that a transaction is consummated on a different page than the page/location where a potential customer responds to a "buy button" or other purchase opportunity for a product or service advertised directly through such player, pages or advertisements shall not render such purchase outside the scope of Subscription Service Revenues hereunder, and

(B) Monies and other consideration paid by or on behalf of subscribers for software or any other access device owned by Licensee (or any subsidiary or other affiliate of the Licensee, but excluding, for the avoidance of doubt, any entity that sells a third-party product, whether or not bearing the Licensee's brand) to access the Licensee's Subscription Service shall not be deemed part of Subscription Service Revenues, unless such software or access device is required as a condition to access the Subscription Service and either is purchased by a subscriber contemporaneously with or after subscribing or has no independent function other than to access the Subscription Service;

(4) Monies and other consideration for the use or exploitation of data specifically and separately concerning subscribers or the Subscription Service, but not monies and other consideration for the use or exploitation of data wherein information concerning subscribers or the Subscription Service is commingled with and not separated or distinguished from data that predominantly concern nonsubscribers or other services; and

(5) Bad debts recovered with respect to paragraphs (m)(1) through (4) of this section; provided that the Subscription Service shall be permitted to deduct bad debts actually written off during a reporting period.

§ 262.3 Royalty fees for public performances of sound recordings and for ephemeral recordings.

(a) *Basic royalty rate.* Royalty rates and fees for eligible nonsubscription transmissions made by Licensees pursuant to 17 U.S.C. 114(d)(2) during the period January 1, 2003, through December 31, 2004, and the making of Ephemeral Recordings pursuant to 17 U.S.C. 112(e) to facilitate such transmissions; noninteractive digital audio transmissions made by Licensees pursuant to 17 U.S.C. 114(d)(2) as part of a new subscription service during the period October 28, 1998, through December 31, 2004, and the making of Ephemeral Recordings pursuant to 17 U.S.C. 112(e) to facilitate such transmissions; and the making of Ephemeral Recordings by Business Establishment Services pursuant to 17 U.S.C. 112(e) during the period January 1, 2003, through December 31, 2004, shall be as follows:

(1) *Nonsubscription Services.* For their operation of Nonsubscription Services, Licensees other than Business Establishment Services shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

(i) *Per Performance Option.* $0.000762 (0.0762¢) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel switching; Provided that this provision is not intended to imply that permitting users of a service to "skip" a recording is or is not permitted under 17 U.S.C. 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial Performances.

(ii) *Aggregate Tuning Hour Option.*

(A) Non-Music Programming. $0.000762 (0.0762¢) per Aggregate Tuning Hour for programming reasonably classified as news, talk, sports or business programming.

(B) *Broadcast Simulcasts.* $0.0088 (0.88¢) per Aggregate Tuning Hour for Broadcast Simulcast programming not reasonably classified as news, talk, sports or business programming.

(C) *Other Programming.* $0.0117 (1.17¢) per Aggregate Tuning Hour for programming other than Broadcast Simulcast programming and programming reasonably classified as news, talk, sports or business programming.

(2) *Subscription Services.* For their operation of Subscription Services, Licensees other than Business Establishment Services shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

(i) *Per Performance Option.* $0.000762 (0.0762¢) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel switching; Provided that this provision is not intended to imply that permitting users of a service to "skip" a recording is or is not permitted under 17 U.S.C. 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial Performances.

(ii) *Aggregate Tuning Hour Option.*—

(A) *Non-Music Programming:* $0.000762 (0.0762¢) per Aggregate Tuning Hour for programming reasonably classified as news, talk, sports or business programming.

(B) *Broadcast Simulcasts.* $0.0088 (0.88¢) per Aggregate Tuning Hour for Broadcast Simulcast programming not reasonably classified as news, talk, sports or business programming.

(C) *Other Programming.* $0.0117 (1.17¢) per Aggregate Tuning Hour for programming other than Broadcast Simulcast programming and programming reasonably classified as news, talk, sports or business programming.

(iii) *Percentage of Subscription Service Revenues Option.* 10.9% of Subscription Service Revenues, but in no event less than 27¢ per month for each person who subscribes to the Subscription Service for all or any part of the month or to whom the Subscription Service otherwise is delivered by Licensee without a fee (*e.g.*, during a free trial period), subject to the following reduction associated with the transmission of directly licensed sound recordings (if applicable). For any given payment period, the fee due from Licensee shall be the amount calculated under the formula described in the immediately preceding sentence *multiplied by* the

following fraction: the total number of Performances (as defined under § 262.2(j), which excludes directly licensed sound recordings) made by the Subscription Service during the period in question, *divided by* the total number of digital audio transmissions of sound recordings made by the Subscription Service during the period in question (inclusive of Performances and equivalent transmissions of directly licensed sound recordings). Any Licensee paying on such basis shall report to the Designated Agent on its statements of account the pertinent music use information upon which such reduction has been calculated. This option shall not be available to a Subscription Service where—

(A) A particular computer software product or other access device must be purchased for a separate fee from the Licensee as a condition of receiving transmissions of sound recordings through the Subscription Service, and the Licensee chooses not to include sales of such software product or other device to subscribers as part of Subscription Service Revenues in accordance with § 262.2(m)(3), or

(B) The consideration paid or given to receive the Subscription Service also entitles the subscriber to receive or have access to material, products or services other than the Subscription Service (for example, as in the case of a "bundled service" consisting of access to the Subscription Service and also access to the Internet in general). In all events, in order to be eligible for this payment option, a Licensee may not engage in pricing practices whereby the Subscription Service is offered to subscribers on a "loss leader" basis or whereby the price of the Subscription Service is materially subsidized by payments made by the subscribers for other products or services.

(3) *Business Establishment Services.* For the making of any number of Ephemeral Recordings in the operation of a service pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), a Licensee that is a Business Establishment Service shall pay 10% of such Licensee's "Gross Proceeds" derived from the use in such service of musical programs that are attributable to copyrighted recordings. "Gross Proceeds" as used in paragraph (a)(3) of this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(i) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, and

(ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(b) *Election process.* A Licensee other than a Business Establishment Service shall elect the particular Nonsubscription Service and/or Subscription Service royalty rate categories it chooses (that is, among paragraph (a)(1)(i) or (ii) of this section and/or paragraph (a)(2)(i), (ii) or (iii) of this section) for the License Period by no later than March 8, 2004. Notwithstanding the preceding sentence, where a Licensee has not previously provided a Nonsubscription Service or Subscription Service, as the case may be, the Licensee may make its election by no later than thirty (30) days after the new service first makes a digital audio transmission of a sound recording under the 17 U.S.C. 114 statutory license. Each such election shall be made by notifying the Designated Agent in writing of such election, using an election form provided by the Designated Agent. A Licensee that fails to make a timely election shall pay royalties as provided in paragraphs (a)(1)(i) and (a)(2)(i) of this section, as applicable. Notwithstanding the foregoing, a Licensee eligible to make royalty payments under an agreement entered into pursuant to the Small Webcaster Settlement Act of 2002 may elect to make payments under such agreement as specified in such agreement.

(c) *Ephemeral Recordings.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made by a Licensee other than a Business Establishment Service during the License Period, and used solely by the Licensee to facilitate transmissions for which it pays royalties as and when provided in this section and § 262.4 shall be deemed to be included within, and to comprise 8.8% of, such royalty payments. The royalty payable under 17 U.S.C. 112(e) for the reproduction of phonorecords by a Business Establishment Service shall be as set forth in paragraph (a)(3) of this section.

(d) *Minimum fee.* (1) *Business Establishment Services.* Each Licensee that is a Business Establishment Service shall pay a minimum fee of $10,000 for each calendar year in which it makes Ephemeral Recordings for use to facilitate transmissions under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), whether or not it does so for all or any part of the year.

(2) *Other Services.* Each Licensee other than a Business Establishment Service shall pay a minimum fee of $2,500, or $500 per channel or station (excluding archived programs, but in no event less than $500 per Licensee), whichever is less, for each calendar year in which it makes eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings for use to facilitate such transmissions, whether or not it does the foregoing for all or any part of the year; except that the minimum annual fee for a Licensee electing to pay under paragraph (a)(2)(iii) of this section shall be $5,000.

(3) *In General.* These minimum fees shall be nonrefundable, but shall be fully creditable to royalty payments due under paragraph (a) of this section for the same calendar year (but not any subsequent calendar year).

(e) *Continuing Obligation.* For the limited purpose of the period immediately following the License Period, and on an entirely without prejudice and nonprecedential basis relative to other time periods and proceedings, if successor statutory royalty rates for Licensees for the period beginning January 1, 2005, have not been established by January 1, 2005, then Licensees shall pay to the Designated Agent, effective January 1, 2005, and continuing for the period through April 30, 2005, or until successor rates and terms are established, whichever is earlier, an interim royalty pursuant to the same rates and terms as are provided for the License Period. Such interim royalties shall be subject to retroactive adjustment based on the final successor rates. Any overpayment shall be fully creditable to future payments, and any underpayment shall be paid within 30 days after establishment of the successor rates and terms, except as may otherwise be provided in the successor terms. If there is a period of such interim payments, Licensees shall elect the particular royalty rate categories it chooses for the interim period as described in paragraph (b) of this section, except that the election for a service that is in operation shall be made by no later than January 15, 2005.

(f) *Other royalty rates and terms.* This part 262 does not apply to persons or

entities other than Licensees, or to Licensees to the extent that they make other types of transmissions beyond those set forth in paragraph (a) of this section. For transmissions other than those governed by paragraph (a) of this section, or the use of Ephemeral Recordings to facilitate such transmissions, persons making such transmissions must pay royalties, to the extent (if at all) applicable, under 17 U.S.C. 112(e) and 114 or as prescribed by other law, regulation or agreement.

§ 262.4 Terms for making payment of royalty fees and statements of account.

(a) *Payment to designated agent.* A Licensee shall make the royalty payments due under § 262.3 to the Designated Agent.

(b) *Designation of agent and potential successor designated agents.* (1) Until such time as a new designation is made, SoundExchange, presently an unincorporated division of the Recording Industry Association of America, Inc. ("RIAA"), is designated as the Designated Agent to receive statements of account and royalty payments from Licensees due under § 262.3 and to distribute such royalty payments to each Copyright Owner and Performer entitled to receive royalties under 17 U.S.C. 112(e) or 114(g). SoundExchange shall continue to be designated after its separate incorporation.

(2) If SoundExchange should fail to incorporate by July 1, 2003, dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by successor entities upon the fulfillment of the requirements set forth in paragraphs (b)(2)(i) and (ii) of this section.

(i) By a majority vote of the nine copyright owner representatives on the SoundExchange Board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

(ii) By a majority vote of the nine performer representatives on the SoundExchange Board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

(iii) The Copyright Office shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) or (ii) of this section an order designating the Designated Agents named in such petitions. Nothing contained in this section shall prohibit the petitions filed under paragraphs (b)(2)(i) and (ii) of this section from naming the same successor Designated Agent.

(3) If petitions are filed under paragraphs (b)(2)(i) and (ii) of this section, then, following the actions of the Copyright Office in accordance with paragraph (b)(2)(iii) of this section:

(i) Each of the successor entities shall have all the rights and responsibilities of a Designated Agent under this part 262, except as specifically set forth in this paragraph (b)(3).

(ii) Licensees shall make their royalty payments to the successor entity named by the copyright owner representatives under paragraph (b)(2)(i) of this section (the "Receiving Agent") and shall provide statements of account on a form prepared by the Receiving Agent. Licensees shall submit a copy of each statement of account to the collective named by the performer representatives under paragraph (b)(2)(ii) of this section at the same time such statement of account is delivered to the Receiving Agent.

(iii) The Designated Agents shall agree between themselves concerning responsibility for distributing royalty payments to Copyright Owners and Performers that have not themselves authorized either Designated Agent. The Designated Agents also shall agree to a corresponding methodology for allocating royalty payments between them using the information provided by the Licensee pursuant to the regulations governing records of use of performances for the period for which the royalty payment was made. Such methodology shall value all performances equally. Within 30 days after their agreement concerning such responsibility and methodology, the Designated Agents shall inform the Register of Copyrights thereof.

(iv) With respect to any royalty payment received by the Receiving Agent from a Licensee, a designation by a Copyright Owner or Performer of a Designated Agent must be made no later than 30 days prior to the receipt by the Receiving Agent of that royalty payment.

(v) The Receiving Agent shall promptly allocate the royalty payments it receives between the two Designated Agents in accordance with the agreed methodology. A final adjustment, if necessary, shall be agreed and paid or refunded, as the case may be, between the Receiving Agent and the collectives named under paragraph (b)(2) of this section for each calendar year no later than 180 days following the end of each calendar year. The Designated Agents shall agree on a reasonable basis for the sharing on a pro-rata basis of any costs associated with the allocations set forth in paragraph (b)(3)(iii) of this section.

(vi) If a Designated Agent is unable to locate a Copyright Owner or Performer that the Designated Agent otherwise would be required to pay under this paragraph (b) within 3 years from the date of payment by Licensee, such Copyright Owner's or Performer's share of the payments made by Licensees may first be applied to the costs directly attributable to the administration of the royalty payments due such Copyright Owners and Performers by that Designated Agent and shall thereafter be allocated between the Designated Agents on a pro rata basis (based on distributions to entitled parties) to offset any costs permitted to be deducted by a designated agent under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

(c) *Monthly payments.* A Licensee shall make any payments due under § 262.3(a) by the 45th day after the end of each month for that month, except that payments due under § 262.3(a) for the period from the beginning of the License Period through the last day of the month in which these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register** shall be due 45 days after the end of such period. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Licensee shall make any payment due under § 262.3(d) by January 31 of the applicable calendar year, except that:

(1) Payment due under § 262.3(d) for 2003, and in the case of a Subscription Service any earlier year, shall be due 45 days after the last day of the month in which these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register**; and

(2) Payment for a Licensee that has not previously made eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall be due by the 45th day after the

end of the month in which the Licensee commences to do so.

(e) *Late payments.* A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Designated Agent after the due date. Late fees shall accrue from the due date until payment is received by the Designated Agent.

(f) *Statements of account.* For any part of the period beginning on the date these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register** and ending on December 31, 2004, during which a Licensee operates a service, by 45 days after the end of each month during the period, the Licensee shall deliver to the Designated Agent a statement of account containing the information set forth in this paragraph (f) on a form prepared, and made available to Licensees, by the Designated Agent. If a payment is owed for such month, the statement of account shall accompany the payment. A statement of account shall include only the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment, or if no payment is owed for the month, to calculate any portion of the minimum fee recouped during the month, including, as applicable, the Performances, Aggregate Tuning Hours (to the nearest minute) or Subscription Service Revenues for the month;

(2) The name, address, business title, telephone number, facsimile number, electronic mail address and other contact information of the individual or individuals to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or a corporation;

(ii) A partner or delegee, if the Licensee is a partnership; or

(iii) An officer of the corporation, if the Licensee is a corporation;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

(g) *Distribution of payments.*—(1) The Designated Agent shall distribute royalty payments directly to Copyright Owners and Performers, according to 17 U.S.C. 114(g)(2); Provided that the Designated Agent shall only be responsible for making distributions to those Copyright Owners and Performers who provide the Designated Agent with such information as is necessary to identify and pay the correct recipient of such payments. The agent shall distribute royalty payments on a basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of sound recordings by Licensees; Provided, however, Performers and Copyright Owners that authorize the Designated Agent may agree with the Designated Agent to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Parties entitled to receive payments under 17 U.S.C. 114(g)(2) may agree with the Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties consistent with the percentages in 17 U.S.C. 114(g)(2).

(2) The Designated Agent shall inform the Register of Copyrights of:

(i) Its methodology for distributing royalty payments to Copyright Owners and Performers who have not themselves authorized the Designated Agent (hereinafter "nonmembers"), and any amendments thereto, within 60 days of adoption and no later than 30 days prior to the first distribution to Copyright Owners and Performers of any royalties distributed pursuant to that methodology;

(ii) Any written complaint that the Designated Agent receives from a nonmember concerning the distribution of royalty payments, within 60 days of receiving such written complaint; and

(iii) The final disposition by the Designated Agent of any complaint specified by paragraph (g)(2)(ii) of this section, within 60 days of such disposition.

(3) A Designated Agent may request that the Register of Copyrights provide a written opinion stating whether the Designated Agent's methodology for distributing royalty payments to nonmembers meets the requirements of this section.

(h) *Permitted deductions.* The Designated Agent may deduct from the payments made by Licensees under § 262.3, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments under 17 U.S.C. 112(e) or 114(g) may agree to permit the Designated Agent to make any other deductions.

(i) *Retention of records.* Books and records of a Licensee and of the Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than 3 years.

§ 262.5 Confidential information.

(a) *Definition.* For purposes of this part, "Confidential Information" shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Receiving Agent or a Designated Agent are public knowledge. The Designated Agent that claims the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Designated Agent use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto; Provided, however, that the Designated Agent may disclose to Copyright Owners and Performers Confidential Information provided on statements of account under this part in aggregated form, so long as Confidential Information pertaining to any individual Licensee cannot readily be identified, and the Designated Agent may disclose the identities of services that have obtained licenses under 17 U.S.C. 112(e) or 114 and whether or not such services are current in their obligations to pay minimum fees and submit statements of account (so long as the Designated Agent does not disclose the amounts paid by the Licensee).

(d) *Disclosure of Confidential Information.* Except as provided in paragraph (c) of this section and as required by law, access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Designated Agent, subject to an appropriate confidentiality agreement, who are engaged in the

collection and distribution of royalty payments hereunder and activities related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of their work, require access to the records;

(2) An independent and qualified auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Designated Agent with respect to the verification of a Licensee's statement of account pursuant to § 262.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty payments pursuant to § 262.7;

(3) The Copyright Office, in response to inquiries concerning the operation of the Designated Agent;

(4) In connection with future Copyright Arbitration Royalty Panel proceedings under 17 U.S.C. 114(f)(2) and 112(e), and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings, Copyright Arbitration Royalty Panels, the Copyright Office or the courts; and

(5) In connection with bona fide royalty disputes or claims that are the subject of the procedures under § 262.6 or § 262.7, and under an appropriate confidentiality agreement or protective order, the specific parties to such disputes or claims, their attorneys, consultants or other authorized agents, and/or arbitration panels or the courts to which disputes or claims may be submitted.

(e) *Safeguarding of Confidential Information.* The Designated Agent and any person identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Designated Agent or person.

§ 262.6 Verification of statements of account.

(a) *General.* This section prescribes procedures by which the Designated Agent may verify the royalty payments made by a Licensee.

(b) *Frequency of verification.* The Designated Agent may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Designated Agent must file with the Copyright Office a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of records.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Designated Agent shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Designated Agent, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Designated Agent shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 262.7 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty payments made by the Designated Agent; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or a Performer and the Designated Agent have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or a Performer may conduct a single audit of the Designated Agent upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Office a notice of intent to audit the Designated Agent, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Designated Agent. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of records.* The Designated Agent shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Designated Agent in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Designated Agent reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure

shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Designated Agent shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 262.8 Unclaimed funds.

If a Designated Agent is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty payment under this part, the Designated Agent shall retain the required payment in a segregated trust account for a period of 3 years from the date of payment. No claim to such payment shall be valid after the expiration of the 3-year period. After the expiration of this period, the Designated Agent may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

PART 263—RATES AND TERMS FOR CERTAIN TRANSMISSIONS AND THE MAKING OF EPHEMERAL REPRODUCTIONS BY NONCOMMERCIAL LICENSEES

Sec.
263.1 General.
263.2 Definitions.
263.3 Royalty rates and terms.

Authority: 17 U.S.C. 112(e), 114, 801(b)(1).

§ 263.1 General.

This part 263 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Noncommercial Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of ephemeral recordings by certain Noncommercial Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period 2003–2004.

§ 263.2 Definitions.

For purposes of this part, the following definition shall apply:

A *Noncommercial Licensee* is a person or entity that has obtained a compulsory license under 17 U.S.C. 114 and the implementing regulations therefor, or that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make ephemeral recordings for use in facilitating such transmissions, and—

(a) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(b) Has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

(c) Is a State or possession or any governmental entity or subordinate thereof, or the United States or District of Columbia, making transmissions for exclusively public purposes.

§ 263.3 Royalty rates and terms.

A Noncommercial Licensee shall in every respect be treated as a "Licensee" under part 262 of this chapter, and all terms applicable to Licensees and their payments under part 262 of this chapter shall apply to Noncommercial Licensees and their payment, except that a Noncommercial Licensee shall pay royalties at the rates applicable to such a "Licensee," as currently provided in § 261.3(a), (c), (d) and (e) of this chapter, rather than at the rates set forth in § 262.3(a) through (d) of this chapter.

Dated: January 22, 2004.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 04–2535 Filed 2–5–04; 8:45 am]

BILLING CODE 1410–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2930

[WO–250–1220–PA–24 1A]

RIN 1004–AD45

Permits for Recreation on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is amending its regulations on Special Recreation Permits by changing the maximum term for these permits to 10 years instead of 5 years. The reason for this change is to add a reasonable expectation of continuity for outfitters, guides, and other small businesses that provide services to recreationists on public lands.

BLM is also amending its regulations on Recreation Use Permits for fee areas by adding a section on prohibited acts and penalties. This new provision is necessary to give BLM law enforcement personnel authority to cite persons who do not pay fees or otherwise do not follow the regulations on Recreation Use Permits.

EFFECTIVE DATE: April 6, 2004.

ADDRESSES: You may submit suggestions or inquiries to the following addresses: Mail: Director (250), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, VA 22153. Personal or messenger delivery: Room 301, 1620 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Lee Larson at (202) 452–5168 as to the substance of the final rule, or Ted Hudson at (202) 452–5042 as to procedural matters. Persons who use a telecommunications device for the deaf (TDD) may contact either individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

BLM published a final rule on Permits for Recreation on Public Lands in the **Federal Register** on October 1, 2002 (67 FR 61732). That final rule included a new subpart containing regulations on recreation use permits. These permits are for use of BLM fee areas. Fee areas are sites that provide specialized facilities, equipment, or services related to outdoor recreation. These include areas that are developed by BLM, receive regular maintenance, may have on-site staffing, and are supported by Federal funding. Not all fee areas necessarily have all of these attributes. Examples of fee areas are campgrounds that include improvements such as picnic tables, toilet facilities, tent or trailer sites, and drinking water; and specialized sites such as swimming pools, boat launch facilities, places with guided tours, hunting blinds, and so forth.

The October 1, 2002, final rule did not include a section on prohibited acts for such fee areas. We later determined that such a provision was necessary to give BLM law enforcement personnel authority to cite persons who use these areas without proper authorization, without paying required fees, without properly displaying their authorizations, or with falsified documentation. The proposed rule published on October 1, 2002 (67 FR 61746), listed these acts as those that would be prohibited.

The October 1, 2002, final rule left substantially intact the existing

regulations on the length of terms for commercial Special Recreation Permits. Those regulations provide for a maximum term of 5 years, allowing applicants to request permit terms up to that length of time and authorizing BLM to issue them for no more than 5 years.

One comment on the May 16, 2000 (65 FR 31234), proposed rule from an association representing commercial outfitters and guides recommended that the maximum term for Special Recreation Permits should be 10 years, unless BLM finds that special circumstances require a shorter period. The comment stated that outfitters need a 10-year term because they must make substantial investments that are not economically viable with a 5-year permit.

We recognize that the 5-year maximum term for permits is a matter of concern for the outfitting and guiding community, and that a 10-year term may be more desirable from both a business and a land management perspective. For this reason, BLM published a proposed rule on October 1, 2002 (67 FR 61746), to allow our field managers to grant up to a 10-year term for Special Recreation Permits on a case-by-case basis.

II. Discussion of Public Comments

BLM received about 97 comments on the proposed rule. Of these, 4 opposed the provision in the rule that extended the maximum term for Special Recreation Permits to 10 years, and 88 supported it without reservation. The remainder expressed support for the change if BLM would base its determination of the permit term on the performance of the permittee.

Several comments expressed concern about the effect of a 10-year permit on competition and the availability of permits for new businesses. The proposed rule would have little impact in most cases on the ability of new outfitters to obtain a permit. Special Recreation Permits are not exclusive. The majority of public lands do not have use allocations limiting the number of commercial Special Recreation Permits issued. In areas where there is resource sensitivity or high demand for limited recreation resources, BLM may impose limits on recreation use allowed and the number of permits available. We determine such limitations through the land use planning process under 43 CFR subpart 1610, and not through the permit administration process.

Limited permit availability is therefore a function of resource allocation through a land use plan rather than the length of the term. Permit tenure has minimal affect on availability. An expiring permit has preference for renewal, so long as—

(1) The permit is in good standing,

(2) The permit is consistent with BLM plans, and

(3) The permittee has a satisfactory record of performance (*see* § 2932.51).

Where the number of permits is limited, a new business can—

(1) Apply for a new permit if and when BLM determines through a comprehensive study and evaluation of the site or locale that we can justify an increase in allowable use with negligible impact on the existing permittees and environment,

(2) Purchase a business that is already permitted in the area and apply for a transfer of that permit. The tenure or length of term of the permit has no effect on its transferability (see subpart 2932.54), or

(3) Participate in the planning process and advocate expanded opportunities.

This is true regardless of the length of the permit term. Since land use planning is a public process, businesses interested in operating in the area subject to a plan should become involved and may be able to present information to justify expanding permit opportunities in the area.

We received several comments which were supportive of the proposed rule if the 10 year maximum term for special recreation permits is discretionary rather than mandatory, and if BLM grants it only to permits whose holders have successfully complied with all permit terms and conditions on previous permits for the same activity. Generally, BLM issues a first-time permit for a one year term, treating that year as a probationary period. In subsequent years, we might issue longer-term permits up to the 10-year maximum based on the factors discussed in this rule.

The comments suggested that BLM automatically revoke multi-year permits and change them to an annual probationary authorization if the operator violates any permit term or condition. We have not adopted this comment in the final rule, although BLM policy provides for such an annual probationary authorization for permittees with substantial violations. BLM has the authority to pursue measures such as this on a case-by-case basis. We prefer to retain permit management flexibility in the regulations and to consider violations on a case-by-case basis. We would not generally impose such sanctions for minor infractions that the operator remedies during the operating season.

The comments also suggested that the onus of demonstrating compliance with the terms of the previous permit fall on the applicant rather than BLM. This is correct. Once BLM monitoring and annual evaluations determine that an operator is or has been in noncompliance, the burden is on the operator to prove that he or she has remedied the problem.

Most of the concerns raised in the comments have already been addressed in the proposed rule and the existing regulations in 43 CFR part 2930. The proposed rule stated that an applicant may request a permit for a period of up to 10 years, and specifically stated that BLM will determine the appropriate term on a case-by-case basis. The BLM Manual/Handbook for Special Recreation Permits gives field office managers guidance for determining the length of a permit. It directs them to consider—

(1) Performance and compliance with the terms and conditions of previous permits;

(2) Conformance to land use plans; and

(3) Evolving resource conditions and technologies.

Other sections of the existing regulations on recreation authorizations (*see* § 2932.56) provide for the amendment, suspension, or revocation of the permit if an operator violates permit stipulations. These provisions apply to all permits, regardless of term length.

Finally, one comment expressed concern about the penalty provision included in the section on prohibited acts in fee areas, stating it was too vague and might allow disproportionate fines for minor violations. The comment gave an example, stating it appeared that a person who failed to pay a $10 camping fee could be fined up to $5,000, depending on the class of violation involved.

We did not include specific penalties for violations. There are too many possible variations in citable offenses and degrees of culpability. To list all possible associated penalties is beyond the scope of this rule.

BLM relies on two authorities for the imposition of penalties for violation of these regulations. The first of these is section 303 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1733). Section 303 authorizes a maximum penalty of $1,000 or 12 months imprisonment, or both. Violation of some of the prohibited acts in this rule, those governing personal conduct, would trigger a penalty under section 303. Under the United States Criminal Code and the Sentencing Reform Act (18 U.S.C. 3571), the level of penalty in section 303 translates to a

Class A misdemeanor. Section 3571 raises the maximum fine to $100,000 for individuals and $200,000 for corporations.

The authority for imposing monetary penalties for infraction of permit requirements is the Land and Water Conservation Fund Act. This Act imposes a penalty of $500 for permit infractions. Under the Sentencing Reform Act, these infractions may be penalized up to $5,000 for an individual or $10,000 for a corporation.

In enacting the Sentencing Reform Act, Congress concluded that a $1,000 fine such as that provided for by FLPMA was an insufficient deterrent for some illegal activities. In some cases, such activities may be very profitable, as well as extremely harmful to society or the environment. Establishing the higher maximum punishment provides flexibility for the agencies and the courts to address the extremely wide variety of offenses covered under agency regulations. By establishing these maximum penalties, however, Congress clearly did not intend that persons convicted of minor offenses should be subject to maximum levels of punishment in every case.

Federal rules authorize each Federal Judicial District to establish a bail forfeiture schedule for all offenses. Agencies use the bail forfeiture schedule to issue citations. This allows local courts to establish appropriate fines for each offense in their area of jurisdiction. It is also the fine the officer or BLM ranger enters on a citation. The violator may mail it in with a check to dispose of the citation and avoid further judicial action. The fine, in effect, becomes the bail forfeiture amount.

If a defendant chooses to appear in court to challenge the citation, and is convicted, he or she may face a fine and/or imprisonment for a misdemeanor offense. In such a case, the Magistrate Judge carefully tailors the sentence to the offense and is guided by clear rules of Federal criminal procedure.

We amended the table in the penalties section of the regulations to make it clear what penalty provisions pertain to which violations. We decided to provide only the cross-references to the statutory provisions rather than dollar figures for the penalties.

At present, bails for nonpayment are estimated to range from $25-$100 with most being around $50. Barring extreme aggravating circumstances, there is no reasonable likelihood of a defaulting camper being subjected to such an extreme fine as the comment postulated.

III. Discussion of Final Rule

Section 2932.42 How Long Is My Special Recreation Permit Valid?

We did not make changes in this section in the final rule. We are amending this section solely by changing the maximum Special Recreation Permit term from 5 years in the previous regulations to 10 years. BLM will consider each application separately and may issue a permit for any period of time from the 10-year maximum term to a season or even a single day. We consider the purpose of the permit, the needs of the permittee, and the public interest in determining the appropriate term.

Permittees are subject to rigorous monitoring and may lose their permits for poor performance under other provisions of the regulations (*see* 43 CFR 2932.56). This final rule will have no impact on our ability to ensure that permittees are well-qualified and carry out their activities in a manner that protects the health of the public lands and serves the recreating public. It will, on the other hand, allow outfitters, guides, and river-running enterprises to avoid the expense and inconvenience of more frequent permit renewal, secure financing more easily (based on lenders knowing that permit terms are longer), and engage in long-term business planning.

This change should benefit existing permit holders. However, it may reduce the ability of outfitters who currently do not hold a permit to obtain one, but only in areas where resource sensitivity or high demand for a limited recreational resource requires BLM to impose limits on use allocations. BLM does not expect this rule to present a substantial departure from current commercial outfitter operations on BLM lands or diminish the ability of BLM staff to monitor and enforce permit compliance.

From the business perspective, the change will improve the ability of outfitters and guides to justify financing from lenders. Also, the business climate should improve for larger scale commercial permits and operations as a result of this change, in turn improving business stability within local economies.

In the proposed rule, we asked specific questions relating to the likely effects of the proposed increase of maximum permit terms. We also asked for anecdotal evidence of problems caused for small businesses by the 5-year maximum term. Most comments offered general support for the proposed change. A trade association for outfitters and other commercial recreation enterprises replied that a longer term for permits would make financing more readily obtainable and business planning more feasible. Without offering data or anecdotal history, the comment went on to quote outfitters saying that getting financing has been difficult with the 5-year maximum term. This commentary did nothing to negate our expectations as to the likely effects of this rule.

From the perspective of the land manager, extending the maximum permit term from 5 to 10 years allows BLM greater range and flexibility to set a term for the permit appropriate for the activity in light of, and commensurate with—

- The level of permittee investment;
- The geographic location and resource considerations;
- Anticipated changes or time frames in land use allocations or planning decisions;
- Our experience in managing and monitoring the type of permitted use; and
- The type, complexity, and extent of the proposed activity.

The rule does not automatically set the term of all permits at 10 years. Rather, it simply allows the field manager to select an appropriate term for up to 10 years.

Finally, the amendment should lead to a small reduction in administrative costs by reducing the analysis and paperwork required for more frequent permit renewal.

Subpart 2933—Recreation Use Permits for Fee Areas

We have amended this subpart on Recreation Use Permits by adding a new section on prohibited acts and penalties. Under this new section 2933.33, BLM will cite and penalize persons using campgrounds and other fee areas if they do not—

- Obtain a permit,
- Pay necessary fees, or
- Display proof of payment as BLM requires and posts at the site.

BLM may also cite and penalize them if they—

- Use forged permits, or
- Use another person's permit.

This new section also states that failure to display proof of payment on a vehicle parked in a fee area is evidence of non-payment. This is important. It strengthens BLM's enforcement capability and reduces costs by establishing an evidentiary threshold that the defendant must overcome or be found guilty. Once BLM establishes that the defendant did not display a permit, the defendant has the burden of overcoming the presumption of non-payment by proving that he or she paid the fee.

Finally, the new section lists the penalties that may be imposed upon conviction.

IV. Procedural Matters

The principal author of this final rule is Lee Larson of the Recreation Group, Washington Office, BLM, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget has asked to review this rule as possibly a significant rule under Executive Order 12866. However, BLM has made the following determinations:

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. It will make BLM's regulatory approach to maximum special recreation permit terms identical to that of the National Park Service, whose regulations also allow a maximum permit term of 10 years.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal issues, but raises a novel policy issue by making a substantive change in the maximum term length for Special Recreation Permits, increasing it from 5 to 10 years. Four comments opposed this change, 88 supported it without reservation, and several others supported it conditionally, as discussed above in the Discussion of Comments.

The increase in the maximum term for Special Recreation Permits from 5 to 10 years should have no significant economic effect. It is not expected to have a significant effect on the number of firms operating on BLM lands. The operating costs of such firms may be slightly reduced as a result of this rule due to better financing terms. During fiscal year 2001, BLM issued about 34,500 Special Recreation Permits and collected about $4 million in fees. Special Recreation Permits are generally obtained by commercial outfitters and guides, including river-running companies (about 3,000), sponsors of competitive events (about 1,000), "snow bird" seasonal mobile home campers who use BLM's long term visitor areas (about 14,000), and private individuals and groups using certain special areas.

The increase of the maximum term for Special Recreation Permits will affect primarily the first of these categories: Commercial outfitters and guides, which include river-running companies. The rule does not change the fee structure at all, but benefits these businesses by giving them a more secure permit tenure. This will help them justify financing from lenders.

The second change in the rule affects Recreation Use Permits. During fiscal year 2001, BLM issued about 670,000 Recreation Use Permits for use of fee sites, with revenues totaling about $3.9 million. The cost of such a permit averaged a little under $6.00.

This final rule does not affect fees, and should have no effect on the number of Recreation Use Permits BLM will issue. It merely adds a section—

- Prohibiting the following acts: Failure to obtain a permit, failure to pay for one, and fraudulent use of permits or other documents to avoid paying a fee;
- Making failure to display a permit, where local rules require it, evidence of failure to pay; and
- Stating the standard statutory maximum penalties for violation that a magistrate could impose.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). According to the president of the American Recreation Coalition, outdoor recreation is a $350 billion industry made up of small businesses. None of these small businesses will be affected more than incidentally by making failure to pay for or obtain a fee area Recreation Use Permit a prohibited act. There is no way to quantify how many of these permits BLM issues to small entities; it must be a minuscule share of the campground and similar permits BLM issues to the general recreating public.

Changing the maximum term for Special Recreation Permits from 5 to 10 years will benefit small businesses as explained in the previous section of this part of the Preamble. We cannot quantify the benefits accruing from increased permit tenure. The rule will benefit about 3,000 commercial outfitters and guides and river-running outfitters. All of them operate small businesses and some hold multiple Special Recreation Permits.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- Does not have an annual effect on the economy of $100 million or more. See the discussion under Regulatory Planning and Review, above.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule does not change fees. It merely provides a mechanism for enforcing their collection. See the discussion above under Regulatory Flexibility Act.
- Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Recreationists are not likely to resort to foreign recreation markets because failure to pay a campground fee becomes a punishable offense.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The rule has no effect on governmental or tribal entities. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. The enforcement provision does not include any language requiring or authorizing forfeiture of personal property or any property rights. A takings implications assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. 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. The rule does not preempt State law.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation and Coordination with Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we find that this final rule does not include policies with tribal implications. The rule does not affect lands held for the benefit of Indians, Aleuts, and Eskimos. The rule applies only to BLM campgrounds and other fee areas on BLM lands, and to commercial outfitters and guides who may apply for longer term permits to use the public lands.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required. We base this finding on an environmental assessment of the rule dated August 22, 2002, which you can find in the administrative record for the rule.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, *§ 2932.42 How long is my Special Recreation Permit valid?*)

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the final rule? What else could we do to make the rule easier to understand?

If you have any comments that concern how we could make this rule easier to understand, in addition to sending the original to the address shown in **ADDRESSES**, above, please send a copy to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Execsec@ios.doi.gov.*

List of Subjects in 43 CFR Part 2930

Penalties; Public lands; Recreation and recreation areas; Reporting and recordkeeping requirements; Surety bonds.

■ For the reasons explained in the preamble, and under the authority of 43 U.S.C. 1740, part 2930, chapter II, subtitle B of title 43 of the Code of Federal Regulations is amended as follows:

Dated: October 6, 2003.

Rebecca W. Watson,

Assistant Secretary of the Interior.

PART 2930—PERMITS FOR RECREATION ON PUBLIC LANDS

■ 1. The authority citation for part 2930 continues to read as follows:

Authority citation: 43 U.S.C. 1740; 16 U.S.C. 460l–6a.

Subpart 2932—Special Recreation Permits for Commercial Use, Competitive Events, Organized Groups, and Recreation Use In Special Areas

■ 2. Revise section 2932.42 to read as follows:

§ 2932.42 How long is my Special Recreation Permit valid?

You may request a permit for a day, season of use, or other time period, up to a maximum of 10 years. BLM will determine the appropriate term on a case-by-case basis.

Subpart 2933—Recreation Use Permits for Fee Areas

■ 3. Add section 2933.33 to read as follows:

§ 2933.33 Prohibited acts and penalties.

(a) *Prohibited acts.* You must not—

(1) Fail to obtain a use permit or pay any fees that this subpart or the Land and Water Conservation Fund Act, as amended, requires (*see* paragraph (d)(3) of this section);

(2) Fail to pay any fees, after you first occupy a designated use facility, within the time set by the local BLM office (*see* paragraph (d)(3) of this section);

(3) Fail to display any required proof of payment of fees (*see* paragraph (d)(3) of this section);

(4) Willfully and knowingly possess, use, publish as true, or sell to another, any forged, counterfeited, or altered document or instrument used as proof of or exemption from fee payment (*see* paragraph (d)(1) of this section);

(5) Willfully and knowingly use any document or instrument used as proof of or exemption from fee payment, that BLM issued to or intended another to use (*see* paragraph (d)(1) of this section); or

(6) Falsely represent yourself to be a person to whom BLM has issued a document or instrument used as proof of or exemption from fee payment (*see* paragraph (d)(1) of this section).

(b) *Evidence of nonpayment.* BLM will consider failure to display proof of payment on your unattended vehicle parked within a fee area, where payment is required under paragraph (a)(2) of this section, to be *prima facie* evidence of nonpayment.

(c) *Responsibility for penalties.* If another driver incurs a penalty under this subpart when using a vehicle registered in your name, you and the driver are jointly responsible for the penalty, unless you show that the vehicle was used without your permission.

(d) *Types of penalties.* You may be subject to the following fines or penalties for violating the provisions of this subpart.

If you are convicted of . . .	then you may be subject to . . .	under . . .
(1) Any act prohibited by paragraph (a)(4), (5), or (6) of this section.	a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733(b)(5) for individuals or (c)(5) for organizations.	the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)).
(2) Violating any regulation in this subpart or any condition of a Recreation Use Permit.	a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733(b)(5) for individuals or (c)(5) for organizations.	the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)).

If you are convicted of . . .	then you may be subject to . . .	under . . .
(3) Failing to obtain any permit or to pay any fee required in this subpart.	a fine in accordance with 18 U.S.C. 3571(b)(7) for individuals or (c)(7) for organizations.	the Land and Water Conservation Fund Act, as amended, 16 U.S.C. 460l–6a(e).

[FR Doc. 04–2545 Filed 2–5–04; 8:45 am]
BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 25

[IB Docket No. 99–67; RM No. 9165; FCC 03–283]

Equipment Authorization for Portable Earth-Station Transceivers and Out-of-Band Emission Limits for Mobile Earth Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its rules to establish a prior authorization requirement for importation, sale, lease, offering for sale or lease, or shipment or distribution for sale or lease of portable earth-station transceivers. The Commission has also revised rule provisions pertaining to responsibility for operation of earth-station transceivers and limits on out-of-band emissions from mobile earth-station transceivers.

DATES: Effective March 8, 2004, except for § 25.129 and the changes in §§ 1.1307, 2.1033, 2.1204, and 25.132, which contain information collection requirements that have not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those rule changes. Written comments by the public on the information collection requirements must be submitted on or before April 6, 2004. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collection requirements on or before April 6, 2004.

Compliance Date: When it becomes effective, § 25.129 will require prior authorization to be obtained pursuant to application procedures specified in existing rule provisions in 47 CFR Part 2 for devices imported, sold, leased, or offered, shipped, or distributed for sale or lease after November 19, 2004.

ADDRESSES: Comments on the information collection requirements should be addressed to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 Twelfth Street, SW., Washington, DC 20554, or via Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kristy_L._LaLonde@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: William Bell, Satellite Division, International Bureau, at (202) 418–0741. For additional information concerning the information collection requirements, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the *Second Report and Order* in IB Docket No. 99–67, adopted on November 6, 2003, and released on November 18, 2003. The full text of the *Second Report and Order* 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. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

In the *Second Report and Order* the Commission adopted a rule that will require interested parties to obtain equipment authorization for portable earth-station transceivers pursuant to the previously-established certification procedure specified in part 2 of the Commission's rules. The certification procedure requires submission of an application and exhibits to the Commission, including test data showing that a representative sample unit meets the Commission's applicable technical requirements. Devices subject to this requirement may not be imported, sold or leased, offered for sale or lease, or shipped or distributed for sale or lease in the United States after November 19, 2004 unless a pertinent certification application has been granted and the devices are permanently marked with an FCC identification number. The prohibition against importation is modified, however, by an exception that permits travelers to carry up to three portable earth-station transceivers that have not been authorized by FCC certification into the United States as personal effects for purposes other than sale or lease. The purposes of the new certification requirement for portable GMPCS transceivers are to prevent interference, reduce radio-frequency radiation exposure risk, and make regulatory treatment of portable GMPCS transceivers consistent with treatment of similar terrestrial wireless devices, such as cellular phones. The *Second Report and Order* also revises several rule provisions to place appropriate legal responsibility for unauthorized transceiver operation on parties that control access to satellite networks and to eliminate redundant information-filing requirements.

In addition to adopting rules pertaining to equipment authorization and importation of portable earth-station transceivers, the *Second Report and Order* amended a rule section that prescribes limits on emissions from Mobile Satellite Service transceivers in the 1559–1610 MHz band. In light of comments filed in response to a Further Notice of Proposed Rulemaking released in 2002, the Commission prescribed several additional limits on such out-of-band emissions, specified measurement techniques, and set compliance deadlines for Inmarsat maritime transceivers. These rule changes improve interference protection for aeronautical radio-navigation.

The *Second Report and Order* imposes new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements.

Paperwork Reduction Act

The *Second Report and Order* imposes new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general

public to comment on the information collection requirements as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments on the information collection requirements are due April 6, 2004.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

As proposed in a Notice of Proposed Rulemaking (NPRM) issued in 1999, the *Second Report and Order* in IB Docket No. 99–67 amends the Commission's rules to require authorization to be obtained in advance for importation, domestic sale or lease, or offering, shipment, or distribution for domestic sale or lease of portable, land-based earth-station transceivers. The authorization procedure, which is specified in previously adopted provisions in part 2 of the Commission's rules, requires submission of test data proving compliance with the Commission's pertinent technical requirements. The Notice of Proposed Rulemaking included an Initial Regulatory Flexibility Analysis (IRFA) pertaining to the proposed equipment-authorization requirement and invited comment on alternative authorization procedures that might minimize economic impact on small entities. The comments filed in response to the NPRM did not discuss the IRFA.

To obtain authorization required under the new rules for importation, distribution, or sale of portable, land-based earth-station transceivers, test data must be submitted to prove that the devices meet pertinent technical requirements in the Commission's rules. Because such testing would be necessary in any event to ensure that the devices can be lawfully operated in compliance with existing rule requirements, the Commission does not believe that the requirement to submit test data will have a significant adverse economic impact on anyone. The Commission postponed the effective date of the authorization requirement for one year, moreover, to afford adequate time in advance for obtaining such authorization and for disposing of uncertificated devices in current inventories. The Commission therefore certified that the equipment authorization requirement established by this order will not have significant economic impact on a substantial number of small entities.

The *Second Report and Order* also amends a rule section adopted in 2002, 47 CFR 25.216, that specifies out-of-band emission limits for mobile earth-station transceivers licensed to transmit in frequencies between 1610 MHz and 1660.5 MHz or in the 2 GHz MSS band. Specifically, the *Second Report and Order* amends § 25.216 by prescribing a limit for carrier-off emissions, prescribing limits on narrowband emissions in the 1605–1610 MHz band, prescribing a stricter limit on wideband emissions in that band for transceivers with assigned frequencies between 1626.5 MHz and 1660.5 MHz, re-specifying the time interval for emission measurements, requiring use of RMS detectors for compliance testing, and specifying compliance deadlines for Inmarsat Standard-A and Standard-B terminals.

These changes were proposed in a Further Notice of Proposed Rulemaking released with the order that initially adopted § 25.216 or in public comments filed in response to that Notice. As required by the RFA, the Further NPRM included an IRFA pertaining to these further rulemaking proposals. The Commission sought written public comment on the proposals and on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Rulemaking Objectives

The general purposes of the amendments to § 25.216 are to modify its provisions to better serve the objective of preventing interference with aircraft reception of satellite radio-navigation signals and establish equitable compliance deadlines for Standard A and Standard B Inmarsat earth-station transceivers.

Summary of Issues Raised by Public Comments in Response to the IRFA

No comments were filed specifically in response to the IRFA in the Further NPRM.

Description and Estimate of the Number of Small Entities to Which the New Rules Will Apply

The RFA directs agencies to describe, and, where feasible, estimate the number of, small entities that may be affected by the rules they adopt. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). For satellite telecommunication carriers and resellers, the SBA has established a small business size standard that excludes companies with annual receipts above $12.5 million.

The amended emission limits in § 25.216 directly affect parties with licenses for operation of mobile earth stations subject to those limits, including owners of maritime vessels equipped with Standard A or Standard B Inmarsat transceivers. The Commission noted in the IRFA that ten companies held relevant blanket licenses and that four of them had annual revenue in excess of $12.5 million but could not determine from available information whether any of the others were small entities. The Commission anticipates that blanket licenses will be issued within the next three years for 2 GHz MSS earth stations subject to § 25.216, but the Commission does not know how many of the recipients will be small entities. The SBA classifies commercial providers of water transportation (other than for sightseeing) as small entities if they have 500 or fewer employees. Of 1,627 providers of non-sightseeing water transportation counted in the 1997 U.S. Census that operated throughout the year, only 157 had more than 100 employees. The SBA classifies providers of sightseeing transportation by water as small entities if their annual receipts are $6 million or less. Of 1,692 providers of sightseeing transportation by water counted in the 1997 census, only 32 had annual receipts in excess of $6 million. Hence the Commission assumes that most owners of vessels equipped with Standard A or Standard B Inmarsat transceivers are small entities.

Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The amended provisions of section 25.216 do not impose reporting or recordkeeping requirements. Parties with licenses for operation of mobile earth stations subject to section 25.216 will be obliged to ensure that the devices perform in compliance with the amended emission limits adopted in this order, however. Some licensees may find it necessary to alter, replace, or decommission equipment currently in service in order to comply with the amended limits. We do not know, nor do the comments filed in this proceeding indicate, how much additional expense licensees will incur to achieve compliance with the amended limits.

Steps Taken To Minimize Economic Impact on Small Entities and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives considered that might reduce the economic impact on small entities, such as establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; clarifying, consolidating, or simplifying such requirements for such small entities; using performance rather than design standards; or completely or partially exempting small entities from new requirements.

We have considered and adopted exemptions for the benefit of ship owners—most of which, we presume, for reasons stated previously, are small entities. To minimize the impact on ship owners using Inmarsat Standard A transceivers as Global Maritime Distress and Safety System ("GMDSS") stations, we exempt such devices from the requirements of § 25.216 until December 31, 2007, the planned termination date for Standard A services. To minimize the impact on ship owners using Inmarsat Standard B transceivers as GMDSS stations, we exempt such transceivers manufactured previously or within six months hereafter from pertinent § 25.216 limits until December 31, 2012, subject to a no-interference condition.

Report to Congress: The Commission will send a copy of the *Second Report and Order,* including this final RFA analysis, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order* and the final RFA analysis to the Chief Counsel for Advocacy of the SBA.

Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to sections 4(i), 301, 302(a), 303(c), 303(e), 303(f), 303(g), 303(n), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301, 302(a), 303(c), 303(e), 303(f), 303(g), 303(n), and 303(r), §§ 1.1307, 2.1033, 2.1204, 25.132, 25.135, 25.136, 25.138, and 25.216 of the Commission's rules are amended as specified in Appendix B of the report and order and a new rule § 25.129, as set forth in Appendix B of the report and order, is adopted, effective March 8, 2004, except for § 25.129 and the changes in §§ 1.1307, 2.1033, 2.1204, and 25.132, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for these rule changes.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second Report and Order, including the Final Regulatory Flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, and 25 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e).

■ 2. Section 1.1307 is amended by adding a fourth sentence to paragraph (b) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * * Such compliance statements may be omitted from license applications for transceivers subject to the certification requirement in § 25.129 of this chapter.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 3. The authority citation for part 2 continues to read:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 4. Section 2.1033 is amended by adding paragraph (c)(17) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(c) * * *

(17) Applications for certification required by § 25.129 of this chapter shall include any additional equipment test data required by that section.

* * * * *

■ 5. Section 2.1204 is amended by adding new paragraph (a)(10) to read as follows:

§ 2.1204 Import conditions.

(a) * * *

(10) Three or fewer portable earth-station transceivers, as defined in § 25.129 of this chapter, are being imported by a traveler as personal effects and will not be offered for sale or lease in the United States.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 6. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 7. A new § 25.129 is added to read as follows:

§ 25.129 Equipment authorization for portable earth-station transceivers.

(a) Except as expressly permitted by § 2.803 or § 2.1204 of this chapter, prior authorization must be obtained pursuant to the equipment certification procedure in part 2, Subpart J of this chapter for importation, sale or lease in the United States, or offer, shipment, or distribution for sale or lease in the United States of portable earth-station transceivers subject to regulation under part 25. This requirement does not apply, however, to devices imported, sold, leased, or offered, shipped, or distributed for sale or lease before November 20, 2004.

(b) For purposes of this section, an earth-station transceiver is portable if it is a "portable device" as defined in

§ 2.1093(b) of this chapter, *i.e.*, if its radiating structure(s) would be within 20 centimeters of the operator's body when the transceiver is in operation.

(c) In addition to the information required by § 1.1307(b) and § 2.1033(c) of this chapter, applicants for certification required by this section shall submit any additional equipment test data necessary to demonstrate compliance with pertinent standards for transmitter performance prescribed in § 25.138, § 25.202(f), § 25.204, § 25.209, and § 25.216 and shall submit the statements required by § 2.1093(c) of this chapter.

(d) Applicants for certification required by this section must submit evidence that the devices in question are designed for use with a satellite system that may lawfully provide service to users in the United States pursuant to an FCC license or order reserving spectrum.

■ 8. Section 25.132 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 25.132 Verification of earth station antenna performance standards.

(a) All applications for transmitting earth stations in the C and Ku-bands not subject to the certification requirement in § 25.129 must be accompanied by a certificate pursuant to § 2.902 of this chapter from the manufacturer of each antenna that the results of a series of radiation pattern tests performed on representative equipment in representative configurations by the manufacturer which demonstrates that the equipment complies with the performance standards set forth in § 25.209. * * *

* * * * *

■ 9. Section 25.135 is amended by revising paragraphs (c) and (d) to read as follows:

§ 25.135 Licensing provisions for earth station networks in the non-voice, non-geostationary mobile-satellite service.

* * * * *

(c) Transceiver units in this service are authorized to communicate with and through U.S. authorized space stations only. No person without an FCC license for such operation may transmit to a space station in this service from anywhere in the United States except to receive service from the holder of a pertinent FCC blanket license or from another party with the permission of such a blanket licensee.

(d) The holder of an FCC blanket license for operation of transceivers for communication via a non-voice, non-geostationary mobile-satellite system shall be responsible for operation of any such transceiver to receive service provided by the blanket licensee or provided by another party with the blanket licensee's consent. Operators of non-voice, non-geostationary mobile-satellite systems shall not transmit communications to or from user transceivers in the United States unless such communications are authorized under a service contract with the holder of a pertinent FCC blanket license or under a service contract another party with authority for such transceiver operation delegated by such a blanket licensee.

■ 10. Section 25.136 is amended by revising the section heading and paragraphs (b) and (c) to read as follows:

§ 25.136 Licensing provisions for user transceivers in the 1.6/2.4 GHz, 1.5/1.6 GHz, and 2 GHz Mobile Satellite Services.

* * * * *

(b) No person without an FCC license for such operation may transmit to a space station in this service from anywhere in the United States except to receive service from the holder of a pertinent FCC blanket license or from another party with the permission of such a blanket licensee.

(c) The holder of an FCC blanket license for operation of transceivers for communication via a 1.6/2.4 GHz, 1.5/1.6 GHz, or 2 GHz Mobile Satellite Service system shall be responsible for operation of any such transceiver to receive service provided by that licensee or provided by another party with the blanket licensee's consent. Operators of such satellite systems shall not transmit communications to or from user transceivers in the United States unless such communications are authorized under a service contract with the holder of a pertinent FCC blanket license for transceiver operation or under a service contract with another party with authority for such transmission delegated by such a blanket licensee.

* * * * *

■ 11. Section 25.138 is amended by adding a third and a fourth sentence to paragraph (f) to read as follows:

§ 25.138 Blanket licensing provisions of GSO FSS Earth Stations in the 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space) bands.

* * * * *

(f) * * * The holder of an FCC blanket license pursuant to this section shall be responsible for operation of any transceiver to receive GSO FSS service provided by that licensee or provided by another party with the blanket licensee's consent. Operators of GSO FSS systems shall not transmit communications to or from user transceivers in the United States unless such communications are authorized under a service contract with the holder of a pertinent FCC blanket license or under a service contract with another party with authority for such transceiver operation delegated by such a blanket licensee.

* * * * *

■ 12. Section 25.216 is revised to read as follows:

§ 25.216 Limits on emissions from mobile earth stations for protection of aeronautical radionavigation-satellite service.

(a) The e.i.r.p. density of emissions from mobile earth stations placed in service on or before July 21, 2002 with assigned uplink frequencies between 1610 MHz and 1660.5 MHz shall not exceed −70 dBW/MHz, averaged over any 2 millisecond active transmission interval, in the band 1559–1587.42 MHz. The e.i.r.p. of discrete emissions of less than 700 Hz bandwidth generated by such stations shall not exceed −80 dBW, averaged over any 2 millisecond active transmission interval, in that band.

(b) The e.i.r.p. density of emissions from mobile earth stations placed in service on or before July 21, 2002 with assigned uplink frequencies between 1610 MHz and 1626.5 MHz shall not exceed −64 dBW/MHz, averaged over any 2 millisecond active transmission interval, in the band 1587.42–1605 MHz. The e.i.r.p. of discrete emissions of less than 700 Hz bandwidth generated by such stations shall not exceed −74 dBW, averaged over any 2 millisecond active transmission interval, in the 1587.42–1605 MHz band.

(c) The e.i.r.p. density of emissions from mobile earth stations placed in service after July 21, 2002 with assigned uplink frequencies between 1610 MHz and 1660.5 MHz shall not exceedq −70 dBW/MHz, averaged over any 2 millisecond active transmission interval, in the band 1559–1605 MHz. The e.i.r.p. of discrete emissions of less than 700 Hz bandwidth from such stations shall not exceed −80 dBW, averaged over any 2 millisecond active transmission interval, in the 1559–1605 MHz band.

(d) As of January 1, 2005, the e.i.r.p. density of emissions from mobile earth stations placed in service on or before July 21, 2002 with assigned uplink frequencies between 1610 MHz and 1660.5 MHz (except Standard A and B Inmarsat terminals used as Global Maritime Distress and Safety System ship earth stations) shall not exceed −70dBW/MHz, averaged over any 2 millisecond active transmission

interval, in the 1559–1605 MHz band. The e.i.r.p. of discrete emissions of less than 700 Hz bandwidth from such stations shall not exceed −80 dBW, averaged over any 2 millisecond active transmission interval, in the 1559–1605 MHz band. Standard A Inmarsat terminals used as Global Maritime Distress and Safety System ship earth stations that do not meet the e.i.r.p. density limits specified in this paragraph may continue operation until December 31, 2007. Inmarsat-B terminals manufactured more than six months after **Federal Register** publication of the rule changes adopted in FCC 03–283 must meet these limits. Inmarsat B terminals manufactured before then are temporarily grandfathered under the condition that no interference is caused by these terminals to aeronautical satellite radionavigation systems. The full-compliance deadline for grandfathered Inmarsat-B terminals is December 31, 2012.

(e) The e.i.r.p density of emissions from mobile earth stations with assigned uplink frequencies between 1990 MHz and 2025 MHz shall not exceed −70 dBW/MHz, averaged over any 2 millisecond active transmission interval, in frequencies between 1559 MHz and 1610 MHz. The e.i.r.p. of discrete emissions of less than 700 Hz bandwidth from such stations between 1559 MHz and 1605 MHz shall not exceed −80 dBW, averaged over any 2 millisecond active transmission interval. The e.i.r.p. of discrete emissions of less than 700 Hz bandwidth from such stations between 1605 MHz and 1610 MHz manufactured more than six months after **Federal Register** publication of the rule changes adopted in FCC 03–283 shall not exceed −80 dBW, averaged over any 2 millisecond active transmission interval.

(f) Mobile earth stations placed in service after July 21, 2002 with assigned uplink frequencies in the 1610–1660.5 MHz band shall suppress the power density of emissions in the 1605–1610 MHz band to an extent determined by linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz.

(g) Mobile earth stations manufactured more than six months after **Federal Register** publication of the rule changes adopted in FCC 03–283 with assigned uplink frequencies in the 1610–1626.5 MHz band shall suppress the power density of emissions in the 1605–1610 MHz band-segment to an extent determined by linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz averaged over any 2 millisecond active transmission interval. The e.i.r.p of discrete emissions of less than 700 Hz bandwidth from such stations shall not exceed a level determined by linear interpolation from −80 dBW at 1605 MHz to −20 dBW at 1610 MHz, averaged over any 2 millisecond active transmission interval.

(h) Mobile earth stations manufactured more than six months after **Federal Register** publication of the rule changes adopted in FCC 03–283 with assigned uplink frequencies in the 1626.5–1660.5 MHz band shall suppress the power density of emissions in the 1605–1610 MHz band-segment to an extent determined by linear interpolation from −70 dBW/MHz at 1605 MHz to −46 dBW/MHz at 1610 MHz, averaged over any 2 millisecond active transmission interval. The e.i.r.p of discrete emissions of less than 700 Hz bandwidth from such stations shall not exceed a level determined by linear interpolation from −80 dBW at 1605 MHz to −56 dBW at 1610 MHz, averaged over any 2 millisecond active transmission interval.

(i) The peak e.i.r.p density of carrier-off state emissions from mobile earth stations manufactured more than six months after **Federal Register** publication of the rule changes adopted in FCC 03–283 with assigned uplink frequencies between 1 and 3 GHz shall not exceed −80 dBW/MHz in the 1559–1610 MHz band averaged over any 2 millisecond active transmission interval.

(j) A Root-Mean-Square detector shall be used for all power density measurements.

[FR Doc. 04–2530 Filed 2–5–04; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 02–353; FCC 03–251]

Service Rules for Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission adopts service rules for Advanced Wireless Services in the 1710–1755 MHZ and 2110–2155 MHz bands, including provisions for application, licensing, operating and technical rules, and for competitive bidding. The Commission takes this action to facilitate the provision of new services to the public, and to encourage optimum use of these frequencies.

DATES: Effective April 6, 2004.

FOR FURTHER INFORMATION CONTACT: John Spencer or Eli Johnson, Attorneys, Policy Division, Wireless Telecommunications Bureau, at 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in WT Docket No. 02–353, FCC 03–251, adopted on October 16, 2003 and released on November 25, 2003. The complete text of the *Report and Order* is available on the Commission's Internet site, at *http://www.fcc.gov*. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B4202, Washington, DC 20554, telephone 202–863–2893, facsimilie 202–0863–2898, or via e-mail *qualexint@aol.com*.

I. Overview

1. The *Report and Order* adopts licensing, technical, and competitive bidding rules to govern the use of the spectrum at 1710–1755 and 2110–2155 MHz, which had previously been allocated for advanced wireless services, in a manner that will enable service providers to put this spectrum to use for any purpose consistent with its allocation. Specifically, the *Report and Order* decides the following issues. The flexible use of this spectrum is in the public interest and any use of this spectrum that is consistent with the spectrum's fixed and mobile allocation is permitted. The spectrum will be licensed under the Commission's flexible, market-oriented part 27 rules, as those rules are modified to reflect the particular characteristics of this spectrum. The licenses will be assigned through competitive bidding. Licenses will be issued using a geographic area licensing approach, with a mixture of licensing areas to provide for a variety of needs, including both large service providers and small and rural service providers. Spectrum blocks will be composed of different bandwidths to satisfy a variety of needs.

2. Applicants and licensees must report the regulatory status of their service offerings. There will be no ownership restrictions other than those contained in section 310 and no spectrum aggregation limits or eligibility restrictions. The initial license term will be 15 years with 10 year renewal terms.

Licensees will be subject to the substantial service requirement of 47 CFR 27.14. No interim performance requirements are imposed. Disaggregation and partitioning will be permitted. Other rules of general applicability may apply to licensees in these bands (*i.e.*, the ULS rules in part 1, the CMRS rules in part 20, EEO rules and 911 rules).

3. Mobile transmissions will be allowed in the 1710–1755 MHz block and base transmissions in the 2110–2155 MHz block. The Order establishes in-band and out-of-band interference criteria, rules to avoid interference with grandfathered Government operations, and, radiofrequency standards and coordination requirements along the Canadian and Mexican borders.

4. Licenses will be assigned through use of part 1 competitive bidding rules. There will be bidding credits of 15% for small businesses and 25% for very small businesses.

II. Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Service Rules for Advanced Wireless Services in the 1.7 and 2.1 GHz Bands Notice of Proposed Rulemaking (NPRM), 67 FR 78209, (December 23, 2002) . The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, Adopted Rules

6. In the *Report and Order*, we adopt service rules for Advanced Wireless Services (AWS) in the 1710–1755 MHz and 2110–2155 MHz bands, including provisions for application, licensing, operating and technical rules, and for competitive bidding. Licensees in these bands will have the flexibility to provide any fixed or mobile service that is consistent with the allocations for this spectrum. We will license this spectrum under our market-oriented part 27 rules and, in order to accommodate differing needs, our band plan includes both localized and regional geographic service areas and symmetrically paired spectrum blocks with the pairings being composed of different bandwidths. Our licensing plan will allow the marketplace rather than the Commission to ultimately determine what services are offered in this spectrum and what technologies are utilized to provide these services. The licensing framework that we adopt for these bands will ensure that this spectrum is efficiently utilized and will foster the development of new and innovative technologies and services, as well as encourage the growth and development of broadband services.

7. Our actions bring us closer to our goals of achieving the universal availability of broadband access and increasing competition in the provision of such broadband services both in terms of the types of services offered and in the technologies utilized to provide those services. The widespread deployment of broadband will bring new services to consumers, stimulate economic activity, improve national productivity, and advance many other objectives—such as improving education, and advancing economic opportunity for more Americans. By encouraging the growth and development of broadband, our actions today also foster the development of facilities-based competition. We achieve these objectives by taking a market-oriented approach to licensing this spectrum that provides greater certainty, minimal regulatory intervention, and leads to greater benefits to consumers.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

8. We received no comments directly in response to the IRFA in this proceeding. We did, however, consider the potential impact of our rules on smaller entities. For example, we have adopted a building block approach to the licensing of this spectrum, including some smaller geographic licensing areas and some smaller spectrum block sizes. We have also provided for partitioning and disaggregation of licenses and we have adopted spectrum leasing policies. Finally, we have adopted 15 percent and 25 percent "bidding credits" for small and very small businesses, respectively. These policies should provide increased opportunities for small entities to acquire the appropriate amount of spectrum for their particular needs.

C. Description and Estimate of the Number of Small Entities to Which the Adopted Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the SBA. Nationwide, there are approximately 22.4 million small businesses, total, according to the SBA data.

10. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. Last, the definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were about 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

11. The rules adopted in the Order affect applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands. As discussed in the Order, we do not know precisely the type of service that a licensee in these bands might seek to provide. Nonetheless, we anticipate that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the Order adopts the same small business size standards here that the Commission adopted for the broadband PCS service. In particular, the Order defines a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The Order also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

12. We do not yet know how many applicants or licensees in these bands will be small entities. Thus, the Commission assumes, for purposes of this FRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our two special small business size standards for these bands. Although we do not know for certain which entities are likely to apply for these frequencies, we note that the 1710–1755 MHz and 2110–2155 MHz bands are comparable to those used for cellular service and personal communications service.

13. Wireless Telephony Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission's most recent data, 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 have 1,500 or fewer employees and 442 have more than 1,500 employees. Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

Description of Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

14. Applicants for AWS licenses in the 1710–1755 MHz and the 2110–2155 MHz bands will be required to submit short-form auction applications using FCC Form 175. In addition, winning bidders must submit long-form license applications through the Universal Licensing System using Form 601, FCC Ownership Disclosure Information for the Wireless Telecommunications Services using FCC Form 602, and other appropriate forms.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its adopted approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

16. We have taken significant steps to reduce burdens on small entities wherever possible. To provide opportunities for small entities to participate in any auction that is held, we provide bidding credits for small businesses and very small businesses as defined in Section C of this FRFA. The bidding credits adopted are 15 percent for small businesses and 25 percent for very small businesses. We have found that the use of tiered or graduated small business size standards is useful in furthering our mandate under section 309(j) of the Communications Act to promote opportunities for, and disseminate licenses to, a wide variety of applicants.

17. Regarding our decision to apply our part 27 rules to this spectrum, we do not anticipate any adverse impact on small entities. The flexibility afforded by part 27 of our rules should benefit large and small entities alike, because licensees will be in a stronger position to meet changes in demand for services. Under this approach, all licensees will have the freedom to determine the services to be offered and the technologies to be used in providing these services. An alternative to this decision would have been to determine specific allowable service in each frequency band and apply the applicable rule part to the licensing of such services. This approach, however, would be unsatisfactory because it is too restrictive, and in any event, it is unclear that this approach would benefit small entities more than the flexible licensing approach we have decided upon today.

18. Regarding our decision to license this spectrum by geographic area, we anticipate that on balance small entities will benefit from this licensing approach. Geographic licensing in these bands supports the Commission's overall spectrum management goals in that it allows licensees to quickly respond to market demand. Small entities that acquire spectrum that is licensed on a geographic area basis will benefit from such flexibility. Moreover, we have attempted to strike a balance here by using varying sizes of geographic areas. For example, small entities may be more interested in spectrum licensed by smaller geographic areas rather than in spectrum licensed on a nationwide or large regional basis. Consequently, we have decided to include licensing areas based on MSAs and RSAs. As RCA observes, MSAs and RSAs permit entities who are only interested in serving rural areas to acquire spectrum licenses for these areas alone and avoid acquiring spectrum licenses with high population densities that make purchase of license rights too expensive for these types of entities. These types of service providers could acquire an RSA and create a new service area or they could expand an existing service territory or supplement the spectrum they are licensed to operate in by adding an RSA. They could also combine a few MSAs and RSAs to create a larger but localized service territory. MSAs and RSAs allow entities to mix and match rural and urban areas according to their business plans. By being smaller, these types of geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies. Their inclusion in our band plan will foster service to rural areas and tribal lands and thereby bring the benefits of advanced services to these areas. An alternative to our decision to use geographic areas for licensing would have been to employ a site-by-site licensing approach. Site-by-site licensing, however, would be an inefficient licensing method due to a greater strain on Commission resources and less flexibility afforded to licensees.

19. We have also made the decision to license the spectrum in different bandwidths. We do not believe this will disadvantage small entities. In fact, we have decided that the RSA/MSA license areas will be licensed as paired spectrum at 1735–1740 and 2135–2140 for a total of 734 licenses, thus providing the opportunity for entities to obtain a license encompassing as little as 10 megahertz of spectrum. Other spectrum will be licensed in pairs of 10 and 15 MHz blocks, providing flexibility to licensees in constructing their systems. Our approach provides maximum flexibility for both small and large entities to offer a wide range of communications services.

20. We have also decided to permit the disaggregation and partitioning of these spectrum blocks. Licensees will thus be able to increase or decrease the size of their service areas to better meet market demands. Allowing licensees to partition and/or disaggregate their licensed spectrum should improve opportunities for small entities to acquire spectrum for their particular needs. An alternative to this approach would have been to prohibit partitioning and disaggregation; we believe that such an approach could foreclose options for small entities.

21. In addition, we have decided that this spectrum will also be subject to the

rules recently adopted in the *Secondary Markets Report and Order*. In that Order, we took action to remove unnecessary regulatory barriers to the development of secondary markets. The Order established new policies and procedures that enable most wireless licensees, including part 27 licensees, to lease some or all of their spectrum usage rights to third-party spectrum lessees. Application of the new secondary market rules to this spectrum should help ensure that small businesses and rural carriers can acquire spectrum to meet their business needs by allowing more entities access to the AWS spectrum and permit the marketplace, rather than the Commission, to decide what use is made of this spectrum.

22. We believe our objectives of ensuring both efficient use of spectrum and diversity of licensees can best be achieved by adopting a variety of license areas and spectrum block sizes, and ensuring the ability of licensees to partition and disaggregate their licenses and fully participate in the secondary markets. By adopting some smaller geographic licensing areas and some smaller spectrum block sizes, we believe we will encourage participation by smaller and rural entities, without the necessity of adopting set-asides and eligibility restrictions, because such licenses will be less expensive and should more closely mirror such bidders' needs. We believe that these same factors support our decision to decline to adopt other suggested alternatives, such as spectrum aggregation limits, in this band.

23. Finally, regarding our decision to require a showing of "substantial service" at license renewal time, we do not anticipate any adverse impact on small entities. An alternative would have been to adopt a "minimal coverage" requirement. We believe, however, that the substantial service standard is better because it will provide both small and large entities the flexibility to determine how best to implement their business plans based on actual service to end users.

Report to Congress

24. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

III. Ordering Clauses

25. Pursuant to 5 U.S.C. 553(d), the rules adopted herein shall become effective April 6, 2004.

26. It is further ordered that part 27 of the Commission's rules shall become effective April 6, 2004. Information collections contained in these rules will be effective upon OMB approval.

27. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Communications common carriers, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 27 as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 2. Section 27.1 is amended by adding a paragraph (b)(8) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(8) 1710–1755 MHz and 2110–2155 MHz.

* * * * *

■ 3. Section 27.3 is amended by redesignating paragraphs (m) through (p) as paragraphs (n) through (q), and by adding new paragraph (m) to read as follows:

§ 27.3 Other applicable rule parts.

* * * * *

(m) *Part 64.* This part sets forth the requirements and conditions applicable to telecommunications carriers under the Communications Assistance for Law Enforcement Act.

* * * * *

■ 4. Section 27.4 is amended by adding the following in alphabetical order to read as follows:

§ 27.4 Terms and definitions.

Advanced wireless service (AWS). A radiocommunication service licensed pursuant to this part for the frequency bands specified in § 27.5(h).

* * * * *

■ 5. Section 27.5 is amended by adding a new paragraph (h) to read as follows:

§ 27.5 Frequencies.

* * * * *

(h) *1710–1755 MHz and 2110–2155 MHz bands.* The following frequencies are available for licensing pursuant to this part in the 1710–1755 MHz and 2110–2155 MHz bands:

(1) Two paired channel blocks of 10 megahertz each are available for assignment as follows:

Block A: 1710–1720 MHz and 2110–2120 MHz; and

Block B: 1720–1730 MHz and 2120–2130 MHz.

(2) Two paired channel blocks of 5 megahertz each are available for assignment as follows:

Block C: 1730–1735 MHz and 2130–2135 MHz; and

Block D: 1735–1740 MHz and 2135–2140 MHz.

(3) One paired channel block of 15 megahertz each is available for assignment as follows:

Block E: 1740–1755 MHz and 2140–2155 MHz.

■ 6. Section 27.6 is amended by adding a new paragraph (h) to read as follows:

§ 27.6 Service areas.

* * * * *

(h) *1710–1755 and 2110–2155 MHz bands.* AWS service areas for the 1710–1755 MHz and 2110–2155 MHz bands are as follows:

(1) Service areas for Block A (1710–1720 MHz and 2110–2120 MHz) are based on Economic Areas (EAs) as defined in paragraph (a) of this section.

(2) Service areas for Blocks B (1720–1730 MHz and 2120–2130 MHz), C (1730–1735 MHz and 2130–2135 MHz), and E (1740–1755 MHz and 2140–2155 MHz) are based on Regional Economic Area Groupings (REAGs) as defined by paragraph (a) of this section.

(3) Service areas for Block D (1735–1740 MHz and 2135–2140 MHz) are based on cellular markets comprising Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) as defined by Public Notice Report No. CL–92–40 "Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties," dated January 24, 1992, DA 92–109, 7 FCC Rcd 742 (1992), with the following modifications:

(i) The service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline.

(ii) The service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf.

■ 7. Section 27.11 is amended by adding a new paragraph (i) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(i) *1710–1755 MHz and 2110–2155 MHz bands.* Initial authorizations for the 1710–1755 MHz and 2110–2155 MHz bands shall be for 5, 10 or 15 megahertz of spectrum in each band in accordance with § 27.5(h) of this part.

(1) Authorizations for Block A, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in § 27.6(h)(1).

(2) Authorizations for Block B, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in § 27.6(h)(2).

(3) Authorizations for Block C, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h)(2).

(4) Authorizations for Block D, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h)(3).

(5) Authorizations for Block E, consisting of two paired channels of 15 megahertz each, will be based on those geographic areas specified in § 27.6(h)(2).

■ 8. Section 27.13 is amended by adding a new paragraph (g) to read as follows:

§ 27.13 License period.

* * * * *

(g) *1710–1755 MHz and 2110–2155 MHz bands.* Authorizations for the 1710–1755 MHz and 2110–2155 MHz bands will have a term not to exceed ten years from the date of initial issuance or renewal, except that authorizations issued on or before December 31, 2009, shall have a term of fifteen years.

■ 9. Section 27.14 is amended by revising paragraph (a) to read as follows:

§ 27.14 Construction requirements; Criteria for comparative renewal proceedings.

(a) AWS and WCS licensees must make a showing of "substantial service" in their license area within the prescribed license term set forth in § 27.13. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

* * * * *

■ 10. Section 27.15 is amended by revising paragraph (a)(2) to read as follows:

§ 27.15 Geographic partitioning and spectrum disaggregation.

(a) * * *

(2) AWS and WCS licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

* * * * *

■ 11. Section 27.50 is amended by redesignating paragraphs (d) through (g) as paragraphs (e) through (h) and adding a new paragraph (d) to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(d) The following power and antenna height requirements apply to stations transmitting in the 1710–1755 MHz and 2110–2155 MHz bands:

(1) Fixed and base stations transmitting in the 2110–2155 MHz band are limited to a peak effective isotropic radiated power (EIRP) of 1640 watts and a peak output power of 100 watts.

(2) Fixed, mobile, and portable (hand-held) stations operating in the 1710–1755 MHz band are limited to a peak EIRP of 1 watt. Fixed stations operating in this band are limited to a maximum antenna height of 10 meters above ground, and mobile and portable stations must employ a means for limiting power to the minimum necessary for successful communications.

* * * * *

■ 12. Section 27.53 is amended by redesignating paragraphs (g), (h), (i), (j), and (k) as paragraphs (h), (i), (j), (k), and (l), and adding a new paragraph (g) to read as follows:

§ 27.53 Emission limits.

* * * * *

(g) For operations in the 1710–1755 MHz and 2110–2155 MHz bands, the power of any emission outside a licensee's frequency block shall be attenuated below the transmitter power (P) by at least $43 + 10 \log_{10}$ (P) dB.

(1) Compliance with this provision is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block, a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(2) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the licensee's frequency block edges, both upper and lower, as the design permits.

(3) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

* * * * *

■ 13. Section 27.55 is revised to read as follows:

§ 27.55 Signal strength limits.

(a) *Field strength limits.* For the following bands, the predicted or measured median field strength at any location on the geographical border of a licensee's service area shall not exceed the value specified unless the adjacent affected service area licensee(s) agree(s) to a different field strength. This value applies to both the initially offered service areas and to partitioned service areas.

(1) 2110–2155, 2305–2320 and 2345–2360 MHz bands: 47 dBμ V/m.

(2) 698–764 and 776–794 MHz bands: 40 dBμ V/m.

(3) The paired 1392–1395 MHz and 1432–1435 MHz bands and the unpaired 1390–1392 MHz band (1.4 GHz band): 47 dBμV/m.

(b) *Power flux density limit.* For base and fixed stations operating in the 698–746 MHz band, with an effective radiated power (ERP) greater than 1 kW, the power flux density that would be produced by such stations through a combination of antenna height and vertical gain pattern must not exceed 3000 microwatts per square meter on the ground over the area extending to 1 km from the base of the antenna mounting structure.

■ 14. Section 27.57 is amended by adding a new paragraph (c) to read as follows:

§ 27.57 International coordination.

* * * * *

(c) Operation in the 1710–1755 MHz and 2110–2155 MHz bands is subject to international agreements with Mexico and Canada.

■ 15. Section 27.63 is revised to read as follows:

§ 27.63 Disturbance of AM broadcast station antenna patterns.

AWS and WCS licensees that construct or modify towers in the immediate vicinity of AM broadcast stations are responsible for measures necessary to correct disturbance of the AM station antenna pattern which causes operation outside of the radiation parameters specified by the FCC for the AM station, if the disturbance occurred as a result of such construction or modification.

(a) *Non-directional AM stations.* If tower construction or modification is planned within 1 kilometer (0.6 mile) of a non-directional AM broadcast station tower, the AWS or WCS licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification would affect the AM station antenna pattern. The AWS or WCS licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper non-directional performance of the AM station tower.

(b) *Directional AM stations.* If tower construction or modification is planned within 3 kilometers (1.9 miles) of a directional AM broadcast station array, the AWS or WCS licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification would affect the AM station antenna pattern. The AWS or WCS licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper performance of the AM station array.

■ 16. A new subpart L is added to read as follows:

Subpart L—1710–1755 MHz and 2110–2155 MHz Bands

Subpart L—1710–1755 MHz and 2110–2155 MHz Bands

Licensing and Competitive Bidding Provisions

§ 27.1101 1710–1755 MHz and 2110–2155 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for 1710–1755 MHz and 2110–2155 MHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in 47 CFR part 1, subpart Q will apply unless otherwise provided in this subpart.

§ 27.1102 Designated entities.

(a) *Eligibility for small business provisions.* (1) A small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $40 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $15 million for the preceding three years.

(b) *Bidding credits.* (1) A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use a bidding credit of 15 percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid on any of the licenses in this part.

(2) A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use a bidding credit of 25 percent, as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid on any of the licenses in this part.

Relocation of Incumbents

§ 27.1111 Relocation of fixed microwave service licensees in the 2110–2150 MHz band.

Part 101, subpart B of this chapter contains provisions governing the relocation of incumbent fixed microwave service licensees in the 2110–2150 MHz band.

Protection of Incumbent Operations

§ 27.1131 Protection of Part 101 operations.

All AWS licensees, prior to initiating operations from any base or fixed station, must coordinate their frequency usage with co-channel and adjacent channel incumbent, Part 101 fixed-point-to-point microwave licensees operating in the 2110–2155 MHz band. Coordination shall be conducted in accordance with the provisions of § 24.237 of this chapter.

§ 27.1132 Protection of Part 21 operations.

All AWS licensees, prior to initiating operations from any base or fixed station, must coordinate their frequency usage with co-channel and adjacent channel incumbent Part 21 MDS licensees operating in the 2150–2155 MHz band. In the event that AWS and MDS licensees cannot reach agreement in coordinating their facilities, either licensee may seek the assistance of the Commission, and the Commission may then, at its discretion, impose requirements on either or both parties.

§ 27.1133 Protection of Part 74 and Part 78 operations.

AWS operators must protect previously licensed Broadcast Auxiliary Service (BAS) or Cable Television Radio Service (CARS) operations in the adjacent 2025–2110 MHz band. In satisfying this requirement AWS licensees must, before constructing and operating any base or fixed station, determine the location and licensee of all BAS or CARS stations authorized in their area of operation, and coordinate their planned stations with those licensees. In the event that mutually satisfactory coordination agreements cannot be reached, licensees may seek the assistance of the Commission, and the Commission may, at its discretion, impose requirements on one or both parties.

§ 27.1134 Protection of Federal Government operations.

(a) *Protection of Department of Defense operations in the 1710–1755 MHz band.* The Department of Defense (DoD) operates communications systems in the 1710–1755 MHz band at 16 protected facilities, nationwide. AWS licensees must accept any interference received from these facilities and must protect the facilities from interference. AWS licensees shall protect the facilities from interference by restricting the operation of their base and fixed stations from any locations that could potentially permit AWS mobile, fixed, and portable stations transmitting in the 1710–1755 MHz band to cause interference to government operations within the radii of operation of the 16 facilities (the radii of operation of each facility is indicated in the third column of Table 1 immediately following paragraph (a)(3) of this section). In

addition, AWS licensees shall be required to coordinate any operations that could permit mobile, fixed, and portable stations to operate in the specified areas of the 16 facilities, as defined in paragraph (a)(3) of this section. Protection of these facilities in this manner shall take place under the following conditions:

(1) At the Yuma, Arizona and Cherry Point, North Carolina facilities, all operations shall be protected indefinitely.

(2) At the remaining 14 facilities, airborne and military test range operations shall be protected until such time as these systems are relocated to other spectrum, and precision guided munitions (PGM) operations shall be protected until such time as these systems are relocated to other spectrum or until PGM inventory at each facility is exhausted, whichever occurs first.

(3) AWS licensees whose transmit operations in the 1710–1755 MHz band consist of fixed or mobile operations with nominal transmit EIRP values of 100 mW or less and antenna heights of 1.6 meters above ground or less shall coordinate their services around the 16 sites at the distance specified in row a. of Table 2. AWS licensees whose transmit operations in the 1710–1755 MHz band consist of fixed or mobile operations with nominal transmit EIRP values of 1 W or less and antenna heights of 10 meters above ground or less shall coordinate their services around the 16 sites at the distance specified in row b. of Table 2. These coordination distances shall be measured from the edge of the operational distances indicated in the third column of Table 1, and coordination with each affected DoD facility shall be accomplished through the Commander of the facility.

TABLE 1.—PROTECTED DEPARTMENT OF DEFENSE FACILITIES

Location	Coordinates	Radius of operation
Cherry Point, NC	34°58′ N 076°56′ W	100
Yuma, AZ	32°32′ N 113°58′ W	120
China Lake, CA	35°41′ N 117°41′ W	120
Eglin AFB, FL	30°29′ N 086°31′ W	120
Pacific Missile Test Range/Point Mugu, CA	34°07′ N 119°30′ W	80
Nellis AFB, NV	36°14′ N 115°02′ W	160
Hill AFB, UT	41°07′ N 111°58′ W	160
Patuxent River, MD	38°17′ N 076°25′ W	80
White Sands Missile Range, NM	33°00′ N 106°30′ W	80
Fort Irwin, CA	35°16′ N 116°41′ W	50
Fort Rucker, AL	31°13′ N 085°49′ W	50
Fort Bragg, NC	35°09′ N 079°01′ W	50
Fort Campbell, KY	36°41′ N 087°28′ W	50
Fort Lewis, WA	47°05′ N 122°36′ W	50
Fort Benning, GA	32°22′ N 084°56′ W	50
Fort Stewart, GA	31°52′ N 081°37′ W	50

TABLE 2.—COORDINATION DISTANCES FOR THE PROTECTED DEPARTMENT OF DEFENSE FACILITIES

1710–1755 MHz transmit operations	Coordination distance (km)
a. EIRP <=100 mW, antenna height <=1.6 m AG	35
b. EIRP <=1 W, antenna height <=10 m AG	55

(b) *Protection of non-DoD operations in the 1710–1755 MHz and 1755–1761 MHz bands.* Until such time as non-DoD systems operating in the 1710–1755 MHz and 1755–1761 MHz bands are relocated to other spectrum, AWS licensees shall protect such systems by satisfying the appropriate provisions of TIA Telecommunications Systems Bulletin 10–F, "Interference Criteria for Microwave Systems," May, 1994 (TSB 10–F).

(c) *Protection of Federal Government operations below 1710 MHz.* AWS licensees operating fixed stations in the 1710–1755 MHz band, if notified that such stations are causing interference to radiosonde receivers operating in the Meteorological Aids Service in the 1675–1700 MHz band or a meteorological-satellite earth receiver operating in the Meteorological-Satellite Service in the 1675–1710 MHz band, shall be required to modify the stations' location and/or technical parameters as necessary to eliminate the interference.

(d) *Recognition of NASA Goldstone facility operations in the 2110–2120 MHz band.* The National Aeronautics and Space Administration (NASA) operates the Deep Space Network (DSN) in the 2110–2120 MHz band at Goldstone, California (*see* Table 3). NASA will continue its operations of high power transmitters (nominal EIRP of 105.5 dBW with EIRP up to 119.5 dBW used under emergency conditions) in this band at this location. AWS licensees must accept any interference received from the Goldstone DSN facility in this band.

TABLE 3.—LOCATION OF THE NASA GOLDSTONE DEEP SPACE FACILITY

Location	Coordinates	Maximum transmitter output power
Goldstone, California	35°18′ N 116°54′ W	500 kW

§ 27.1135 Protection of non-Federal Government Meteorological-Satellite operations.

AWS licensees operating fixed stations in the 1710–1755 MHz band, if notified that such stations are causing interference to meteorological-satellite earth receivers operating in the Meteorological-Satellite Service in the 1675–1710 MHz band, shall be required to modify the stations' location and/or technical parameters as necessary to eliminate the interference.

[FR Doc. 04–1835 Filed 2–5–04; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 64

[CC Docket Nos. 96–45 and 03–123; FCC 03–232]

Application of Federal Accounting and Auditing Standards to the Universal Service Fund and Telecommunications Relay Services Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules governing certain financial reporting and auditing requirements applicable to the Universal Service Fund and the Telecommunications Relay Services Fund to ensure that the Commission can maintain its obligations under federal financial management and reporting statutes and directives of the Office of Management and Budget. The Commission also clarifies its rules regarding compensation limitations for employees of the Universal Service Administrative Company.

DATES: Effective March 8, 2004.

FOR FURTHER INFORMATION CONTACT: Cara Voth, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket Nos. 96–45 and 03–123, FCC 03–232 released on October 3, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. By this Order, we amend our rules governing certain financial reporting and auditing requirements applicable to the Universal Service Fund and the Telecommunications Relay Services (TRS) Fund (collectively referred to as the Funds) to ensure that the Commission can maintain its obligations under federal financial management and reporting statutes and directives of the Office of Management and Budget (OMB). Specifically, we will require the administrators of the Funds (hereafter "Administrators") to prepare financial statements for the Funds consistent with generally accepted accounting principles for federal agencies (Federal GAAP) and to keep the Funds in accordance with the United States Government Standard General Ledger (USGSGL). We will also require the Administrators to conduct audits of the Funds pursuant to generally accepted government auditing standards (GAGAS). Further, because the Funds are agency programs included on the Commission's annual financial statement, the Funds may be subject to a number of federal financial and reporting statutes. We revise our rules to reflect this, and to note that, where appropriate under relevant law, the Funds may be subject to similar statutes that are enacted in the future. We also clarify our rules regarding compensation limitations for employees of the Universal Service Administrative Company (USAC).

II. Discussion

2. The Universal Service Fund and the TRS Fund are components of the Commission's annual financial statements. In preparing these financial statements, the Commission is required to follow Federal GAAP and maintain its accounts according to the USGSGL pursuant to the Federal Financial Management Improvement Act of 1996 (FFMIA). Because the OMB has concluded that all components included on agency financial statements must comply with Federal GAAP, we direct the Administrators of the Universal Service Fund and the TRS Fund to prepare financial statements for those funds consistent with Federal GAAP and to keep any related accounts in accordance with the USGSGL as of October 1, 2004. Similarly, as discussed more specifically below, because audits of the Commission's financial statements are conducted according to GAGAS, we direct the Administrators to conduct certain audits of the Universal Service Fund and the TRS Fund according to GAGAS.

3. The modifications we make to our rules regarding audits are intended to reflect the distinction between audits of the Funds and audits of the Administrators of the Funds. When the Administrators of the Universal Service Fund or TRS Fund, or any independent auditors hired by such Administrators, conduct audits of the beneficiaries of the Universal Service Fund, contributors to the Universal Service Fund or TRS Fund, or any providers of service under the universal service support mechanisms and the TRS program, such audits shall be conducted in accordance with GAGAS. For example, audits conducted of beneficiaries of the schools and libraries support mechanism pursuant to § 54.516 of the Commission's rules must follow GAGAS. In contrast, audits conducted of the Administrators may be conducted according to generally accepted auditing standards (GAAS). For example, the required audit of the Universal Service Fund Administrator pursuant to § 54.717 of the Commission's rules may continue to be conducted according to GAAS. Similarly, any audit of the TRS Fund Administrator may be conducted pursuant to GAAS. Because the TRS Fund will be audited as a component of the Commission's financial statements, we find that the yearly audit of the TRS Fund pursuant to § 64.604(c)(5)(iii)(D) is no longer necessary, and we delete § 64.604(c)(5)(iii)(D) from the Commission's rules.

4. Because the Funds are components of the Commission's financial statements, the Administrators, in their capacity as administrators of the Funds, may also need to comply with relevant provisions of certain federal financial management and reporting statutes and rules. We therefore amend our rules to reflect the fact that the Funds are also subject to certain existing legal requirements, *e.g.*, the Debt Collection Improvement Act of 1996 and relevant portions of the Federal Financial Management Improvement Act of 1996. As appropriate under federal law, the Commission will also apply relevant provisions of similar federal laws that may be enacted in the future.

5. Finally, we take this opportunity to clarify our rules by adding a note to § 54.715(b) of the Commission's rules. Section 54.715(b) provides that the annual rate of pay for officers and employees of the Administrator of the universal service support mechanisms may not "exceed the annual rate of basic pay for level I of the Executive schedule." The note we add clarifies that the compensation to be included when calculating whether an employee's rate of pay exceeds Level I of the Executive Schedule does not include life insurance benefits, retirement benefits (including payments to 401(k) plans), health insurance benefits, or other similar benefits,

provided that any such benefits are reasonably comparable to benefits that are provided to employees of the federal government. To the extent any of these clarifications require adjustments to benefits that are currently provided to employees of the Administrator, they shall be applied prospectively.

6. We understand that the Administrators will need time to update accounting systems and train accountants, auditors and other relevant employees in order to comply with the rule changes adopted herein. To ensure adequate time for implementation of these new rules, the Administrators will have until October 1, 2004, to update their financial accounting and audit procedures for financial reporting for fiscal year 2005. These rules will go into effect March 8, 2004. We find for good cause that these rule changes may be adopted without affording prior notice and an opportunity for public comment because, for the most part, the rules merely reflect existing legal requirements. Other parts of the rule amendments are exempt from the notice and comment requirements of the Administrative Procedure Act because they concern interpretations of existing rules. The Commission will send a copy of this Order in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order will also be published in the **Federal Register**.

III. Ordering Clauses

7. Pursuant to sections 4(i), 225, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 225, 254, and 303(r), parts 54 and 64 of the Commission's rules are amended, as set forth, effective March 8, 2004.

List of Subjects

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 64

Communications common carriers, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54 and 64 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

■ 2. Amend § 54.702 by adding paragraph (n) to read as follows:

§ 54.702 Administrator's functions and responsibilities.

* * * * *

(n) The Administrator shall account for the financial transactions of the Universal Service Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the Universal Service Fund in accordance with the United States Government Standard General Ledger. When the Administrator, or any independent auditor hired by the Administrator, conducts audits of the beneficiaries of the Universal Service Fund, contributors to the Universal Service Fund, or any other providers of services under the universal service support mechanisms, such audits shall be conducted in accordance with generally accepted government auditing standards. In administering the Universal Service Fund, the Administrator shall also comply with all relevant and applicable federal financial management and reporting statutes.

■ 3. Amend § 54.715 by adding a note to paragraph (b) to read as follows:

§ 54.715 Administrative expenses of the Administrator.

* * * * *

(b) * * *

Note to **paragraph (b):** The compensation to be included when calculating whether an employee's rate of pay exceeds Level I of the Executive Schedule does not include life insurance benefits, retirement benefits (including payments to 401(k) plans), health insurance benefits, or other similar benefits, provided that any such benefits are reasonably comparable to benefits that are provided to employees of the federal government.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 4. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs, 403(b)(2)(B), (C), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 5. In § 64.604, remove and reserve paragraph (c)(5)(iii)(D) and revise paragraph (c)(5)(iii)(H) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii)* * *

(H) Administrator reporting, monitoring, and filing requirements. The administrator shall perform all filing and reporting functions required in paragraphs (c)(5)(iii)(A) through (c)(5)(iii)(J) of this section. TRS payment formulas and revenue requirements shall be filed with the Commission on May 1 of each year, to be effective the following July 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of the TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM) and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall account for the financial transactions of the TRS Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the TRS Fund in accordance with the United States Government Standard General Ledger. When the administrator, or any independent auditor hired by the administrator, conducts audits of providers of services under the TRS program or contributors to the TRS Fund, such audits shall be conducted in accordance with generally accepted government auditing standards. In administering the TRS Fund, the administrator shall also comply with all relevant and applicable federal financial management and reporting statutes. The administrator shall establish a non-paid voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual

report shall include a discussion of the advisory committee deliberations.

* * * * *

[FR Doc. 04–2531 Filed 2–5–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 031112277–4018–02; I.D.080603B]

RIN 0648–AR70

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities From Vandenberg Air Force Base (VAFB), CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Air Force (USAF), is issuing regulations to govern the unintentional takings of small numbers of marine mammals incidental to space vehicle and test flight activities from Vandenberg Air Force Base, CA (VAFB) over a 5-year period. Issuance of regulations is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species or stocks of marine mammals and will not have an unmitigable adverse impact on their availability for subsistence uses. These regulations prescribe methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and on the availability of the species for subsistence uses.

DATES: Effective from February 6, 2004, through February 6, 2009.

ADDRESSES: A copy of the USAF application, which contains a list of the references used in this document, may be obtained by writing to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226 or by telephoning the contact listed here (*see* **FOR FURTHER INFORMATION CONTACT**). NMFS' Administrative Record for this action will be maintained at the above address. Copies of letters and documents are available from this address.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky (301) 713–2322, ext. 163.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the total taking will have a negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. NMFS has defined "negligible impact" in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Under section 18(A), the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On September 2, 2003, NMFS received an application from the USAF requesting authorization under section 101(a)(5)(A) of the MMPA to harass small numbers of marine mammals incidental to space vehicle and test flight activities conducted by the USAF on Vandenberg. These regulations will allow NMFS to issue annual Letters of Authorization (LOAs) to the USAF. The current regulations and LOA expired on December 31, 2003. A detailed description of the operations is contained in the USAF application (USAF, 2003) which is available upon request (see **ADDRESSES**).

Description of the Specified Activity

VAFB is the main west coast launch facility for placing commercial, government, and military satellites into polar orbit on expendable (*i.e.* not reusable) launch vehicles, and for testing and evaluation of intercontinental ballistic missiles (ICBM) and sub-orbital target and interceptor missiles. In addition to space vehicle and missile launches, there are security and search and rescue helicopter operations, as well as test and evaluation flights of fixed-wing air craft. The USAF expects to launch a total of 30 rockets and missiles from VAFB.

Currently five space launch vehicle programs use VAFB to launch satellites into polar orbit: Atlas IIAS, Delta II, Minotaur, Taurus, and Titan (II and IV). Two new programs, the Evolved Expendable Launch Vehicle (EELV) and Space X, are scheduled to make their inaugural launches at VAFB in 2004. The EELV will use a Boeing Delta IV vehicle and a Lockheed-Martin Atlas V. Eventually, these vehicles will replace many of the other programs such as Atlas II and Titan, but initially there will be an overlap in the launches of each program. The Space X is a commercial program which will launch small payloads into low earth orbit. There is also a variety of small missiles, several types of interceptor and target vehicles, and fixed-wing aircrafts that are launched from VAFB.

Atlas IIAS

The Atlas IIAS is launched from Space Launch Complex (SLC) 3E on south VAFB, approximately 9.9 km (6.2 mi) from the Rocky Point harbor seal haul-out area and 11.1 km (6.9 mi) from the Spur Road haul-out site. The Atlas IIAS is a medium-sized (up to 48m, 157.5 ft, tall) launch vehicle with approximately 724,800 lbs of thrust. Two Atlas IIAS launch vehicles have been launched from SLC 3E (the Atlas IIAS AC–141 Terra launched on 18 December 1999 and the Atlas IIAS MLV–10 launched on 8 September 2001).

The received sound level at south VAFB from the Atlas IIAS launches was relatively quiet, due to the great amount of attenuation from the 9.9 km (6.2 mi) distance between the measurement site and SLC–3E. Measurements at the south VAFB haul-out site were similar to those measured at the north base Spur Road monitoring site, but slightly higher. The A-weighted sound exposure levels (ASEL), measured at the south haul-out site for the two launches, were 87.3 and 88.5 dB, the unweighted SELs were measured at 124.2 and 118.0 dB

and the C-weighted SEL were measured to be 113.6 and 112.1 dB. The launch noise reached a maximum fast sound level (Lmax) of 76.4 and 80.8 dB.

The launch noise measured at the north VAFB Spur Road acoustic monitoring site was slightly quieter than at the south VAFB monitoring locations, due to the greater distance between the site and the launch pad. The launch noise at this site was unsubstantial. The A-weighted SELs for both launches were measured to be 86.1 dB, and the Terra launch had an unweighted SEL of 117.2 dB, and a C-weighted SEL of 110.0 dB. The launch noise reached Lmax levels of 75.2 and 79.7 dB. A sonic boom was measured for the launch of the Atlas IIAS MLV–10 on SMI. The peak overpressure was 0.75 psf (125.1 dB) and the rise time was relatively slow at 2.6 milliseconds. This relatively slow rise time reduces the higher frequency content of the boom and tends to produce a sound more resembling distant thunder than the more familiar sharp crack of a distinct sonic boom.

Delta II

The Delta II is launched from SLC–2 on north VAFB, approximately 2.0 km (1.2 mi) from the Spur Road harbor seal haul-out site. The Delta II is a medium-sized launch vehicle approximately 38 m (124.7 ft) tall. The Delta II uses a Rocketdyne RS–27A main liquid propellant engine and additional solid rocket strap-on graphite epoxy motors (GEMs) during liftoff. A total of 3, 4 or 9 GEMs can be attached for added boost during liftoff. When 9 GEMs are used, 6 are ignited at liftoff and 3 are ignited once the rocket is airborne. When 3 or 4 GEMs are used, they are all ignited at liftoff. The number of GEMs attached to each vehicle will determine the amount of launch noise produced by the vehicle.

Six Delta II launches have been acoustically quantified near the Spur Road harbor seal haul-out site. The noise at the Spur Road site from the Delta II launches is relatively loud, primarily due to the close proximity of the launch pad. The Delta II is the second loudest of the launch vehicles at the Spur Road haul-out site with unweighted SEL measurements ranging from 126.5 to 128.8 dB and averaging of 127.4 dB (as measured by the digital audio tape [DAT] recorder). The C-weighted SEL ranged from 124.3 to 126.7 dB with an average of 125.4 dB (DAT). The A-weighted SEL measurements from both a sound level meter (SLM) and the DAT were similar and ranged from 111.8 to 118.2 dB and had an average of114.5 dB (DAT). The seal-weighted SELs were considerably reduced to range from 74.2 to 79.7 dB and averaged 76.9 dB. The Lmax values ranged from 104.2 to 112.5 and averaged 109.5 dB. Sonic booms have been measured on SMI from two Delta II launches, the Iridium MS–12 and EO–1. The Iridium MS–12 had two small sonic booms impact the Point Bennett area of SMI with peak overpressures of 0.47 and 0.64 psf and rise times of 18 and 91 ms. The Delta II EO–1 sonic boom had a peak overpressure of 0.4 psf and rise time of 41 microseconds (µs).

Minotaur

The Minotaur launch vehicle is launched from the California Spaceport on south VAFB, near SLC–6 and is approximately 2.3 km (1.4 mi) from the south VAFB pinniped haul-out sites. The Minotaur launch vehicle is made up of modified Minuteman II Stage I and Stage II segments mated with Pegasus upper stages. The Minotaur is a small vehicle, approximately 19.2 m (63.0 ft) tall with approximately 215,000 lbs of thrust. Although the Minotaur produces less thrust than other larger launch vehicles, due to its close proximity to the south VAFB haul-out sites, it is one of the loudest vehicles at this site. Two Minotaur launch vehicles have been launched from VAFB (26 January 2000 and 19 July 2000).

The launch noise measured near the south VAFB haul-out sites was moderately loud, primarily due to the close proximity to the launch pad. The unweighted SEL measurements varied by 3.5 dB between the two launches and were measured to be 119.4 and 122.9 dB. The C-weighted SELs varied less and were measured at 116.6 and 117.9 dB. From the DAT and SLM measurements, the A-weighted SEL ranged from 104.9 to 107.0 dB. The launch noise reached an Lmax level of 101.7 and 103.4 dB.

Taurus

The Taurus space launch vehicle is launched from 576–E on north VAFB, approximately 0.5 km (0.3 mi) from the Spur Road harbor seal haul-out site. There have been 6 Taurus rockets launched from 576–E. The standard Taurus is a small launch vehicle, at approximately 24.7 m (81.0 ft) tall and is launched in two different configurations: Defense Advanced Research Projects Agency (DARPA) and standard, with different first stages providing 500 or 400 kilopounds of thrust, respectively.

The launch noise from 4 Taurus launches has been measured near the Spur Road haul-out site. The noise arriving at the Spur Road monitoring site, near the harbor seal haul-out, was substantial due to the close proximity of the launch pad. At 0.5 km to SLC–576, the Taurus is the loudest of the launch vehicles at the Spur Road haul-out site. The unweighted SEL measurements from all the measured Taurus vehicles ranged from 135.8 to 136.8 and averaged 136.4 dB. The C-weighted SEL measurements were slightly lower as expected, ranging from 133.8 to 134.8 dB and averaged 134.5 dB. The A-weighted SEL measurements ranged from 123.5 to 128.9 dB with an average of 126.6 dB (SLM). The harbor seal-weighted SELs ranged from 88.0 to 91.3 dB and averaged 90.2 dB. The Lmax values were measured to range from 118.3 to 122.9 dB and averaged 120.9 dB (SLM).

Titan II

The Titan II space launch vehicle is launched from SLC–4W, which is approximately 8.5 km (5.3 mi) north of the south VAFB pinniped haul-out sites. The USAF has launched 6 Titan II space launch vehicles from SLC–4W during the study period. The Titan II space launch vehicle is a medium-sized liquid fueled rocket at 36.0 m (118.1 ft) tall. It has a small-to-medium weight lift capability; additional strap-on GEM solid rocket motors can be added to the first stage to increase the lift capability. All of the Titan II launch configurations were the same, launched without additional solid rocket motors attached and had a thrust of approximately 474,000 lbs.

The Titan II launch noise as measured near the south VAFB haul-out site, which is the closest haul-out to SLC–4W, is unsubstantial and ranks among the quieter vehicles. This is primarily due to its moderate thrust and the relatively long distance to the launch pad. The unweighted SEL measurements ranged from 116.3 to 120.3 dB and averaged 118.3 dB. The C-weighted SELs ranged from 109.6 to 115.0 dB and averaged 112.5 dB. The A-weighted SELs ranged from 83.5 to 95.7 dB and averaged 89.9 dB (DAT). The harbor seal-weighted SELs ranged from 38.2 to 54.5 dB and averaged 47.4 dB. The Lmax values were measured to range from 74.9 to 85.9 dB and averaged 80.1 dB.Titan IV

The Titan IV space launch vehicle is launched from SLC–4E, which is approximately 8.5 km (5.3 mi) from the south VAFB pinniped haul-out site. The Titan IV series was developed as a complementary heavy-lift vehicle to the Space Shuttle and is by far the largest vehicle currently launched from VAFB. The Titan IV is approximately 44 m (144.5 ft) tall and has a liquid fuel core engine and two upgraded solid rocket

motors (SRMU) that provide approximately 3,400,000 lbs of thrust. The Titan IV is moderately loud and is one of the louder vehicles at the south VAFB haul-out site, primarily due to its large amount of thrust. The launch noise measurements for the 4 Titan IV launches measured were all fairly consistent. The unweighted SELs ranged from 125.9 to 130.2 dB and averaged 127.8 dB. Similarly, the C-weighted measurements varied very little, with the C-weighted SELs ranging from 119.0 to 124.2 dB and averaging 121.5 dB. There was a greater difference with the A-weighted and harbor seal-weighted measurements with the A-weighted SELs ranging from 96.6 to 104.5 dB with an average of 101.5 dB (DAT). The harbor seal-weighted SELs ranged from 54.4 to 63.5 dB with an average of 60.3 dB. The Lmax values were determined to range from 88.2 to 100.6 dB and averaged 95.6 dB. Several sonic booms have been measured for the launches of the Titan IV. The peak overpressures from sonic booms produced by this vehicle range from 1.34 to 8.97 psf. These booms have been measured for 4 launches of the Titan IV and have impacted each coast of SMI.

Evolved Expendable Launch Vehicle (EELV)

The EELV is the Air Force's newest launch vehicle program and will use the Atlas V vehicle from Lockheed-Martin and the Delta IV space launch vehicle from the Boeing Company for launches from VAFB. The EELV program will become the main space launch program over the next several years, replacing many of the other launch vehicles at VAFB. The maximum number of forecasted EELV launches per year is 5, with a total of 68 launches projected through 2020 (U.S. Air Force 2000).

The Atlas V consists of both a medium (V400) and heavy (V500) lift vehicle with up to 5 solid rocket boosters. During the next 5 years, only the medium lift V400 series vehicle will be launched from VAFB. The V400 series will lift up to 7,640 kg (16,843 lbs) into geosynchronous transfer orbit or up to 12,500 kg (27,557.3 lbs) into low earth orbit. The Atlas V consists of a common booster core (3.8 m, 12.5 ft, in diameter and 32.5 m, 106.6 ft, high) powered by an RD180 engine that burns a liquid propellant fuel consisting of liquid oxygen and RP1 fuel (kerosene). The RD180 engine provides 840,000 lbs of thrust on liftoff, and up to three solid rocket boosters can be attached to the common booster core to provide extra lift. There is a Centaur upper stage (3.1 m, 10.2 ft, in diameter and 12.7 m, 41.7 ft, high) powered by a liquid oxygen and liquid hydrogen fuel. The payload fairing is up to 4.2 m (13.7 ft) making the complete Atlas V up to 58.3 m (191.3 ft) high.

The Atlas V will be launched from SLC–3 East, the site of the current Atlas II launch facility. SLC–3 East is approximately 9.9 km (6.2 mi) north of the main harbor seal haul-out site in the area of Rocky Point. Launches of the smaller Atlas IIAS (47.4 m, 51.8 ft, in length and 700,000 lbs of thrust) produced A-weighted sound exposure levels ranging from 87.3 to 88.5 dB at the south VAFB haul-out site. The predicted noise level at the closest haul-out site (10 km, 6.2 mi, from the launch pad of an Atlas V) would be slightly louder than the noise levels from the Atlas IIAS. The maximum sonic boom impacting the Channel Islands would be 7.2 pounds per square foot (psf). The size of the actual sonic boom will depend on meteorological conditions, which can vary by day and season and with the trajectory of the vehicle.

The Delta IV family of launch vehicles consists of 5 launch vehicle configurations utilizing a common booster core (CBC) first stage and 2 and 4 strap on GEMs. The Delta IV comes in four medium lift configurations and one heavy lift configuration consisting of multiple common booster cores. The Delta IV can carry payloads from 4,210 to 13,130 kg (9.281.3 to 28,946.2 lbs) into geosynchronous transfer orbit. The Delta IV will be launched from SLC–6, which is 2.8 km (1.7 mi) north of the main harbor seal haul-out site at South Rocky Point. The Delta IV will be the loudest vehicle at the south VAFB harbor seal haul-out site. The Delta IV is predicted to have a sonic boom offshore of up to 7.2 psf for the largest of the medium configurations and 8 to 9 psf for the heavy configuration. The size and location of the actual sonic boom will depend on meteorological conditions, which can vary by day and season and with the trajectory of the vehicle.

Space X

The Space X program will launch the Falcon space launch vehicle from SLC 3–West on south VAFB. The Falcon is a light space launch vehicle and will send small payloads of up to 500 kg (1102.3 lbs) into low earth orbit. The Falcon vehicle is 1.7 m (5.6 ft) in diameter and 20.7 m (67.9 ft) in height, making it approximately the size of a Peacekeeper missile. The Falcon is a two-stage liquid fuel vehicle. The first stage is reusable and uses a liquid oxygen and kerosene base fuel. The second stage is expendable and also uses a liquid oxygen and kerosene fuel.

Other Launch Activities

There are a variety of small missiles launched from VAFB, including Peacekeeper, Minuteman III, and several types of interceptor and target vehicles for the National Missile Defense Program. The missile launch facilities are spread throughout northern VAFB and are within 0.65 to 3.9 km (0.4 to 2.4 mi) of the recently occupied Lion's Head haul-out site and approximately 11 to 16.5 km (6.8 to 10.3 mi) north of the Spur Road and Purisma Point harbor seal haul-out sites.

The Peacekeeper missile is an Inter-Continental Ballistic Missile (ICBM) that was developed as part of the United States strategic deterrence force. The Peacekeeper is launched from various underground silos as part of a test and evaluation program. The Peacekeeper is composed of four rocket motors, 21.8 m (71.5 ft) in length by 2.3 m (7.5 ft) in diameter, with the first stage thrust of 500,000 lbs. The Peacekeeper, unlike other silo launch missiles, is "cold launched," initially propelled out of the silo with pressurized gas. The first stage rocket motor is ignited once the vehicle is approximately 20 m (65.6 ft) above the ground. The Peacekeeper missile is being phased out and only a few launches remain.

The Minuteman III missile is an ICBM that was also developed as part of the United States strategic deterrence force. Similar to the Peacekeeper, the Minuteman III is launched from underground silos but is not cold launched. The Minuteman III is composed of three rocket motors and is 18.0 m (59.1 ft) in length by 1.7 m (5.6 ft) in diameter, with a first stage thrust of 202,600 lbs.

The Missile Defense Agency (MDA) is developing the Ground-based Midcourse Defense (GMD) element of the conceptual Ballistic Missile Defense System (BMDS). The BMDS concept is to defend against threat missiles in each phase or segment of the missile's flight. There are three segments of this conceptual system in various stages of technology development: Boost Phase Defense, Midcourse Defense, and Terminal Defense. Each segment of the BMDS is being developed to destroy an attacking missile in the corresponding boost, mid-course, or terminal phase of its flight. The GMD element is designed to protect the United States in the event of a limited ballistic missile attack by destroying the threat missile in the mid-course phase of its flight. During the mid-course phase, which occurs outside the earth's atmosphere for medium and long-range missiles, the missile is coasting in a ballistic trajectory.

A variety of small missiles under 13 m (42.7 ft) including the Hera, Lance, Patriot As A Target, ERINT, Black Brant, Terrier, SRTYPI II, Castor I, Storm, ARIES, and Hermes are also included in the application because of the new harbor seal pupping site that was established in 2002 at Lion's Head. Those missiles, in addition to missiles already included in previous NMFS authorizations for VAFB (Minuteman and Peacekeeper missiles and missiles from the Ground Based Interceptor programs), and the new generation of missiles from the MDA, will be covered by these regulations and annual LOAs. Several types of missiles will be used for target and interceptor test and evaluation; some of these missiles are being used currently (Booster Verification Test) and the remainder will not be used until 2004 or later. All of the target and interceptor missiles are smaller than the Minuteman III or Peacekeeper missiles that are currently launched from VAFB. Many of the different missile types have interchangeable first or second stage motors; therefore, most of the missiles may have similar noise characteristics, depending on their configuration.

The Ground Based Interceptors (GBI) are approved for launchings at VAFB (12 May 2003, 68 FR 25347). The GBI Booster Verification and the uncanisterized Orbital Booster Vehicle will be flight tested from LF–21 and LF–23. The missiles would be comprised of a commercially available, solid propellant booster consisting of three stages and an exo-atmospheric kill vehicle emulator.

Aircraft Activities

VAFB is also a site for limited flight testing and evaluation of fixed-wing aircraft. Three approved routes are used that avoid the established pinniped haul-out sites. A variety of aircraft, including the B1 and B2 bombers, F–14, F–15, F–16, and F–22 fighters, and KC–135 tankers may use the test and evaluation routes.

Various fixed-wing aircraft (jet and propeller aircraft) use VAFB for a variety of purposes including delivery of space or missile vehicle components, launching of launch vehicles at high altitude, such as the Pegasus, and emergency landings. VAFB has approximately 120–fixed-wing flights per year and 10,000 take offs and landings (training operations), which occur mostly on north VAFB (U.S. Air Force 2003). All aircraft are required to remain outside of an established 1,000–ft (304.8 m) bubble around pinniped rookeries and haul-out sites, except when performing a life-or-death rescue mission, when responding to a security incident, or during an aircraft emergency.

The VAFB helicopter squadron uses a UH-IN helicopter and provides support for launch operations, security reconnaissance, aerial photography, training, transport, and search and rescue. VAFB has approximately 75 helicopter sorties per month (U.S. Air Force 2003). All helicopters are required to remain outside of the 1,000–ft (304.8 m) bubble around pinniped rookeries or haul-out sites, except when performing a life-or-death rescue mission, when responding to a security incident, or during an aircraft emergency.

Comments and Responses

On September 19, 2003 (68 FR 54894), NMFS published a notice of receipt of application and on December 3, 2003 (68 FR 67629) NMFS published a notice of proposed rulemaking on the USAF's application for an incidental take authorization and requested comments, information and suggestions concerning the request. During the public comment period, NMFS received comments from the Marine Mammal Commission (Commission). The Commission supports NMFS' intent to implement incidental take regulations for the USAF's activities at VAFB provided that regulations are incorporated into the proposal.

Comment: The Commission supports NMFS' small take regulations for these activities, provided that the research, mitigation, and monitoring activities described in the application are incorporated into the regulations. The Commission notes that the applicant's research, reporting, and monitoring efforts under the previous regulations indicate that the haul-out behavior of harbor seals is apparently unaffected by launch operations, and that the animals do not seem to have incurred any permanent hearing damage as a result of space vehicle launches at the VAFB. NMFS amended those regulations on 22 January 2002 to require that biological monitoring be conducted only during Pacific harbor seal pupping season (67 FR 2820). The current application states that a research program to study the effects of space launch vehicle and missile launch noise and sonic booms on the behavior, hearing ability, and population dynamics of pinnipeds at VAFB and the northern Channel Islands was begun in 1997, and, if the requested authorization is issued, would continue through 2008.

Response: NMFS is requiring all research, mitigation, and monitoring activites described in the USAF's application. NMFS is also requiring the USAF to continue their research program on VAFB to study the behavior of pinnipeds during launches.

Specified Geographic Region and Description of Habitat and Marine Mammals Affected by the Activity

VAFB is composed of 99,000 acres of land and approximately 65 km (39 mi) of coastline on the coast of Central California within Santa Barbara County. The northern Channel Islands are located 72 km (44.7 mi) south of VAFB and consist of San Miguel Island (SMI), Santa Cruz Island (SCI), and Santa Rosa Island (SRI). The northern Channel Islands are part of the Channel Islands National Park and the Channel Islands National Marine Sanctuary.

The most common marine mammal inhabiting VAFB is the Pacific harbor seal (*Phoca vitulina richardsi*). Harbor seals are local to the area, rarely traveling more than 50 km (31.1 mi) from their haul-out sites. They haul-out on small offshore rocks or reefs and sandy or cobblestone cove beaches. Although harbor seals can be found along much of the VAFB coastline, they congregate in the areas of Oil Well Canyon to South Rocky Point and near the boat harbor on south VAFB. The haul-out site on south VAFB has the largest population of harbor seals on VAFB, with up to 515 seals surveyed, and has been growing at an average annual rate of 12.7 percent since 1997 while the California population has remained stable. At least 700 harbor seals used SMI, 1,000 used SCI and 900 used SRI during the 2002 aerial counts (Lowry and Caretta 2003).

Less than 200 California sea lions (*Zalophus californianus*) are found seasonally on VAFB. Sea lions may sporadically haul-out to rest when in the area to forage or when transiting the area, but generally spend little time there. Sea lions may haul-out in the area of Rocky Point, Point Arguello, Point Pedernales, and Point Sal, just north of VAFB. In 2003, at least 142 sea lions and 5 pups were hauled out at Rocky Point. This was the first reported occurrence of sea lions being born at VAFB but may be a result of the El Nino conditions that existed at that time. SMI is one of the major California sea lion rookeries, along with San Nicolas Island, with about 23,000 pups born each year. Launches from VAFB will only affect SMI.

Approximately 150 northern elephant (*Mirounga angustirostris*) seals may be found seasonally on VAFB. Weaned elephant seal pups making their first foraging trips occasionally haul-out for 1 to 2 days at VAFB before continuing on their migration. In April 2003,

approximately 88 juveniles and young adult females began to haul-out at South Rocky Point to molt. The nearest elephant seal haul-out point is at Point Conception, 25 km (15.5 mi) south of VAFB. Elephant seals primarily use SMI and SRI for breeding and hauling out to rest or molt. Up to 12,000 elephant seal pups are found on SMI and up to 1,500 on SRI (Lowry 2002).

There have been no reports of northern fur seals (*Callorhinus ursinus*) on VAFB. They are only found on the west end of SMI at Point Bennet and Castle Rock, just offshore of SMI. The SMI stock is approximately 4,000 fur seals (Forney et al. 2000d).

Potential Effects of Target Missile Launches and Associated Activities on Marine Mammals

The activities under these regulations create two types of noise: Continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles, and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. Generally, noise is generated from four sources during launches: (1) Combustion noise from launch vehicle chambers, (2) jet noise generated by the interaction of the exhaust jet and the atmosphere, (3) combustion noise from the post-burning of combustion products, and (4) sonic booms. Launch noise levels are highly dependent on the type of first-stage booster and the fuel used to propel the vehicle. Therefore, there is a great similarity in launch noise production within each class size of launch vehicles.

The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from space launch vehicle and missile launches and aircraft and helicopter operations may cause the animals to move towards the water or enter the water. The percentage of seals leaving the haul-out increases with noise level up to approximately 100 decibels (dB) A-weighted Sound Exposure Level, after which almost all seals leave, although recent data has shown that an increasing percentage of seals have remained on shore. Using time-lapse video photography, it was discovered that during four launch events, the seals that reacted to the launch noise but did not leave the haul-out were all adults. This suggests that they had experienced other launch disturbances and had habituated to it in that they reacted less strongly than other younger seals.

The louder the launch noise, the longer it took for seals to begin returning to the haul-out site and for the numbers to return to pre-launch levels. In two past Athena IKONOS launches with A-weighted sound exposure levels of 107.3 and 107.8 dB at the closest haul-out site, seals began to haul-out again approximately 16 to 55 minutes post-launch (Thorson et al. 1999a; 1999b). In contrast, noise levels from an Atlas launch and several Titan II launches had A-weighted sound exposure levels ranging from 86.7 to 95.7 dB at the closest haul-out and seals began to return to the haul-out site within 2 to 8 minutes post-launch (Thorson and Francine 1997; Thorson et al. 2000). Seals may begin to return to the haul-out site within 2 to 55 minutes of the launch disturbance and the haul-out site has usually returned to pre-launch levels within 45 minutes to 120 minutes.

The main concern on the northern Channel Islands is potential impacts from sonic booms created during launches of space vehicles from VAFB. Sonic booms are impulse noises, as opposed to continuous (but short-duration) noise such as that produced by aircraft and rocket launches. The initial shock wave during a sonic boom propagates along a path that grazes the earth's surface due to the angle of the vehicle and the refraction of the lower atmosphere. As the launch vehicle pitches over, the direction of propagation of the shock wave becomes more perpendicular to the earth's surface. These direct and grazing shock waves can intersect to create a narrowly focused sonic boom, about 1 mile of intense focus, followed by a larger region of multiple sonic booms. During the period of 1997 to 2002, there were no sonic booms above 2.0 psf recorded on the northern Channel Islands. Small sonic booms between 1 to 2 psf usually elicit a "heads up" response or slow movement toward and entering the water, particularly for pups.

From the research and monitoring conducted over the last 5 years, it has become clear that there is little difference between distinctive classes of rockets (ballistic launches and satellite launches). Therefore, to better represent the possible impacts to marine mammals, launch activities at VAFB have been divided into three geographic zones that comprise the main pinniped haul-out on VAFB. This is because the level of disturbance caused by launches is more closely associated with the geographical proximity of launch sites to haul-out sites.

Zone 1 is northern VAFB. The main haul-out site in this area is at Lion's Head and is regularly used by small numbers of harbor seals for resting and pupping. Although this is not a major haul-out site, it is an important site to consider during launches that occur during the harbor seal pupping season.

Zone 2 is in the central VAFB, running from Spur Road north to San Antonio Creek. This area has the two main harbor seal haul-out sites on north VAFB, Spur Road, and Purisima Point. Spur Road has up to 145 harbor seals but is not a pupping site. Purisima Point has up to 50 seals and up to 5 pups.

Zone 3 is in southern VAFB and covers from approximately the Boat Harbor to northern boundary of south VAFB. The main harbor seal haul-out site on VAFB is found in the area of the Boat Harbor to Rocky Point. Up to 500 harbor seals are found there during the molting season and up to 52 pups during the pupping season, March through June. California sea lions will haul-out on occasion on the Boat Dock jetty and seasonally at Rocky Point. Weaned northern elephant seal pups (only 1 to 2 seals) will haul-out occasionally for several days to rest in the area of Rocky Point during their first foraging trip to sea.

Sonic booms created by the larger space launch vehicles may impact marine mammals on the northern Channel Islands, particularly SMI. Based on previous monitoring of sonic booms created by space launch vehicles on SMI (Thorson *et al.* 1999a: 1999b), it is estimated that up to approximately 25 percent of the marine mammals may be disturbed on SMI. If conditions allow, under a scientific research permit issued under Section 104 of the MMPA, the hearing of harbor seals will be tested before and after each launch.

With respect to impacts on pinniped hearing, NMFS' proposed rule for the previous rulemaking indicated that VAFB launch and missile activities, including sonic booms, would have an impact on the hearing of pinnipeds (63 FR 39055; July 21, 1998). These impacts were limited to Temporary Threshold Shifts (TTS) lasting between minutes and hours, depending on exposure levels. Subsequent information on Auditory Brainstem Response (ABR) testing on harbor seals following Titan IV and Taurus launches indicates that no Permanent Threshold Shift (PTS) resulted from these launches. These results are consistent with NMFS' previous conclusions in its prior rulemaking.

NMFS also notes here that stress from long-term cumulative sound exposures can result in physiological effects on

reproduction, metabolism, and general health, or on the animals' resistance to disease. However, this is not likely to occur here, because of the infrequent nature and short duration of the noise, including the occasional sonic boom. Research shows that population levels at these haul-out sites have remained constant in recent years, giving support to this conclusion.

The USAF does not anticipate a significant impact on any of the species or stocks of marine mammals from launches from VAFB. For even the largest launch vehicles, such as Titan IV and Delta IV, the launch noises and sonic booms can be expected to cause a startle response and flight to water for those harbor seals, California sea lions and other pinnipeds that are hauled out on the coastline of VAFB and on the northern Channel Islands. The noise may cause TTS in hearing depending on exposure levels but no PTS is anticipated.

Numbers of Marine Mammals Expected To Be Taken by Harassment

It is estimated that up to approximately 25 percent of the marine mammals may be disturbed on SMI due to the rare occurrence of a sonic boom. Up to approximately 200 harbor seals of all age classes and sexes may be taken by level B harassment per launch on the northern Channel Islands, with an expected range of between zero and 200 harbor seals. Up to approximately 5,800 California sea lion pups and 2,500 juvenile and adult sea lions of either sex may be harassed at SMI per launch, with an expected range of between zero and 8,300 sea lions. Up to approximately 3,000 northern elephant seal pups and 10,000 northern elephant seals of all age classes and sexes may be taken, by level B harassment, per launch on the northern Channel Islands, with an expected range of between zero and 13,000 elephant seals. Up to approximately 300 northern fur seal pups and 1,100 juvenile and adult northern fur seals of both sexes may be taken, by level B harassment, per launch at SMI, with an expected range of between zero and 1,100 fur seals. One Steller sea lion of any age class or sex may be harassed during the period of the regulations. Up to two Guadalupe fur seals of any age class or sex may be harassed over the period of the proposed regulations. The numbers taken will depend on the type of rocket, location of the sonic boom, weather conditions that influence the size of the sonic boom, the time of day and time of year. For this reason, ranges are given for the harassment estimates of marine mammals.

Effects of Target Missile Launches and Associated Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and, thus, there are no anticipated effects on subsistence needs.

Effects of Target Missile Launches and Associated Activities on Marine Mammal Habitat at VAFB

Harbor seals, California sea lions, northern elephant seals, northern fur seals, Guadalupe fur seals, and Steller sea lions are known to inhabit VAFB and the surrounding islands. There will only be short-term disturbance effects to the behavior of the marine mammals. These activities will not affect their habitat.

Mitigation

To minimize impacts on pinnipeds on beach haul-out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, the USAF has prepared the following mitigation measures, which NMFS has incorporated into its regulations.

All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped rookeries closer than 1,000 ft (305 m). For missile and rocket launches, unless constrained by other factors including, but not limited to, human safety, national security or launch trajectories, holders of LOAs must schedule launches to avoid, whenever possible, launches during the harbor seal pupping season of March through June. NMFS is also expanding the requirement so that VAFB must avoid, whenever possible, launches that are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons.

If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and appropriate changes will be made prior to the next launch of the same vehicle under that LOA.

Monitoring

As part of its application, VAFB provided a monitoring plan, similar to that in the prior regulations (50 CFR 216.125), for assessing impacts to marine mammals from rocket and missile launches at VAFB. This monitoring plan is described, in detail, in their application (VAFB, 2003). The Air Force will conduct the following monitoring under the regulations.

The monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals. Monitoring at the haul-out site closest to the launch facility will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch.

Monitoring for Vandenberg Air Force Base

Biological monitoring at VAFB will be conducted for all launches during the harbor seal pupping season, 1 March to 30 June. Acoustic and biological monitoring will be conducted on new space and missile launch vehicles during at least the first launch, whether it occurs within the pupping season or not. The first three launches of the Delta IV will also be monitored. In addition, the hearing of harbor seals will be tested before and after each launch under a scientific research permit issued under Section 104 of the MMPA.

Monitoring will include multiple surveys each day that record, when possible, the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Time-lapse photography or video will be used during daylight launches to document the behavior of mother-pup pairs during launch activities. For launches during the harbor seal pupping season (March through June), follow-up surveys will be made within two weeks of the launch to ensure that there were no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 120 days of the launch.

Monitoring for the Northern Channel Islands

Monitoring will be conducted on the northern Channel Islands (San Miguel, Santa Cruz, and Santa Rosa Islands) whenever a sonic boom over 1.0 psf is predicted (using the most current sonic boom modeling programs) to impact one of the Islands. Monitoring will be conducted at the haul-out site closest to

the predicted sonic boom impact area. Monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals. Monitoring will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch.

Monitoring will include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Due to the large numbers of pinnipeds found on some beaches of SMI, smaller focal groups should be monitored in detail rather than the entire beach population. A general estimate of the entire beach population should be made once a day and their reaction to the launch noise noted. Photography or video will be used during daylight launches to document the behavior of mother-pup pairs or dependent pups during launch activities. During the pupping season of any species affected by a launch, follow-up surveys will be made within two weeks of the launch to ensure that there were no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 120 days of the launch.

Reporting Requirements

A report containing the following information must be submitted to NMFS within 120 days after each launch: (1) Date(s) and time(s) of each launch, (2) date(s), location(s), and preliminary findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations, and (3) results of the monitoring programs, including but not necessarily limited to (a) numbers of pinnipeds present on the haul-out prior to commencement of the launch, (b) numbers of pinnipeds that may have been harassed as measured by the number of pinnipeds estimated to have entered the water as a result of launch noise, (c) the length of time(s) pinnipeds remained off the haul-out or rookery, (d) the numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and (4) any behavioral modifications by pinnipeds that likely were the result of launch noise or the sonic boom.

An annual report must be submitted to NMFS at the time of renewal of the LOA described in §216.127, that describes any incidental takings under an LOA not reported in the 120-day launch reports, such as the aircraft test program and helicopter operations and any assessments made of their impacts on hauled-out pinnipeds.

A final report must be submitted to NMFS no later than 180 days prior to expiration of these regulations. This report must summarize the findings made in all previous reports and assess both the impacts at each of the major rookeries and the cumulative impact on pinnipeds and any other marine mammals from Vandenberg activities.

Determinations

Based on the VAFB's application, the Environmental Assessment, and this document, and taking into consideration the comments submitted on the application and proposed regulations, NMFS has determined that it will authorize the taking, by Level B harassment, of small numbers of marine mammals incidental to to rocket and missile launch operations and aircraft overflights at VAFB. The total taking of marine mammals by Level B harassment launch operations at VAFB over the period of these regulations will have no more than a negligible impact on affected marine mammal stocks. NMFS is assured that space and missile test launch operations and aircraft overflights from VAFB off California will result, at worst, in temporary modifications in behavior by the affected pinnipeds and possible TTS in hearing of any pinnipeds that are in close proximity to a launch pad during launch. No take by injury and/or death is anticipated, and the potential for hearing impairment is unlikely. NMFS has determined that the requirements of section 101(a)(5)(A) of the MMPA have been met and the LOAs can be issued.

Changes From the Proposed Rule

At the proposed rule stage, NMFS did not publish the full text for Subpart K in Chapter II of title 50 of the Code of Federal Regulations and only published those paragraphs that were being modified from the original rule (64 FR 9925, March 1, 1999). Since this rule expired on December 31, 2003, and was removed and reserved by the Office of the **Federal Register**, NMFS is publishing the entire text in this document.

National Environmental Policy Act (NEPA)

NMFS has prepared an EA and made a Finding of No Significant Impact (FONSI). Therefore, preparation of an environmental impact statement on this action is not required. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

ESA

Under section 7 of the ESA, NOAA Fisheries has concluded that these activities are not likely to adversely affect species listed under the ESA.

CZMA Consistency

According to the USAF, it has received concurrence from the California Coastal Commission that the VAFB activities described in this document are consistent to the maximum extent practicable with the enforceable policies of the California Coastal Act.

National Marine Sanctuaries Act

This action is not likely to destroy, cause the loss of, or injure any national marine sanctuary resources. Therefore, consultation was not required.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

Under 5 U.S.C. 553(d), an agency may waive the required 30–day delay in effectiveness date if it finds that there is good cause for doing so. VAFB has a Taurus (SLC 576–E) launch scheduled for Feb 26, 2004, which falls within 30 days of the publication date of this final rule. Many, if not most, space missions require a particular orbit for the payload, and getting into that orbit can be closely tied to the time of year or even time of day. Therefore, delaying this launch could mean that it will miss its launch opportunity for an entire year. In addition, a delay could cost up to hundreds of thousands of dollars per day, depending on various factors, including the cost of maintaining the vehicle and payload in ready condition and the number of personnel in the launch crew. A launch delay also could lead to increased risks for personnel if there is increased handling time for hazardous materials or ordnance that has to be deactivated or offloaded, depending on the stage of launch preparations at the time of delay. NMFS does not believe that it is necessary to require delay or cancellation of the scheduled launch under the circumstances. The mitigation and monitoring required by this final rule are for the benefit and protection of marine mammals, and these measures are substantially similar to the measures contained in the 5-year final rule that expired on December 31, 2003. VAFB is

the only entity regulated by this rule. VAFB expressly requested that NMFS issue the rule and regulations and is both willing and able to comply with the requirements of NMFS' final regulations and LOA, as they were during the course of the previous rule and regulations, within the 30–day window. Therefore, NMFS has determined that there is good cause to waive the delay in effectiveness date for this final rule.

At the proposed rule stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the 30th Space Wing, U.S. Air Force and would have no effect, directly or indirectly, on small businesses. It may affect a small number of contractors providing services on the base, some of which may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: January 30, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For reasons set forth in the preamble, 50 CFR part 216 is added to read as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Subpart K is added to part 216 to read as follows:

Subpart K—Taking of Marine Mammals Incidental to Space Vehicle and Test Flight Activities

Sec.

Subpart K—Taking of Marine Mammals Incidental to Space Vehicle and Test Flight Activities

§ 216.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in:

(1) Launching up to 30 space and missiles vehicles each year from Vandenberg Air Force Base, for a total of up to 150 missiles and rockets over the 5-year period of these regulations,

(2) Launching up to 20 rockets each year from Vandenberg Air Force Base, for a total of up to 100 rocket launches over the 5-year period of these regulations,

(3) Aircraft flight test operations, and

(4) Helicopter operations from Vandenberg Air Force Base.

(b) The incidental take of marine mammals on Vandenberg Air Force Base and in waters off southern California, under the activity identified in paragraph (a) of this section, is limited to the following species: Harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), and northern fur seals (*Callorhinus ursinus*).

§ 216.121 Effective dates.

Regulations in this subpart are effective from February 6, 2004, through February 6, 2009.

§ 216.122 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106, the 30th Space Wing, U.S. Air Force, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 216.120, provided all terms, conditions, and requirements of these regulations and such Letter(s) of Authorization are complied with.

(b) [Reserved]

§ 216.123 Prohibitions.

No person in connection with the activities described in § 216.120 shall:

(a) Take any marine mammal not specified in § 216.120(b);

(b) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 216.120(b) if such take results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.106.

§ 216.124 Mitigation.

(a) The activity identified in § 216.120(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.120, the following mitigation measures must be utilized:

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (*e.g.*, Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (*e.g.*, search-and-rescue, fire-fighting) which may require approaching pinniped rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons, March through June.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch under that Letter of Authorization.

(5) Additional mitigation measures as contained in a Letter of uthorization.

(b) [Reserved]

§ 216.125 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to § 216.106 for activities described in § 216.120(a) are

required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, National Marine Fisheries Service, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, as specified in the Letter of Authorization, to:

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time not less than 48 hours subsequent to launching,

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals,

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf could occur in those areas (this determination will be made in consultation with the National Marine Fisheries Service),

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) The Holder of the Letter of Authorization must submit a report to the Southwest Administrator, National Marine Fisheries Service within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch,

(2) Design of the monitoring program, and

(3) Results of the monitoring programs, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haulout prior to commencement of the launch,

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,

(iii) The length of time(s) pinnipeds remained off the haulout or rookery,

(iv) The numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and

(v) Behavioral modifications by pinnipeds that were likely the result of launch noise or the sonic boom.

(e) An annual report must be submitted at the time of renewal of the LOA.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports,

(2) Assess the impacts at each of the major rookeries,

(3) Assess the cumulative impact on pinnipeds and other marine mammals from Vandenberg activities, and

(4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations.

§ 216.126 Applications for Letters of Authorization.

(a) To incidentally take harbor seals and other marine mammals pursuant to these regulations, either the U.S. citizen conducting the activity or the 30th Space Wing on behalf of the U.S. citizen conducting the activity, must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) The application must be submitted to the National Marine Fisheries Service at least 30 days before the activity is scheduled to begin.

(c) Applications for Letters of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of seals and sea lions.

§ 216.127 Renewal of Letters of Authorization.

A Letter of Authorization issued under § 216.126 for the activity identified in § 216.120(a) will be renewed annually upon:

(a) Timely receipt of the reports required under § 216.125(d), if determined by the Assistant Administrator to be acceptable; and

(b) A determination that the mitigation measures required under § 216.124 and the Letter of Authorization have been undertaken.

§ 216.128 Modifications of Letters of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.120 (b), a Letter of Authorization may be substantively modified without prior notice and opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

[FR Doc. 04–2414 Filed 2–5–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 25
Friday, February 6, 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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 04–06]

RIN 1557–AB98

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1181]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AC50

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[No. 2004–04]

RIN 1550–AB48

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, and OTS (collectively, "we" or "the agencies") have conducted a joint review of the CRA regulations, fulfilling the commitment we made when we adopted the current Community Reinvestment Act (CRA or "the Act") regulations in 1995. *See* 60 FR 22156, 22177 (May 4, 1995). As part of our review, we published an advance notice of proposed rulemaking (ANPR) on July 19, 2001, seeking public comment on a wide range of questions. 66 FR 37602 (July 19, 2001).

This proposal was developed following the agencies' review of the CRA regulations, which included an analysis of about four hundred comments received on the ANPR. The comments reflected a general consensus that fundamental elements of the regulations are sound, but indicated a profound split over the need for, and appropriate direction of, change. Community organizations advocated "updating" the regulations with expanded requirements to match developments in the industry and marketplace; financial institutions were concerned principally with reducing burden consistent with maintaining or improving the regulations' effectiveness.

The agencies believe the regulations are essentially sound, but are in need of some updating to keep pace with changes in the financial services industry. Therefore, we are proposing amendments to the regulations in two areas. First, to reduce unwarranted burden consistent with the agencies' ongoing efforts to identify and reduce regulatory burden where appropriate and feasible, we are proposing to amend the definition of "small institution" to mean an institution with total assets of less than $500 million, without regard to any holding company assets. This change would take into account substantial institutional asset growth and consolidation in the banking and thrift industries since the definition was adopted. It also reflects the fact that small institutions with a sizable holding company do not appear to find addressing their CRA responsibilities any less burdensome than a similarly-sized institution without a sizable holding company. As described below, this proposal would increase the number of institutions that are eligible for evaluation under the small institution performance standards, while only slightly reducing the portion of the nation's bank and thrift assets subject to evaluation under the large retail institution performance standards. It would better align the definition of small institution with agency expectations when revising the regulations in 1995 about the scope of coverage for small institutions.

Second, to better address abusive lending practices [1] in CRA evaluations, we are proposing to amend our regulations specifically to provide that evidence that an institution, or any of an institution's affiliates, the loans of which have been considered pursuant to § ____.22(c), has engaged in specified discriminatory, illegal, or abusive credit practices in connection with certain loans adversely affects the evaluation of the institution's CRA performance.

Finally, as described below, we expect to address certain other issues raised in connection with the ANPR through additional interpretations, guidance, and examiner training. We also propose several enhancements to the data disclosed in CRA public evaluations and CRA disclosure statements relating to providing information on loan originations and purchases, loans covered under the Home Ownership and Equity Protection Act (HOEPA) and other high-cost loans, and affiliate loans.

We encourage comments from the public and regulated financial institutions on all aspects of this joint notice of proposed rulemaking, in order to ensure a full discussion of the issues.

DATES: Comments must be received by April 6, 2004.

ADDRESSES: *OCC:* Please direct your comments to: Docket No. 04–06, Communications Division, Public Information Room, Mailstop 1–5, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. However, because paper mail in the Washington, DC, area and at the OCC is subject to delay, please consider submitting your comments by e-mail to *regs.comments@occ.treas.gov*, or by fax to (202) 874–4448. You can make an appointment to inspect and photocopy all comments by calling (202) 874–5043.

Board: Comments should refer to Docket No. R–1181 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*, by e-mail to *regs.comments@federalreserve.gov*, or

[1] The terms "abusive" and "predatory" lending practices are used interchangeably.

by fax to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Rules proposed by the Board and other Federal agencies may also be viewed and commented on at *http://www.regulations.gov*.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Mail: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Facsimile: Send facsimile transmissions to fax number (202) 898–3838.

E-mail: You may also electronically mail comments to *comments@fdic.gov*.

Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

OTS: Mail: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004–04.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2004–04.

Facsimiles: Send facsimile transmissions to fax number (202) 906–6518, Attention: No. 2004–04.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention: No. 2004–04 and include your name and telephone number.

Public Inspection: Comments and the related index will be posted on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the material you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date a request is received.

FOR FURTHER INFORMATION CONTACT: *OCC:* Michael Bylsma, Director, or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Karen Tucker, National Bank Examiner, Compliance Division, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Dan S. Sokolov, Senior Attorney, (202) 452–2412; Kathleen C. Ryan, Counsel, (202) 452–3667; Catherine M.J. Gates, Oversight Team Leader, (202) 452–3946; or William T. Coffey, Senior Review Examiner, (202) 452–3946, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Robert Mooney, Assistant Director, (202) 898–3911, Division of Compliance and Consumer Affairs; Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424 or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Celeste Anderson, Project Manager, Compliance Policy, (202) 906–7990; Theresa A. Stark, Program Manager, Compliance Policy, (202) 906–7054; or Richard Bennett, Counsel (Banking and Finance), Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Introduction

After considering the comments on the ANPR published on July 19, 2001 (66 FR 37602), the agencies are jointly proposing revisions to their regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). The proposed regulations would revise the definition of "small institution" and expand and clarify the provisions relating to the effect of evidence of discriminatory, other illegal, and abusive credit practices on the assignment of CRA ratings.

Background

In 1977, Congress enacted the CRA to encourage insured banks and thrifts to help meet the credit needs of their entire communities, including low- and moderate-income communities, consistent with safe and sound lending practices. In the CRA, Congress found that regulated financial institutions are required to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business, and that the convenience and needs of communities include the need for credit as well as deposit services. The CRA has come to play an important role in improving access to credit among under-served rural and urban communities.

In 1995, when we adopted major amendments to regulations implementing the Community Reinvestment Act, the agencies committed to reviewing the amended regulations in 2002 for their effectiveness in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. 60 FR 22156, 22177 (May 4, 1995). The review was initiated in July 2001 with the publication in the **Federal Register** of an advance notice of proposed rulemaking (66 FR 37602 (July 19, 2001)). We indicated that we would determine whether and, if so, how the regulations should be amended to better evaluate financial institutions' performance under CRA, consistent with the Act's authority, mandate, and intent. We solicited comment on the fundamental issue of whether any change to the regulations would be beneficial or warranted, and on eight discrete aspects of the regulations. About 400 comment letters were received, most from banks and thrifts of varying sizes and their trade associations ("financial institutions") and local and national nonprofit community advocacy and community development organizations ("community organizations").

The comments reflected a general consensus that fundamental elements of the regulations are sound, but demonstrated a disagreement over the need and reasons for change. Community organizations advocated "updating" the regulations with expanded requirements to match developments in the industry and marketplace; financial institutions were concerned principally with reducing burden consistent with maintaining or improving the regulations' effectiveness. In reviewing these comments, the agencies were particularly mindful of the need to balance the desire to make changes that "fine tune" and improve the regulations, with the need to avoid unnecessary and costly disruption to reasonable CRA policies and procedures

that the industry has had to put into place under the current rules.

We believe the regulations are essentially sound, but susceptible to improvement. Thus, we are proposing limited amendments. First, to reduce unwarranted burden, we propose to amend the definition of "small institution" to mean an institution with total assets of less than $500 million, regardless of the size of its holding company. This would take into account significant changes in the marketplace since 1995, including substantial asset growth and consolidation. As described below, this proposal will expand the number of institutions that are eligible for evaluation under the streamlined small institution test while only slightly reducing the portion of industry assets subject to the large retail institution test. Second, to better address abusive lending practices in CRA evaluations, we propose to amend the regulations specifically to provide that the agencies will take into account, in assessing an institution's overall rating, evidence that the institution, or any affiliate the loans of which have been included in the institution's performance evaluation, has engaged in illegal credit practices, including unfair or deceptive practices, or a pattern or practice of secured lending based predominantly on the liquidation or foreclosure value of the collateral, where the borrower cannot be expected to be able to make the payments required under the terms of the loan. Evidence of such practices adversely affects the agency's evaluation of the institution's CRA performance.

Review of Issues Raised in Connection With the ANPR

We commenced our review of the regulations in July 2001 with an ANPR soliciting comment on whether the regulations might more effectively place performance over process, promote consistency in evaluations, and avoid unnecessary burden. We solicited comment on the fundamental issue of whether any change to the regulations would be beneficial or warranted, and on eight discrete aspects of the regulations.

The comments we received suggest that financial institutions and community organizations agree that the 1995 amendments have succeeded, at least in part, in shifting the emphasis of CRA evaluations from process to performance. The comments also appear to suggest general agreement that:

- Lending is the most critical CRA-covered activity, although investments and services should be considered in some form and to some extent;
- Evaluation procedures and criteria should vary with an institution's size and type;
- An institution's performance should be evaluated in the area constituting its community;
- Quantitative performance measures are valuable, though they should be interpreted in light of qualitative considerations;
- Careful consideration of performance context is critical; and
- Activities that promote community development, however defined, should be evaluated as a distinct class.

The overall content of the comments reflects support for the general structure and features of the regulations, which we interpret as implying a general consensus that the regulations are essentially sound. To be sure, many comments recommended changes in the regulations. Community organization commenters uniformly contended that the regulations needed to be "updated" and "strengthened" to reflect intervening changes in the marketplace that affected financial institutions' relationships to their communities.

Specifically, community organizations sought to extend CRA performance measurement to include (1) evaluation of the appropriateness of credit terms and practices; (2) scrutiny of the performance of nondepository affiliates of depository institutions; and (3) assessment of institutions' performance everywhere they do business, including areas without deposit-taking facilities.

Financial institutions, however, opposed those recommendations, counseled generally against major change to the regulations, asked that reforms be accomplished largely through other means (for example, examiner training), and recommended that any change to the regulations take into account both process costs and benefits of change. One financial institution trade association expressed the opinion of most financial institution commenters that no major changes should be made: "There is general agreement among our members that we do not want to embark on another major CRA reform process. We do not believe this would be in the best interest of the communities or the financial institutions, as it would entail a major and protracted distraction from the business of serving community needs."

Financial institutions generally favored only those amendments designed to reduce compliance burden, especially for large retail institutions, while maintaining or improving the effectiveness of the regulations. Institutions near in asset size to the small/large institution threshold of $250 million requested that we raise the threshold markedly to make them eligible for examination under the small institution performance standards, and to relieve them of burdens imposed only on large institutions, such as data reporting and the investment test. Large institutions consistently urged the agencies to be more flexible in the evaluation of community development investments (called "qualified investments" by the regulations), including by making qualified investments optional to one degree or another and by treating more types of investments as "qualified investments." Community organizations, however, contended that reducing the burdens associated with the investment test and data collection and reporting would come at the expense of meeting community credit needs.

Large Retail Institutions: Lending, Investment, and Service Tests

An institution is deemed "large" in a given year if, at the end of either of the previous two years, it had assets of $250 million or more or if it is affiliated with a holding company with total bank or thrift assets of $1 billion or more. An institution that meets that definition, unless it has been designated "limited purpose" or "wholesale," or has opted to be evaluated under an approved strategic plan, is evaluated under a three-part large retail institution test. The large retail institution test is comprised of the lending, investment, and service tests. The most heavily weighted part of that test is the lending test, under which the agencies consider the number and amount of loans originated or purchased by the institution in its assessment area; the geographic distribution of its lending; characteristics, such as income level, of its borrowers; its community development lending; and its use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies in a safe and sound manner. To facilitate the evaluation, institutions must collect and report data on small business loans, small farm loans, and community development loans, and may, on an optional basis, collect data on consumer loans.

Under the investment test, the agencies consider the dollar amount of qualified investments, their innovativeness or complexity, their responsiveness to credit and community development needs, and the degree to which they are not routinely provided by private investors.

Under the service test, the agencies consider an institution's branch distribution among geographies of different income levels; its record of opening and closing branches, particularly in low- and moderate-income geographies; the availability and effectiveness of alternative systems for delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals; and the range of services provided in geographies of different income levels, as well as the extent to which those services are tailored to meet the needs of those geographies. The agencies also consider the extent to which the institution provides community development services and the innovativeness and responsiveness of those services.

The lending, investment, and service tests each include an evaluation of community development activities. A community development loan, community development service, or "qualified investment" has a primary purpose of benefiting low- or moderate-income people with affordable housing or community services; promoting economic development by financing small businesses or small farms; or revitalizing or stabilizing low- or moderate-income areas.

The ANPR asked whether the three-part test as a whole, each of its component tests (lending, investment, services), and its community development component are effective in assessing large institutions' responsiveness to community credit needs; whether the test is appropriately balanced between lending, investments, and services; and whether it is appropriately balanced between quantitative and qualitative measures.

Balance Among Lending, Investments, and Services

The three-part test places primary emphasis on lending performance, and secondary emphasis on investment and service performance. A majority of community organization commenters that addressed the question believed that lending should continue to receive more weight than investments or services. Of financial institutions that addressed the issue, more than half agreed. The remainder of industry commenters generally believed either that the components should be weighted equally or that their weights should vary with performance context. As discussed below, many financial institutions felt the investment test is weighted too heavily, while community organizations disagreed.

Based on our review and consideration of the matter, we are not proposing to alter the weights of the three tests, which we continue to believe are appropriate. We address specific concerns about each test below.

Balance Between Quantitative and Qualitative Measures

The component tests primarily employ quantitative measures (such as the number and dollar amount of loans and qualified investments) but also call for qualitative consideration of an institution's activities, including whether, and to what extent, they are responsive to community credit needs and demonstrate innovativeness, flexibility, or complexity. A large number of community organizations indicated that the weight given to quantitative factors is about right, though the same commenters often remarked that the character of activities (for example, the responsiveness of a loan to credit needs and the risk of an investment) should be given more weight. A few financial institutions agreed that quantitative factors receive appropriate weight, but more institutions indicated that too much weight is given to quantitative factors and not enough to contextual considerations such as an institution's business strategy and an activity's profitability. Some financial institutions and community organizations, contending that ratings are not sufficiently consistent and predictable, requested that they be tied to explicit quantitative performance benchmarks, while others disagreed with that suggestion.

Several community organizations and financial institutions expressed concern about some of the qualitative factors specified in the regulations, particularly the application of the terms "innovative" and "complex." These commenters argued that an evaluation should focus on an activity's contribution to meeting community credit needs, and that its innovativeness or flexibility should be seen as a means to that end rather than an end in itself. They stated that financial institutions should not be downgraded for failure to demonstrate their activities are innovative or complex.

Based on our review and consideration of the matter, and as explained below in the context of the investment test, we may seek to clarify through interagency guidance how qualitative considerations should be employed.

Loan Purchases and Loan Originations

The regulations weigh loan purchases and loan originations equally. The ANPR sought comment on whether loan purchases should be given less weight than loan originations. Community organizations generally favored giving more weight to loan originations than purchases, on the grounds that originations take more effort and that purchases can be generated solely to influence CRA ratings rather than for economic reasons. Financial institutions that addressed the issue generally stated that equal weighting of purchases and originations improves liquidity, making credit more widely available at lower prices. The agencies also sought comment on whether purchases of loans and purchases of asset-backed securities should be considered under the same test instead of separately under the lending test and the investment test, respectively. Some community organizations raised concerns about the treatment of some types of mortgage-backed securities as qualified investments.

To improve "transparency" in CRA evaluations, the agencies propose to distinguish loan purchases from loan originations in a public evaluation's display of loan data, where pertinent. We would not, however, weigh loan purchases less than loan originations. We seek comment on the proposed approach.

Investment Test

Although a small number of commenters objected to any consideration of investments under CRA, the comments reveal a general view that community development-oriented investments ("qualified investments," under the regulations) should be considered to the extent they help meet community credit needs. Commenters, nonetheless, disagreed significantly about whether the current investment test effectively and appropriately assesses investments and about the extent to which assessment of investments should be mandatory or optional.

Financial institutions commented that the investment test is not sufficiently tailored to market reality, community needs, or institutions' capacities. Several financial institutions said there are insufficient equity investment opportunities, especially for smaller institutions and those serving rural areas. Some noted that intense competition for a limited supply of community development equity investments has depressed yields, effectively turning many of the

investments into grants; some claimed that institutions had spent resources transforming would-be loans into equity investments merely to satisfy the investment test; and some expressed concern that institutions were forced to worry more about making a sufficient number and amount of investments than about the effectiveness of their investments for their communities.

To address these concerns, many financial institutions favored abolishing the stand-alone investment test and making investments optional to one degree or another. Only two financial institutions expressly supported retaining the separate investment test. Several financial institutions and most financial institution trade associations endorsed one or more of the following three alternatives: (1) Treat investments solely as "extra credit;" (2) make investments count towards the lending or service test; or (3) treat investments interchangeably with community development services and loans under a new community development test.

In contrast, the majority of community organization commenters urged the agencies to retain the investment test. Many of them claimed that the problem is more often a shortage of willing investors than an insufficient number of investment opportunities. Community organizations also contended that grants and equity investments are crucial to meeting the affordable housing and economic development needs of low- and moderate-income areas and individuals. They stated, for example, that investments support and expand the capacity of nonprofit community development organizations to meet credit needs. A few community organizations acknowledged a basis for some of the financial institutions' complaints concerning the investment test, but most of those community organizations argued that refining, rather than restructuring, the large retail institution test would address such complaints.

Commenters also split over the appropriateness of the definition of "community development," which is incorporated in the definition of "qualified investment." Financial institutions asked the agencies to remove from the definition of "community development" the requirement that community development activities target primarily low- or moderate-income individuals or areas, and expand the definition to include community-building activities that incidentally benefit low- or moderate-income individuals or areas. For instance, several financial institutions contended that any activity that helps "revitalize and stabilize" an area (such as after a natural disaster or a steady economic decline) should be considered community development, even if the activity is not located in, or targeted to, low- or moderate-income communities. Other examples of activities for which they sought consideration included municipal bonds and grants to cultural organizations and other charities. In contrast, community organizations that expressed a view favored retaining the current definition of "community development" or narrowing it. For example, many community organizations sought to limit the "economic development" component of the definition (which consists of financing small businesses or small farms) to financing minority-owned businesses or farms and businesses or farms in low- or moderate-income areas.

Apart from the larger debate about the proper role of an investment component in the three-part test and the proper definition of qualified investments, many commenters sought changes to the investment test. Several financial institutions and trade associations felt that examiners do not grant enough weight to investments on the books since the previous examination period. They contended that this practice creates pressure to make new investments more quickly than the market generated new investment opportunities, and undermined the supply of "patient capital." A few commenters proposed full consideration for investments outside assessment areas to promote more efficient allocation of community development capital. Several financial institutions, trade associations, and community organizations contended that insufficient consideration is given to an investment's impact on the community, while too much weight is placed on its innovativeness or complexity. Some suggested that the criterion of "innovative or complex" be eliminated or made subservient to the criterion of "responsiveness * * * to credit and community development needs." Some commenters complained of uncertainty about "how much is enough" and inconsistency among agencies and areas in evaluating investments. A few financial institutions and community organizations requested that the agencies adopt ratings benchmarks (for instance, ratios of qualified investments to Tier I capital or total assets). Other commenters opposed benchmarks as unnecessarily restrictive.

The comments reflect a general consensus that qualified investments should be considered in some fashion in CRA evaluations for their ability to meet community credit needs. The premise of the agencies' adoption of a separate investment test in 1995 was that, for consideration of investments to be meaningful, they must be treated as more than mere "extra credit" that assured an Outstanding rating for an institution otherwise rated Satisfactory. Therefore, the separate investment test embodies an expectation that an institution make such investments, or their equivalent, where feasible and appropriate.

The comments and other feedback suggest that the levels and kinds of expectations under the current investment test sometimes are unrealistic or unproductive, or at least appear that way. It is inevitable that the supply of, demand for, and quality of investment opportunities will vary by region and city; the performance evaluation is supposed to take those variations into account. We are concerned that some institutions nevertheless believe they are expected to make equity investments that are economically unsound. We considered whether this impression was an unavoidable result of the current structure of the investment test or an avoidable result of the implementation of that structure.

Some commenters suggested that the evaluation of community development activities under three separate component tests (lending, investment, service) risks causing institutions to concern themselves more with meeting perceived thresholds in each component test than with maximizing community impact. This possibility led us to study alternatives to the existing three-component structure of the large retail institution test.

One alternative we considered was a two-part large retail institution test consisting of (1) a community development test, which would integrate community development loans, investments, and services, and (2) a retail test, which would include retail loans and services. Under the community development test we considered, different community development activities (loans, investments, and services) would, at least in theory, be fungible and interchangeable so that an institution would have flexibility to allocate its community development resources among different types of community development activities; a rating on this test would be based, in part, on some measure of the total amount of the institution's community development activities.

A different two-part large retail institution test we considered would eliminate the separate investment test and consider investments within the lending test, where they would be treated similarly to community development loans.

Changing the structure of the large retail institution test, as entailed in those alternatives, would not necessarily yield a substantial net benefit. Adopting a new test structure might simply substitute one set of implementation challenges for another. The existing regulations have been criticized by financial institutions and community organizations alike for not being clear about "how much is enough" or how much weight an activity carries relative to another. A restructured large retail institution test would be no less vulnerable to those criticisms. For example, it would raise the question of how to compare investments, loans, and services.

Moreover, the freestanding investment test has become an integral part of CRA and the community development finance markets. We believe that evaluation of investment performance under that test has contributed substantially to the growth of the market for community development-oriented investments. That market has helped institutions to spread risk and maximize the impact of their community development capital. Institutional risk is spread and lowered by instruments such as securities backed by mortgages to low- and moderate-income borrowers. The impact of community development capital is maximized by channeling it through organizations with the knowledge and skills that optimize its use. Thus, we believe the investment test has encouraged community development.

Replacing the investment test might cloud market expectations and understandings, injecting a degree of uncertainty that could be costly, not just for financial institutions and community organizations, but also for local communities. Many commenters pointed out that it took several years for them to become comfortable with the current CRA regulations, and it could take several years again for affected parties to adjust to a new regulatory structure. During that adjustment period, institutions would likely incur substantial implementation costs, for instance, to retrain personnel and, possibly, to change data collection procedures. In weighing those factors, we are mindful of the repeated cautions from financial institution commenters about the costs of major changes.

Thus, we propose to address concerns about the burdens of the investment test by means other than replacing or restructuring it. As explained later in this notice, we are proposing to raise the asset-size threshold at which an institution becomes subject to the large retail institution test and, therefore, the investment test. This would respond to comments that smaller institutions at times have had difficulty competing for investments. As noted earlier, the change would not materially reduce the portion of the nation's bank and thrift assets covered by the large retail institution test, including the investment test.

The criticisms the commenters made of the investment test appear to have more to do with the implementation of the regulations than the regulations themselves. We anticipate developing additional interagency guidance to clarify that the investment test is not intended to be a source of pressure on institutions to make imprudent equity investments. Such guidance also may discuss (1) when community development activities outside of assessment areas can be weighted as heavily as activities inside of assessment areas; (2) that the criteria of "innovative" and "complex" are not ends in themselves, but means to the end of encouraging an institution to respond to community credit needs; (3) the weight to be given to investments from past examination periods, to commitments for future investments, and to grants; and (4) how an institution may demonstrate that an activity's "primary purpose" is to serve low- and moderate-income people. We seek comment on the possible content of such guidance.

Service Test

Service Delivery Methods

Many commenters addressed the evaluation of service delivery methods under the service test. Many community organizations commented that the test should emphasize the placement of bricks-and-mortar branches in low- and moderate-income areas. A few financial institutions agreed, but most institutions that addressed the issue argued that putting less weight on branches and more on alternative service delivery methods was necessary to adequately measure the provision of services to low- and moderate-income individuals. Some community organizations stated that the weight given to alternative methods should depend on data showing their use by low- and moderate-income individuals, and a couple of financial institutions agreed that such data would be useful.

The comments highlight the fact that a service delivery method's appropriate weight will vary from examination to examination based on performance context. Critical factors such as an institution's business strategy naturally vary over time and from institution to institution. Examiners can address such variations through their analysis of performance context. To the extent guidance or examiner training needs to be improved to ensure that such factors are appropriately addressed through the performance context, we will do so.

Banking Services and Nontraditional Services for Low- and Moderate-Income Individuals

Community organizations believed the service test should show special concern for the services available to and used by low- and moderate-income individuals. Many community organizations said that financial institutions should be required to report data on the distribution of their deposits by income and other criteria. Many organizations also said that the service test should give weight to providing low-cost services and accounts to low- and moderate-income individuals and areas; a few said that credit for such services and accounts should depend on data demonstrating that they are used. Many organizations recommended that "payday lending" or "check cashing" activities should hurt, or at least not help, an institution's service test rating, though a few organizations qualified that check cashing should not prejudice a rating where the fee for the service is reasonable. Few financial institutions addressed those specific issues, but many voiced general concerns about increasing data collection burdens or assessing the appropriateness of a product or service.

The service test takes into account the degree to which services are tailored to meet the needs of low- and moderate-income geographies, whether as "mainstream" retail banking services or community development services. Indeed, an Outstanding rating on the service test is not available unless an institution's services "are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or * * * individuals" and the institution is "a leader in providing community development services." We believe that those provisions properly encourage institutions to pay close attention to services for low- and moderate-income people and areas, and evaluations will

continue to reflect the effectiveness of these services as appropriate.

Community Development Services

We also received comment on the definition and weight of community development services. Some financial institutions asked that the service test rating depend more on community development services and less on other elements of the test. Community development services are limited by the regulations to services that are financial in nature. Some commenters contended that community development services should include non-financial services, such as employees' participation in volunteer home-renovation programs. Many community organizations, however, opposed broadening the definition. We believe that the regulations' linking of community development services to services that are financial in nature is consistent with the purposes of CRA. Therefore, we are not proposing to change the definition of community development services or the weight they receive in the service test.

Assessment Areas

An institution is evaluated primarily on its performance within one or more assessment areas. An institution's assessment area(s) is/are the Metropolitan Statistical Area(s) (MSA(s)) or contiguous political subdivision(s) (such as counties, cities, or towns) that include(s) the census tracts in which the institution has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding census tracts in which it has originated or purchased a substantial portion of its loans. An institution may adjust the boundaries of an assessment area to include only those parts of a political subdivision that it can reasonably serve. But its assessment area(s) may not reflect illegal discrimination, arbitrarily exclude low- or moderate-income geographies, extend substantially beyond designated boundaries, or consist of partial census tracts. Special rules apply to wholesale and limited-purpose institutions and to institutions that serve military personnel.

The ANPR asked whether it was reasonable to continue to anchor the regulations' definition of "assessment area" in deposit-taking facilities. Community organizations contended that substantial portions of lending by institutions covered by CRA are nonetheless not subject to CRA evaluation because of institutions' increasing use of nonbranch channels (including agencies, the Internet, and telephone) to provide credit outside of their branch-based assessment areas. They further commented that an institution's assessment area must include all commercial channels, not just branches and deposit-taking ATMs. Thus, many commenters proposed that an institution's assessment areas include all areas in which the institution has more than a specified share (many suggested 0.5 percent) of the lending market or deposit market.

The majority of financial institutions and trade associations that expressed an opinion about assessment areas endorsed continuing to keep the assessment areas linked to deposit-taking facilities. Those commenters opposed mandatory evaluation outside of the communities served by deposit-taking facilities. Some questioned whether such an expansion would be consistent with the Act. Others argued that an institution needs a substantial local presence to understand a community's needs and to develop and exploit opportunities to serve those needs, but requested credit for activities they might willingly conduct outside their assessment areas.

Few financial institutions suggested that an expansion of the assessment area definition was necessary to accommodate their choice of business strategy. To address the challenge of nonbranch institutions, several commenters recommended subjecting them, like wholesale and limited-purpose institutions, to a community development test while continuing to draw assessment areas around their main offices. Several financial institutions suggested narrowing the current definition by removing the requirement that assessment areas be delineated around deposit-taking ATMs because banks do not *originate* deposit relationships through ATMs. Others argued that the requirement should be removed in special circumstances—for example, when ATMs are on the property of an organization closed to nonemployees.

No definition of "assessment area" will foresee every conceivable bank or thrift business model. We considered whether the current definition is suitable to most financial institutions. To a large extent, nontraditional channels in the market today seem to be used as complements to, rather than substitutes for, branches and deposit-taking ATMs. Even with widespread access to the Internet by bank and thrift customers, few banks or thrifts are Internet-only, without branches. In fact, it has been reported that some institutions created with an Internet-only strategy later added branches or deposit-taking ATMs. The number of branchless banks and thrifts that conduct business through other channels, such as independent agents, though growing, is also small. To be sure, traditional retail institutions increasingly rely on nontraditional channels to take deposits and make loans—including nonbranch or agency offices, mail, telephone, on-line computer networks, and agents or employees of affiliated nonbank companies. Many of those institutions still originate a substantial portion of their CRA-relevant loans (including the vast majority of their small business loans) in their branch-based assessment areas, whether through branches or other means. In short, the definition of "assessment area" appears adequate to delineate the relevant communities of the overwhelming majority of financial institutions.

Moreover, for institutions that do a substantial portion of their lending outside branch areas, the agencies have interpreted the regulations as giving examiners flexibility to address, on a case-by-case basis, institutions that conduct a substantial part of their business through nontraditional channels. For instance, an institution's loans to low- and moderate-income persons and small business and small farm loans outside of its assessment area(s) will be considered if it has adequately addressed the needs of borrowers within its assessment area(s), although such loans will not compensate for poor lending performance inside the assessment area(s). An institution with poor retail lending performance inside the assessment area may, however, compensate with exceptionally strong performance in community development lending in its assessment area or a broader statewide or regional area that includes the assessment area. The regulations also permit an institution to propose a strategic plan tailored to its unique circumstances.

Although limitations in the current definition of "assessment area" might grow in significance as the market evolves, we believe any limitations are not now so significant or pervasive that the current definition is fundamentally ineffective. Moreover, none of the alternatives we studied seemed to improve the existing definition sufficiently to justify the costs of regulatory change. Many of the alternative definitional changes to assessment area we reviewed were not feasible to implement, and some of them raised fundamental questions about the scope and purpose of CRA and entail political judgments that may be better

left to elected officials in the first instance.

For example, we considered community organizations' proposal to expand an assessment area to include all areas where an institution does a significant level of business. The implementation questions raised by the proposal are many and complex, including the following: Is the relevant type of business deposit-taking, lending, investing, or two or all three of those types? What is the relevant measure of the amount of business? Is it the share of the market? If so, how is the market defined and where are data obtained? Is it the share of the institution's business? Would an institution, its examiners, and interested community organizations know sufficiently early where the institution's business would reach significant levels to adjust their CRA planning and resource commitments accordingly? How would institutions, examiners, and community organizations cope with the possibility that an institution's assessment areas could change substantially from one examination period to the next? Could institutions be expected to have enough knowledge, expertise, and ability in areas where they do not have branches to make informed decisions about meeting community credit needs and effectively execute them?

The agencies also considered comments advocating elimination of the requirement to delineate assessment areas around deposit-taking ATMs. ATMs can generate substantial deposits and provide a wide range of services, often substituting for branches with respect to many functions.

For these reasons, the agencies will continue to address nontraditional institutions flexibly, using such measures as strategic plans, existing agency interpretations mentioned above and new guidance as appropriate.

Wholesale and Limited Purpose Institutions

An institution is a limited-purpose institution if it offers only a narrow product line, such as credit card or motor vehicle loans, to a regional or broader market. An institution is a wholesale institution if it is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. Both limited purpose and wholesale institutions are evaluated under a community development test. Under this test, the agencies consider the number and amount of community development loans, qualified investments, or community development services; the extent to which such activities are innovative, complex, and, in the case of qualified investments, not routinely provided by private investors; and the institution's responsiveness to credit and community development needs.

Most financial institutions that addressed the appropriateness of the definitions of "wholesale" or "limited purpose" institution suggested that the definition of "limited purpose institution" should be expanded. Some said it should not be restricted to institutions with certain product lines, such as credit cards and auto loans, but should include any institution, regardless of its product line, that serves a narrow customer base. A couple of financial institution commenters also sought expansion of the category of wholesale institutions. Community organizations, in contrast, contended that these definitions are not sufficiently restrictive and that the agencies have incorrectly designated some large retail institutions as wholesale or limited purpose institutions.

Commenters also disagreed about extending the community development test now reserved for limited purpose and wholesale institutions to additional categories of institutions. Several financial institutions suggested that non-branch institutions and other nontraditional institutions be treated as limited purpose institutions eligible for evaluation under a community development test. Many, but not all, community organizations opposed extending the test to other types of institutions.

Based on our review and consideration of the matter, we are not proposing any changes to the regulations concerning the definitions of wholesale and limited purpose institutions or expansion of the community development test to additional types of institutions.

Strategic Plan

Every institution has the option to develop a strategic plan with measurable goals for meeting the credit needs of its assessment area(s). An institution must informally solicit suggestions from the public while developing its plan, solicit formal public comments on its plan, and submit the plan to its supervisory agency for approval with any written comments from the public and an explanation of how, if at all, those comments are reflected in the plan.

Relatively few comments addressed the strategic plan provision. Most of the financial institutions that addressed the issue said the option should be retained though modified; a few community organizations agreed, while a few others said the strategic plan option should be eliminated. A principal concern of financial institutions was a perceived lack of flexibility, for instance, to modify their goals as the economy or their business changes. Of equal concern to them were the requirements of the plan approval process to solicit public comment and disclose information they regard as proprietary.

Based on our review and consideration of the matter, we are not proposing any changes to the regulations concerning strategic plans.

Performance Context

Regardless of type, an institution is always evaluated in light of its performance context, including information about the institution, its community, its competitors, and its peers. Relevant information includes assessment area demographics; product offerings and business strategy; lending, investment, and service opportunities in the assessment area; institutional capacity and constraints; and information about the institution's past performance and that of similarly situated lenders.

Many commenters from various viewpoints emphasized the importance of considering performance context in CRA evaluations, but were critical of how the agencies have developed and used performance context. Some commented that examiners do not adequately solicit and incorporate input from community organizations and financial institutions in the development of performance context, participants do not have sufficient guidance about what information to present to examiners to aid in the development of the performance context, and the guidelines examiners use to determine performance context (such as selecting an institution's peers) are not transparent. Some commented that performance evaluations do not adequately tie performance context to evaluations and that examiners do not give sufficiently nuanced consideration to an institution's business strategy or local needs.

Based on our review and consideration of the matter, we believe that the current regulations provide sufficient flexibility to address the concerns that have been raised, and that performance context issues can be addressed adequately through examiner guidance and training.

Data Collection and Reporting

Large institutions are required to collect and report data on small business, small farm and community development loans, and to supplement

Home Mortgage Disclosure Act (HMDA) data with property locations for loans made outside MSAs. In the ANPR we asked whether these data reporting requirements are effective and efficient in assessing CRA performance while avoiding undue burden.

Most community organizations believed that the data collection and reporting requirements could be more effective in assessing an institution's CRA performance. Many of them stated that more detailed data should be collected on small business and small farm lending, including race, sex, loan cost, purpose of loan, action taken, and reasons for denial. Many organizations also asked that the agencies disaggregate small business and small farm loan data to the census tract level, and that we identify the census tract and purpose for each community development loan.

Many financial institutions commented that the regulations' data collection and reporting provisions are a significant burden. Some also said that the data are not useful and fails to accurately represent a financial institution's efforts to meet credit needs; a few questioned the agencies' authority to require data collection and reporting. They suggested that data collection and reporting be eliminated or made optional. However, other financial institutions commented that no changes to the regulations' data provisions are necessary.

We believe existing reporting requirements correctly balance burden and benefit for the institutions that would remain subject to those requirements were the definition of "small institution" to be amended as proposed and discussed in detail below.

The agencies intend to revise the regulations, however, to enhance the data disclosed to the public. The regulations do not now provide for disclosure of business and farm loans by geography (census tract) in the CRA Disclosure Statement the agencies prepare for every institution's public file. Rather, the regulations provide for aggregation of that data across tracts within tract-income categories. As we intend to revise the regulations, they will provide that the Disclosure Statement would contain the number and amount of the institution's small business and small farm loans by census tract. During the 1994–95 CRA rulemaking, we received comments expressing concern that disclosing loan data at the census tract level might reveal private information about small-business and small-farm borrowers. We believe that the risk of revealing such information is likely very small, and that the benefit to the public of having data at the census tract level is substantial.

We seek comment on whether the revision properly balances the benefits of public disclosure against any risk of unwarranted disclosure of otherwise private information. We also invite any specific suggestions for display of the data.

Public File Requirements

Most community organizations commenting on the public file requirements believed that the current regulations should be maintained. A few asked that public files be made available on the Internet.

Most financial institutions addressing the issue commented that the current public file requirement is burdensome and should be revised or eliminated, though some said no change in the regulations should be made. Commenters seeking change stated that requests for public files are rarely presented to branches but, rather, are usually presented to CRA officers; they suggested that a hard copy of the public files be maintained at the main office only, and be available elsewhere upon request. Others suggested streamlining the public file by removing all but the most essential information (such as an institution's assessment areas, primary delivery channels, products, services, and last performance evaluation).

Based on our review and consideration of the matter, we are not proposing any changes to the regulations concerning public file requirements.

Small Institutions

In connection with the interagency rulemaking that culminated in the revised CRA regulations adopted in 1995, the agencies received a large number of comments from small institutions seeking regulatory relief. These commenters stated that they incurred significant regulatory burdens and costs from having to document CRA performance, and that these burdens and costs impeded their ability to improve their CRA performance. The regulations reflect the agencies' objectives that the CRA regulations provide for performance-based assessment standards that minimize compliance burden while stimulating improved performance.

An institution is considered small under the regulations if, at the end of either of the two previous years, it had less than $250 million in assets and was independent or affiliated with a holding company with total bank and thrift assets of less than $1 billion. Under the regulations, small institutions' CRA performance is evaluated under a streamlined test that focuses primarily on lending. The test considers the institution's loan-to-deposit ratio; the percentage of loans in its assessment areas; its record of lending to borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of its loans; and its record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment areas.

Most small institutions commented that they were satisfied that the streamlined test adopted in 1995 substantially reduced their CRA compliance burden, though many stated that it was too difficult for a small institution to achieve an Outstanding rating. Some of those commenters sought a way to receive consideration for their service and investment activities without undergoing the evaluation of such activities imposed on large retail institutions. In contrast, community organizations generally believed the performance standards for small institutions did not effectively measure the institutions' contributions to meeting community credit needs.

Many other commenters stated that the small institution performance standards should be available to a larger number of institutions. Generally, these commenters raised many of the same concerns as those that had been raised in connection with the 1995 rulemaking, primarily that the regulatory burden of the CRA rules impedes smaller banks from improving their CRA performance. Many financial institutions suggested that, to reduce undue burden, the agencies raise significantly the small institution asset threshold and either raise significantly or eliminate the holding company limitation. These commenters supported these suggestions by citing burdens on retail institutions that are subject to the "large institution" CRA tests because they slightly exceed the asset threshold for small institutions. Financial institutions singled out two aspects of the large retail institution test as particularly burdensome for institutions just above the threshold. First, they asserted that those institutions have difficulty achieving a Low Satisfactory or better rating on the investment test, and, as a result, have difficulty achieving an Outstanding rating overall. Those institutions are said to encounter serious challenges competing with larger institutions for suitable investments and, as a result, to sometimes invest in activities inconsistent with their business

strategy, their own best financial interests, or community needs.

Second, financial institutions asserted that data collection and reporting are proportionally more burdensome for institutions just above the threshold than for institutions far above the threshold. Some commenters asserted that institutions that exceed the $250 million threshold face a threefold increase in compliance costs for CRA due to the need for new personnel, data collection and reporting costs, and the particular burdens imposed by the investment test applicable to large retail institutions. They asserted that raising the asset threshold for small institutions would be consistent with the agencies' belief in 1995 that the CRA rules should not impose such regulatory burden. They also questioned the benefit of reporting small business and small farm loan data, especially by institutions that serve limited geographic areas. Some commenters suggested that banks be relieved of reporting such data and that examiners instead sample files or review only the data gathered and maintained by banks pursuant to other laws or procedures (for example, the Call Report or Thrift Financial Report).

Financial institutions also commented that changes in the industry had rendered the threshold out-of-date. They pointed to the consolidation in the banking and thrift industries through mergers and acquisitions, and the growing gap between "mega-institutions" and those under $1 billion in assets. They noted that the number of institutions considered small, and the percentage of overall bank and thrift assets held by those institutions, has decreased significantly since the 1995 revisions.

Financial institutions suggested raising the small institution asset-size threshold from $250 million to amounts ranging from $500 million to as much as $2 billion. They also generally suggested eliminating or raising the $1 billion holding company threshold. They contended that affiliation with a large holding company does not enable an otherwise small institution to perform any better under the large retail institution test than a small institution without such an affiliation.

Community organizations that commented on the issue opposed changing the definition of "small institution." These commenters were primarily concerned that reducing the number of institutions subject to the large retail institution test—and, therefore, the investment test—would reduce the level of investment in low- and moderate-income urban and rural communities. Community organizations also expressed concerns about the reduction in publicly available small business and small farm loan data that would follow a reduction in the number of large retail institutions.

The regulations distinguish between small and large institutions for several important reasons. Institutions' capacities to undertake certain activities, and the burdens of those activities, vary by asset size, sometimes disproportionately. Examples of such activities include identifying, underwriting, and funding qualified equity investments, and collecting and reporting loan data. The case for imposing certain burdens is sometimes more compelling with larger institutions than with smaller ones. For instance, the number and volume of loans and services generally tend to increase with asset size, as do the number of people and areas served, although the amount and quality of an institution's service to its community certainly is not always directly related to its size. Furthermore, evaluation methods appropriately differ depending on institution size. For example, the volume of originations of loans other than home mortgage loans in the smallest institutions will generally be small enough that an examiner can view a substantial sampling of loans without advance collection and reporting of data by the institution. Commenters from various viewpoints tended to agree that the regulations should draw a line between small and large institutions for at least some purposes. They differed, however, on where the line should be drawn.

The agencies considered the institution asset-size and holding company asset-size thresholds in light of these comments. When we adopted the definition in 1995, we indicated that we included a holding company limitation to reflect the ability of a holding company of a certain size (over $1 billion) to support a bank or thrift subsidiary's compliance activities. Anecdotal evidence, however, suggests that a relatively small institution with a sizable holding company often finds addressing its CRA responsibilities no less burdensome than does a similarly-sized institution without a sizable holding company. Thus, we are proposing to eliminate the holding company limitation on small institution eligibility.

Several factors led us to propose raising the asset threshold. First, with the increase in consolidation at the large end of the asset size spectrum, the gap in assets between the smallest and largest institutions has grown substantially since the line was drawn at $250 million in 1995. The compliance burden on institutions just above any threshold, measured as the cost of compliance relative to asset size, generally will be proportionally higher than the burden on institutions far above the same threshold, because some compliance costs are fixed. But, the growing asset gap between the smallest above-the-threshold institutions and the largest institutions has meant that the disproportion in compliance burden has grown on average. Second, the number of institutions defined as small has declined by over 2,000 since the threshold was set in 1995, and their percentage of industry assets has declined substantially. Third, some asset growth since 1995 has been due to inflation, not real growth. Fourth, the agencies are committed to reducing burden where feasible and appropriate.

For these reasons, we propose to raise the small institution asset threshold to $500 million, without reference to holding company assets. Raising the asset threshold to $500 million and eliminating the holding company limitation would approximately halve the number of institutions subject to the large retail institution test (to roughly 11% of all insured depository institutions), but the percentage of industry assets subject to the large retail institution test would decline only slightly, from a little more than 90% to a little less than 90%. That decline, though slight, would more closely align the current distribution of assets between small and large banks with the distribution that was anticipated when the agencies adopted the definition of "small institution."

The proposed changes would not diminish in any way the obligation of all insured depository institutions subject to CRA to help meet the credit needs of their communities. Instead, the changes are meant only to address the regulatory burden associated with evaluating institutions under CRA. We seek comment on whether the proposal improves the effectiveness of CRA evaluations, while reducing unwarranted burden.

Credit Terms and Practices

The regulations provide that "evidence of discriminatory or other illegal credit practices adversely affects" an agency's evaluation of an institution's CRA performance and may affect the rating, depending upon consideration of factors specified in the regulations. Interagency guidance explains that this provision applies when there is evidence of certain violations of laws including certain violations of the Equal Credit Opportunity Act (ECOA), Fair Housing

Act, Home Ownership and Equity Protection Act (HOEPA), Real Estate Settlement Procedures Act (RESPA), Truth in Lending Act (TILA), and Federal Trade Commission Act (FTC Act).[2] The guidance further explains that violations of other provisions of consumer protection laws generally will not adversely affect an institution's CRA rating, although the violations may be noted in a CRA performance evaluation.

The ANPR noted that some parties have maintained that the CRA regulations should take more account of whether loans contain abusive terms or reflect abusive practices, prompting comments supporting and opposing that view.

Community organizations uniformly urged expanding CRA's role in detecting and penalizing credit practices deemed predatory or abusive. Commenters suggested that the agencies give "negative" credit for loans evidencing unlawful or otherwise abusive practices, exclude such loans from evaluation, or automatically rate an institution making such loans lower than Satisfactory.

Commenters recommended that the regulations themselves specify the practices that will adversely affect a CRA evaluation, using the list in the interagency guidance, to include, but not be limited to, evidence of particular violations of the Equal Credit Opportunity Act, Fair Housing Act, Home Ownership and Equity Protection Act, Real Estate Settlement Procedures Act, Truth in Lending Act, and Federal Trade Commission Act.

Commenters also recommended the regulations clarify that a number of particular loan terms or characteristics, whether or not specifically prohibited by law, that have been associated with predatory lending practices should adversely affect an institution's CRA evaluation. These include high fees, prepayment penalties, single-premium credit insurance, mandatory arbitration clauses, frequent refinancing ("flipping"), lending without regard to repayment ability, equity "stripping," targeting low- or moderate-income neighborhoods for subprime loans, and failing to refer qualifying borrowers to prime financial products. Commenters also suggested that certain types of loans, such as payday loans, be categorically treated as inappropriate and lead to a rating reduction.

Financial institutions generally opposed determining under the CRA whether activities beyond those identified in the regulations are predatory or abusive. They noted that the regulations already expressly provide that violations of certain laws can adversely affect a rating. They contended that abusive credit terms and practices generally should not be regulated through CRA because Congress enacted other laws for that purpose, and expressed doubt that a workable regulatory definition of "predatory lending" could be developed. They also contended that the increased compliance costs caused by using CRA examinations to detect and deter abusive practices would not be justified because regulated financial institutions are not responsible for the bulk of abuses. They urged instead that the agencies continue to rely on fair lending and compliance examinations to detect and deter abuses.

As concern about lending practices has often focused on nondepository affiliates, the agencies also solicited and received comment on the role of affiliate loans in an institution's CRA evaluation. Nondepository institutions are not covered by the Act, but the regulations permit an institution to elect, at its option, to have loans of a nondepository affiliate considered as part of the institution's own record of performance. An institution must elect consideration of affiliate loans by assessment area and lending category. For example, if an institution elects for examiners to consider residential mortgage loans of a particular affiliate, examiners will evaluate all residential mortgage loans made in the same assessment area by any of its affiliates. There can be an "upside" to including an affiliate's activities in an institution's CRA lending evaluation because affiliate loans are considered favorably in an institution's lending evaluation, particularly if they increase the number and amount of lending in low- and moderate-income areas.

Many community organizations contended that the problem of predatory lending lies as much or more in nondepository affiliates as in institutions subject to CRA. They generally urged mandating the inclusion of affiliate loans in an institution's CRA evaluation, instead of letting the institution decide whether to include them. Finally, a few commenters recommended directly subjecting nonbank affiliates to CRA evaluations and ratings. Financial institutions opposed those suggestions.

The agencies believe that predatory and abusive lending practices are inconsistent with important national objectives, including the goals of fair access to credit, community development, and stable home ownership by the broadest spectrum of Americans, and are inconsistent with the purposes of the CRA. We have acted to attack abusive practices through rulemakings under various statutes, supervisory policies, financial literacy education, and community development support.

The CRA regulations can play a role in promoting responsible lending practices and discouraging abusive practices, where feasible. The regulations give the agencies considerable discretion to determine whether lending activities help to meet the credit needs of the community consistent with safe and sound practices. The regulations reward with special consideration efforts to insulate borrowers from abusive practices.[3] And, as noted above, evidence of certain illegal credit practices adversely affects the agency's evaluation of an institution's CRA performance.

The agencies believe that it is appropriate to enhance how the CRA regulations address credit practices that may be discriminatory, illegal, or otherwise predatory and abusive, and that are inconsistent with helping to meet community credit needs in a safe and sound manner. Therefore, in response to commenters' recommendations that the agencies' CRA regulations address predatory lending, whether by regulated financial institutions or an affiliate, the agencies are proposing to revise and clarify the regulations in several respects.

First, the agencies plan to specify in the regulations examples of certain violations of law that will adversely affect an agency's evaluation of an institution's CRA performance. The regulations would specify, in an illustrative list, that evidence of the following practices adversely affects an agency's evaluation of an institution's CRA performance: discrimination against applicants on a prohibited basis in violation of, for example, the Equal Credit Opportunity or Fair Housing Acts; evidence of illegal referral practices in violation of section 8 of the Real Estate Settlement Procedures Act; evidence of violations of the Truth in

[2] See "Interagency Questions and Answers Regarding Community Reinvestment," 66 FR 36620, 36640 (July 12, 2001).

[3] For example, the agencies look favorably on loan programs that feature financial education to help borrowers avoid unsuitable loans; promote subprime borrowers to prime terms when appropriate; report to consumer reporting agencies; and provide small unsecured consumer loans in a safe and sound manner, based on borrowers' ability to repay, on reasonable terms. Credit for "community development" activities also is available under the service and investment tests for providing or supporting financial education or affordable loans to low- and moderate-income individuals, the population most vulnerable to inappropriate practices.

Lending Act concerning a consumer's right to rescind a credit transaction secured by a principal residence; evidence of violations of the Home Ownership and Equity Protection Act; and evidence of unfair or deceptive credit practices in violation of section 5 of the Federal Trade Commission Act. These laws are listed to give an indication of the types of illegal and discriminatory credit practices that the agency may consider. Evidence of violations of other applicable consumer protection laws affecting credit practices, including State laws if applicable, may also adversely affect the institution's CRA evaluation. While no substantive change will result from listing these examples, specifying in the regulation examples of violations that give rise to adverse CRA consequences should improve the usefulness of the regulations by providing critical information in primary compliance source material.

The agencies also propose to clarify that an institution's evaluation will be adversely affected by practices described above in connection with any type of lending activity described in ____.22(a) (home mortgage, small business, small farm, consumer, and community development loans). This would also clarify that the agencies may consider such practices in connection with consumer loans, even if the institution did not elect to have such loans included in its evaluation.

Second, the agencies propose to explicitly address equity stripping by revising the regulations to provide that evidence of a pattern or practice of extending home mortgage or consumer loans based predominantly on the foreclosure or liquidation value of the collateral by the institution, where the borrower cannot be expected to be able to make the payments required under the terms of the loan,[4] also adversely affects an institution's overall rating. An institution may determine that a borrower can be expected to be able to make the payments required under the terms of the loan based, for example, on information about the borrower's credit history, current or expected income, other resources, and debts; preexisting customer relationships (such as accommodation lending); or other information ordinarily considered by the institution (or affiliate, as applicable) and as documented and verified, stated, or otherwise ordinarily determined by the institution (or affiliate, as applicable).

This element of the agencies' proposal addresses one of the central characteristics of predatory lending, and describes a practice clearly not consistent with helping to meet the credit needs of the community. For example, home-secured loans made without regard to borrowers' ability to repay can lead to unwarranted foreclosures, which, in turn, undermine the entire community. To be sure, equity stripping is not the only potential lending abuse in home mortgage and consumer loans, but it is more readily susceptible to clear definition in a regulation than many other abuses. The agencies believe that other abuses not expressly prohibited by HOEPA, TILA, RESPA, or ECOA, may be better addressed on a case-by-case basis under the unfair-or-deceptive standard of the FTC Act, rather than by regulatory definitions. The FTC Act is particularly well suited to addressing evidence of predatory lending practices that are not otherwise prohibited by Federal law. For example, many practices that have been criticized as predatory and abusive, such as loan flipping, the refinancing of special subsidized mortgage loans, other forms of equity stripping, and fee packing, can entail unfair or deceptive practices that violate the FTC Act.[5]

As noted above, this aspect of the proposal is limited to home mortgage loans and consumer loans. It does not cover loans to businesses. Further, the proposal is not intended to cover loans such as reverse mortgages that, by their terms, will be paid from liquidation of the collateral.

In addition, under the proposed standard, an institution would determine that a borrower may be expected to be able to make the payments required under the terms of the loan by considering information it ordinarily considers in connection with the type of loan. Depending upon the institution's normal procedures in the circumstances and consistent with safe and sound underwriting, such information may or may not be documented and verified. For example, many institutions ordinarily do not verify or even consider income of people with high net worth or exemplary records of paying credit obligations. Note, however, that HOEPA requires lenders to document the borrower's ability to repay a loan subject to HOEPA, and that HOEPA violations adversely affect an institution's CRA evaluation.

The agencies seek comment on whether the inclusion in the regulations of a provision to address the pattern or practice of making home mortgage and consumer loans based predominantly on the foreclosure or liquidation value of the collateral by the institution, where the borrower cannot be expected to be able to make the payments required under the terms of the loan, is sufficient or whether a different formulation of that provision would better discourage abusive lending practices without risking curtailment of consumers' access to credit. We also seek comment on whether it is feasible to define any other specific abuses by regulation in a way that both shields consumers from the costs of the abuse and avoids inadvertently curtailing the availability of credit to consumers.

Third, the agencies propose to clarify that an institution's evaluation will be adversely affected by discriminatory, other illegal, or abusive credit practices described in the regulations regardless of whether the practices involve loans in the institution's assessment area(s) or in any other location or geography. The regulations currently provide that evidence of discriminatory or other illegal credit practices by an institution can adversely affect the institution's rating, and they do not limit the agencies' consideration of such evidence to lending within an assessment area.

Fourth, the proposed revisions would clarify that an institution's CRA evaluation also can be adversely affected by evidence of discriminatory, other illegal, and abusive credit practices *by any affiliate*,[6] if *any* loans of that affiliate have been considered in the CRA evaluation pursuant to ____.22(c)(1) and (2). Loans by an affiliate currently are permitted to be included in an institution's evaluation of an assessment area only, and the proposal would be similarly limited to affiliate lending practices within any assessment area. We seek comment on whether the agencies should provide in the regulation that evidence of discriminatory, other illegal, or abusive credit practices by an affiliate whose loans have been considered in an institution's evaluation will adversely affect the institution's rating whether or

[4] Note that other Federal law, such as HOEPA and OCC regulations (*see* 12 CFR parts 7 and 34) contain similar, but not identically worded, prohibitions on such lending practices in certain circumstances.

[5] *See* OCC Advisory Letter 2003–2, "Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices," February 21, 2003.

[6] An affiliate means any company that controls, is controlled by, or is under common control with another company. Generally, for CRA purposes, this includes companies engaged in lending that are owned and controlled by bank holding companies or thrift holding companies, as well as companies engaged in lending that are direct operating subsidiaries of an insured bank or thrift.

not the activities were inside any of the institution's assessment areas.

The agencies will consider all credible evidence of discriminatory, other illegal, or abusive credit practices that comes to their attention. Such information could be obtained from supervisory examinations (including safety and soundness examinations and compliance examinations), CRA comments in connection with applications for deposit facilities, and public sources. However, CRA examinations themselves generally will not entail specific evaluation of individual complaints or specific evaluation of individual loans for illegal credit practices or otherwise abusive lending practices.

With these proposed changes to the CRA regulations, the agencies seek to ensure that evidence of predatory and abusive lending practices are appropriately considered in an institution's CRA evaluation. We considered suggestions for adopting a more categorical response to evidence of an illegal credit practice, such as rating the institution no higher than Needs to Improve. We continue to believe an institution should be evaluated based on all relevant ratings factors without mandating a particular rating result. Further, it may be impractical for the agencies to try to exclude from CRA consideration all loans originated in connection with an illegal or abusive credit practice because it could require examiners to identify and segregate each such loan, and we invite comment on this issue.

We invite comment on all aspects of the proposed revisions to section ____28.(c), including the extent to which the proposed revisions would make CRA evaluations more effective in measuring an institution's contribution to community credit needs without imposing undue burden.

Enhancement of Public Performance Evaluations

A public performance evaluation is a written description of an institution's record of helping to meet community credit needs, and includes a rating of that record. An evaluation is prepared at the conclusion of every CRA examination and made available to the public. The agencies intend to use publicly available HMDA and CRA data to disclose the following information in CRA performance evaluations by assessment area:

(1) The number, type, and amount of purchased loans;

(2) The number, type, and amount of loans of HOEPA loans and of loans for which rate spread information is reported under HMDA (data that will be available in mid-2005); and

(3) The number, type, and amount of loans that were originated or purchased by an affiliate and included in the institution's evaluation, and the identity of such affiliate.

These changes should make it easier for the public to evaluate the lending by individual institutions according to particular factors that many commenters suggested. They should not impose any burden on institutions, as it does not call for any change to data collection or reporting procedures. The agencies seek comment on the extent to which the enhancements of public CRA performance evaluations described above will make the evaluations more effective in communicating to the public an institution's contribution to meeting community credit needs.

Regulatory Analysis

Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number (OCC, 1557–0160; Board, 7100–0197; FDIC, 3064–0092; and OTS, 1550–0012). The Agencies also give notice that, at the end of the comment period, the proposed collections of information, along with an analysis of the comments, and recommendations received, will be submitted to OMB for review and approval.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencys' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection 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.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the information collections should be modified prior to submission to OMB for review and approval. The comments will also be summarized or included in the Agencies' requests to OMB for approval of the collections. All comments will become a matter of public record.

Comments should be addressed to:

OCC: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mail stop 1–5, Attention: Docket 04–06, Washington, DC 20219; fax number (202) 874–4448; Internet address: *regs.comments@occ.treas.gov.* Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit their comments by fax or e-mail. You can make an appointment to inspect the comments at the Public Information Room by calling (202) 874–5043.

Board: Comments should refer to Docket No. R–1181 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*, by e-mail to *regs.comments@federalreserve.gov*, or by fax to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Rules proposed by the Board and other Federal agencies may also be viewed and commented on at *http://www.regulations.gov.*

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Leneta G. Gregorie, Legal Division, Room MB–3082, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to the title of the proposed collection. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m., Attention: Comments/Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *information collection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

Title of Information Collection:

OCC: Community Reinvestment Act Regulation—12 CFR 25.

Board: Recordkeeping, Reporting, and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment Act).

FDIC: Community Reinvestment—12 CFR 345.

OTS: Community Reinvestment—12 CFR 563e.

Frequency of Response: Annual.

Affected Public:

OCC: National banks.

Board: State member banks.

FDIC: Insured nonmember banks.

OTS: Savings associations.

Abstract: This Paperwork Reduction Act section estimates the burden that would be associated with the regulations were the agencies to change the definition of "small institution" as proposed, that is, increase the asset threshold from $250 million to $500 million and eliminate any consideration of holding-company size. The two proposed changes, if adopted, would make "small" approximately 1,350 insured depository institutions that do not now have that status. That estimate is based on data for all FDIC-insured institutions that filed Call or Thrift Financial Reports on March 31, 2003. Those data also underlie the estimated paperwork burden that would be associated with the regulations if the proposals were adopted by the agencies.

Estimated Paperwork Burden under the Proposal:

OCC

Number of Respondents: 2,066.

Estimated Time Per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; Strategic Plan, 275 hours; and Public file, 10 hours.

Total Estimated Annual Burden: 223,062 hours.

Board

Number of Respondents: 950.

Estimated Time Per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; and Public file, 10 hours.

Total Estimated Annual Burden: 114,350 hours.

FDIC

Number of Respondents: 5,341.

Estimated Time Per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; and Public file, 10 hours.

Total Estimated Annual Burden: 331,358 hours.

OTS

Number of Respondents: 958.

Estimated Time Per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; and Public file, 10 hours.

Estimated Total Annual Burden: 116,493 hours.

Regulatory Flexibility Act

OCC: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that since the proposal would reduce burden and would not raise costs for small institutions, this proposal will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any additional paperwork or regulatory reporting requirements. The proposal would increase the overall number of small banks that are permitted to avoid data collection requirements in 12 CFR part 25. Accordingly, a regulatory flexibility analysis is not required.

Board: Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board certifies that since the proposal would reduce burden and would not raise costs for small institutions, this proposal will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any additional paperwork or regulatory reporting requirements. The proposal would increase the overall number of small banks that are permitted to avoid data collection requirements in 12 CFR part 228. Accordingly, a regulatory flexibility analysis is not required.

FDIC: Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that since the proposal would reduce burden and would not raise costs for small institutions, this proposal will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any additional paperwork or regulatory reporting requirements. The proposal would increase the overall number of small banks that are permitted to avoid data collection requirements in 12 CFR part 345. Accordingly, a regulatory flexibility analysis is not required.

OTS: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that since the proposal would reduce burden and would not raise costs for small institutions, this proposal will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any additional paperwork or regulatory reporting requirements. The proposal would increase the overall number of small savings associations that are permitted to avoid data collection requirements in 12 CFR part 563e. Accordingly, a regulatory flexibility analysis is not required.

OCC and OTS Executive Order 12866 Determination

The OCC and OTS have determined that their portion of the proposed rulemaking is not a significant regulatory action under Executive Order 12866.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, neither agency has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

The Treasury and General Government Appropriations Act, 1999—Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681.

Board, FDIC, and OTS Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board, the FDIC, and the OTS to use "plain language" in all proposed and final rules published after January 1, 2000. The Board, the FDIC, and the OTS invite comments on whether the proposed rules are clearly stated and effectively organized, and how the Board, the FDIC, and the OTS might make the proposed text easier to understand.

OCC Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

OCC Executive Order 13132 Determination

The Comptroller of the Currency has determined that this final rule does not have any Federalism implications, as required by Executive Order 13132.

OCC Community Bank Comment Request

The OCC invites your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, the Office of the Comptroller of the Currency proposes to amend part 25 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

2. Revise § 25.12(t) to read as follows:

§ 25.12 Definitions.

* * * * *

(t) *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than $500 million.

* * * * *

3. Revise § 25.28, paragraph (c) to read as follows:

§ 25.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory, other illegal, and abusive credit practices.*

(1) The OCC's evaluation of a bank's CRA performance is adversely affected by evidence of the following in any geography by the bank or in any assessment area by any affiliate whose loans have been considered pursuant to § 25.22(c):

(i) In connection with any type of lending activity described in § 25.22(a), discriminatory or other illegal credit practices including, but not limited to:

(A) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(B) Violations of the Home Ownership and Equity Protection Act;

(C) Violations of section 5 of the Federal Trade Commission Act;

(D) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(E) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(ii) In connection with home mortgage and secured consumer loans, a pattern or practice of lending based

predominantly on the foreclosure or liquidation value of the collateral by the bank (or affiliate, as applicable), where the borrower cannot be expected to be able to make the payments required under the terms of the loan.[1]

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

4. Revise § 25.42(h) to read as follows:

§ 25.42 Data collection, reporting, and disclosure.

* * * * *

(h) *CRA Disclosure Statement.* The OCC prepares annually for each bank that reports data pursuant to this section a CRA disclosure statement that contains, on a State-by-State basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased by geography, grouped according to whether the geography is low-, moderate-, middle-, or upper-income;

(ii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased in each geography, grouped according to median income of the geography relative to the area median income, as follows: less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside assessment areas reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

* * * * *

(c) *Effect of evidence of discriminatory, other illegal, and abusive credit practices.* (1) The Board's evaluation of a bank's CRA performance is adversely affected by evidence of the following in any geography by the bank or in any assessment area by any affiliate whose loans have been considered pursuant to § 228.22(c):

(i) In connection with any type of lending activity described in § 228.22(a), discriminatory or other illegal practices including, but not limited to:

(A) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(B) Violations of the Home Ownership and Equity Protection Act;

(C) Violations of section 5 of the Federal Trade Commission Act;

(D) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(E) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(ii) In connection with home mortgage and secured consumer loans, a pattern or practice of lending based predominantly on the foreclosure or liquidation value of the collateral by the bank, where the borrower cannot be expected to be able to make the payments required under the terms of the loan.[1]

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the Board considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

4. Revise § 228.42(h) to read as follows:

§ 228.42 Data collection, reporting, and disclosure.

* * * * *

(h) *CRA Disclosure Statement.* The Board prepares annually for each bank

[1] A bank (or affiliate, as applicable) may determine that a borrower can be expected to be able to make the payments required under the terms of the loan based, for example, on information about the borrower's credit history, current or expected income, other resources, and debts; preexisting customer relationships; or other information ordinarily considered, and as documented and verified, stated, or otherwise ordinarily determined, by the bank (or affiliate, as applicable) in connection with the type of lending.

Dated: January 28, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System proposes to amend part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

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

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

2. Revise § 228.12(t) to read as follows:

§ 228.12 Definitions.

* * * * *

(t) *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than $500 million.

* * * * *

3. Revise § 228.28(c) to read as follows:

§ 228.28 Assigned ratings.

* * * * *

[1] A bank (or affiliate, as applicable) may determine that a borrower can be expected to be able to make the payments required under the terms of the loan based, for example, on information about the borrower's credit history, current or expected income, other resources, and debts; preexisting customer relationships; or other information ordinarily considered, and as documented and verified, stated, or otherwise ordinarily determined, by the bank (or affiliate, as applicable) in connection with the type of lending.

that reports data pursuant to this section a CRA disclosure statement that contains, on a State-by-State basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased by geography, grouped according to whether the geography is low-, moderate-, middle-, or upper-income;

(ii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased in each geography, grouped according to median income of the geography relative to the area median income, as follows: Less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside assessment areas reported by the bank; and

(4) the number and amount of community development loans reported as originated or purchased.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated: January 29, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

2. Revise § 345.12(t) to read as follows:

§ 345.12 Definitions.

* * * * *

(t) *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than $500 million.

* * * * *

3. Revise § 345.28(c) to read as follows:

§ 345.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory, other illegal, and abusive credit practices.* (1) The FDIC's evaluation of a bank's CRA performance is adversely affected by evidence of the following in any geography by the bank or in any assessment area by any affiliate whose loans have been considered pursuant to § 345.22(c):

(i) In connection with any type of lending activity described in § 345.22(a), discriminatory or other illegal practices including, but not limited to:

(A) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(B) Violations of the Home Ownership and Equity Protection Act;

(C) Violations of section 5 of the Federal Trade Commission Act;

(D) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(E) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(ii) In connection with home mortgage and secured consumer loans, a pattern or practice of lending based predominantly on the foreclosure or liquidation value of the collateral by the bank, where the borrower cannot be expected to be able to make the payments required under the terms of the loan.[1]

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the FDIC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

* * * * *

4. Revise § 345.42(h) to read as follows:

§ 345.42 Data Collection, Reporting, and Disclosure

* * * * *

(h) *CRA Disclosure Statement.* The FDIC prepares annually for each bank that reports data pursuant to this section a CRA disclosure statement that contains, on a State-by-State basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased by geography, grouped according to whether the geography is low-, moderate-, middle-, or upper-income;

(ii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased in each geography, grouped according to

[1] A bank (or affiliate, as applicable) may determine that a borrower can be expected to be able to make the payments required under the terms of the loan based, for example, on information about the borrower's credit history, current or expected income, other resources, and debts; preexisting customer relationships; or other information ordinarily considered, and as documented and verified, stated, or otherwise ordinarily determined by the bank (or affiliate, as applicable) in connection with the type of lending.

median income of the geography relative to the area median income, as follows: less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside assessment areas reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

* * * * *

Dated at Washington, DC, this 20th day of January, 2004.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervisiion

12 CFR CHAPTER V

For the reasons outlined in the joint preamble, the Office of Thrift Supervision proposes to amend part 563e of chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 563e—COMMUNITY REINVESTMENT

1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

2. Revise § 563e.12(s) to read as follows:

§ 563e.12 Definitions.

* * * * *

(s) *Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had total assets of less than $500 million.

* * * * *

3. Revise § 563e.28(c) to read as follows:

§ 563e.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory, other illegal, and abusive credit practices.* (1) The OTS's evaluation of a savings association's CRA performance is adversely affected by evidence of the following in any geography by the savings association or in any assessment area by any affiliate whose loans have been considered pursuant to § 563e.22(c):

(i) In connection with any type of lending activity described in § 563e.22(a), discriminatory or other illegal practices including, but not limited to:

(A) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(B) Violations of the Home Ownership and Equity Protection Act;

(C) Violations of section 5 of the Federal Trade Commission Act;

(D) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(E) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(ii) In connection with home mortgage and secured consumer loans, a pattern or practice of lending based predominantly on the foreclosure or liquidation value of the collateral by the savings association, where the borrower cannot be expected to be able to make the payments required under the terms of the loan.[1]

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the savings association's assigned rating, the OTS considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the savings association (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the savings association (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

4. Revise § 563e.42(h) to read as follows:

§ 563e.42 Data collection, reporting, and disclosure.

* * * * *

(h) *CRA Disclosure Statement.* The OTS prepares annually for each savings association that reports data pursuant to this section a CRA disclosure statement that contains, on a State-by-State basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased by geography, grouped according to whether the geography is low-, moderate-, middle-, or upper-income;

(ii) A list showing each geography in which the savings association reported a small business or small farm loan; and

(iii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased in each geography, grouped according to median income of the geography relative to the area median income, as follows: Less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list showing each geography in which the savings association reported a small business or small farm loan; and

(iii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the savings association and the number and amount of small business and small farm loans located outside assessment areas reported by the savings association; and

[1] A savings association (or affiliate, as applicable) may determine that a borrower can be expected to be able to make the payments required under the terms of the loan based, for example, on information about the borrower's credit history, current or expected income, other resources, and debts; preexisting customer relationships; or other information ordinarily considered, and as documented and verified, stated, or otherwise ordinarily determined by the savings association (or affiliate, as applicable).

(4) The number and amount of community development loans reported as originated or purchased.

* * * * *

Dated: January 22, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–2354 Filed 2–5–04; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM273; Notice No. 25–04–01–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Overhead Crew Rest Compartment Occupiable During Taxi, Take-off, and Landing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Boeing Model 777 series airplanes. These airplanes will have novel or unusual design features because of the installation of an overhead crew rest (OHCR) compartment which is proposed to be occupiable during taxi, take-off, and landing (TT&L). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before March 8, 2004.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM273, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM273. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Thompson, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–1157; facsimile (425) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On June 25, 2002, the Boeing Commercial Airplane Group (BCAG), P.O. Box 3707, Seattle, Washington, 98124, applied for a change to Type Certificate No. T00001SE for a design change to install an OHCR, which is proposed to be occupiable during TT&L, in Boeing Model 777 series airplanes. The Boeing Model 777 series airplanes are large twin-engine airplanes with various passenger capacities and ranges depending upon airplane configuration.

The OHCR compartment is located in the overhead space above the main passenger cabin immediately aft of the first pair of main deck emergency exits (Door 1) and will include a maximum of two private berths and two seats. Occupancy of the OHCR compartment will be limited to a maximum of four crewmembers during flight and two flightcrew members, one in each seat, during TT&L.

The OHCR compartment will be accessed from the main deck by stairs through a vestibule. In addition, an emergency hatch, which opens directly into the main passenger seating area, will be provided for the OHCR compartment as an alternate route for evacuating occupants of the OHCR compartment in an emergency. A smoke detection system and an oxygen system will be provided in the compartment. Other optional features, such as a kitchenette and lavatory, may be provided as well.

While the installation of an OHCR compartment is not a new concept for large transport category airplanes, each OHCR compartment has unique features based on design, location, and use on the airplane. Previously, OHCR compartments have been installed and certified in Boeing 777 series airplanes in the main passenger seating area, in the overhead compartment above the main passenger seating area, and below the passenger seating area within the cargo compartment. On April 9, 2003, the FAA issued Special Conditions No. 25–230-SC for an OHCR compartment immediately aft of the Door 1 exits and an overhead flight attendant rest compartment adjacent to Door 3 in Boeing 777 series airplanes. These new special conditions address an OHCR compartment at the same location aft of Door 1 as in the April 2003 special conditions, except that they address occupancy of trained flightcrew during TT&L.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, Boeing Commercial Airplane Group must show that Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. T00001SE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes did not become effective until June 10, 2003, which is after the application date for this type design change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The U.S. type certification basis for Boeing Model 777 series airplanes is established in accordance with 14 CFR 21.17 and 21.29 and the type certificate application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are

prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2) Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

Compliance with these proposed special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that installation of the OHCR compartment creates a small compartment volume within the large overhead volume of the airplane. The applicant must comply with the requirements of §§ 25.365(e), (f), and (g) (regarding the effects of sudden decompression) for the OHCR compartment, as well as any other airplane compartment whose decompression characteristics are affected by the installation of an OHCR compartment. Compliance with § 25.831 (regarding ventilation) must be demonstrated for all phases of flight where occupants will be present.

Novel or Unusual Design Features

This OHCR compartment is unique to part 25 due to its design, location and use on the airplane. This OHCR compartment is particularly unique in that it is in the overhead area of the passenger compartment and is proposed to be occupied by trained flight crew during TT&L.

Due to the novel or unusual features associated with the installation of this OHCR compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate. These special conditions do not negate the need to address other applicable part 25 regulations.

Operational Evaluations and Approval

These special conditions outline requirements for OHCR compartment design approvals (type design changes) administered by the FAA's Aircraft Certification Service. Prior to operational use of an OHCR compartment, the FAA's Flight Standards Service must evaluate and approve the "basic suitability" of the OHCR compartment for crew occupation. Additionally, if an operator wishes to utilize an OHCR compartment as "sleeping quarters," the OHCR compartment must undergo an additional evaluation and approval (Reference §§ 121.485(a), 121.523(b) and 135.269(b)(5)). Compliance with these special conditions does not ensure that the applicant has demonstrated compliance with the requirements of parts 121 or 135.

In order to obtain an operational evaluation, the type certificate holder must contact the appropriate aircraft evaluation group (AEG) in the Flight Standards Service and request a "basic suitability" evaluation or a "sleeping quarters" evaluation of their crew rest. The results of these evaluations should be documented in a 777 flight standardization board (FSB) report appendix. Individual operators may reference these standardized evaluations in discussions with their FAA principal operating inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved OHCR compartment configuration that affect crewmember emergency egress or any other procedures affecting the safety of the occupying crewmembers and/or related emergency evacuation training will require a re-evaluation and approval. The applicant for a crew rest design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new crew rest evaluation is required. The results of a re-evaluation should also be documented in a 777 FSB report appendix.

Procedures must be developed to ensure that a crewmember entering the OHCR compartment through the vestibule to fight a fire will examine the vestibule and the lavatory areas (if installed) for the source of the fire prior to entering the remaining areas of the OHCR compartment. These procedures are intended to ensure that the source of the fire is not between the crewmember and the entrance to the OHCR compartment. In the event a fire source is not immediately evident to the firefighter, the firefighter should check for potential fire sources at areas closest to the OHCR compartment entrance first, then proceed to check areas in such a manner that the fire source, when found, would not be between the firefighter and the OHCR compartment entrance. Procedures describing methods to search the OHCR compartment for fire source(s) must be transmitted to operators for incorporation into their training programs and appropriate operational manuals.

Discussion of the Proposed Special Conditions

These proposed special conditions establish seating, communication equipment, lighting, personal safety, and evacuation requirements for the OHCR compartment. In addition, passenger information signs and supplemental oxygen would be required. Where applicable, the proposed requirements parallel the existing requirements for a lower deck service compartment in § 25.819 and for an OHCR compartment not occupiable during TT&L in Special Conditions No. 25–230–SC, issued on April 9, 2003. These proposed special conditions provide a level of safety equivalent to that provided for main deck occupants.

Consideration of a Requirement for an External Exit

The FAA has considered whether or not a special condition should require that the OHCR compartment have an external exit leading directly outside the airplane. In accordance with § 21.16, special conditions must provide flightcrew members who occupy the OHCR compartment during TT&L with a level of safety equivalent to that established by part 25 for main deck occupants. The FAA considers that the following, in addition to the other proposed special conditions, provides this level of safety:

1. The distances along the evacuation routes from seats in the OHCR compartment to the Door 1 exits on the main deck are significantly shorter than the maximum distance a seated passenger on the main deck would need to travel to reach an exit.

2. Occupancy during TT&L would be limited to two flightcrew members who are trained in the evacuation procedures of the OHCR compartment. An airplane flight manual limitation would be established to restrict occupancy to only persons the pilot in command has determined are able to use both evacuation routes rapidly. The ability of such persons to fit through the escape

hatch must be considered in this determination.

The Air Line Pilots Association, International (ALPA), and International Federation of Air Line Pilots (IFALPA) reviewed the Boeing OHCR compartment design and informed the FAA that in their opinion an external exit is not needed, because two independent, internal evacuation routes will be provided. ALPA and IFALPA provided this position to the FAA and Boeing in a meeting on January 7, 2003, and again to the FAA in letters dated February 20, 2003, and February 21, 2003. Since flightcrew members will be the only occupants of the OHCR compartment during TT&L, this input provided further support in determining the acceptability of these proposed special conditions, which do not include a requirement for an external exit.

As discussed in the background section, these proposed special conditions address the same OHCR compartment as that addressed by Special Conditions No. 25–230–SC, except that these proposed special conditions address occupancy of trained flightcrew during TT&L. Special Conditions No. 25–230–SC were developed based on occupancy during flight only for crewmembers in general (flightcrew members and flight attendants). The proposed special conditions also allow occupancy of flightcrew members and flight attendants during flight. However, the applicant has requested that new special conditions be developed that would allow flightcrew members to occupy the OHCR compartment during TT&L. The FAA has not considered the acceptability of any other occupants in the OHCR compartment during TT&L. The proposed special conditions limit occupancy to crewmembers during flight and to flightcrew members during TT&L.

Proposed Special Condition No. 1

Due to the location and configuration of the OHCR compartment, it is proposed that occupancy be limited to a maximum of four crewmembers during flight and two flightcrew members during TT&L. One factor which limits occupancy is the number of approved seats and berths provided in the OHCR compartment. During TT&L, occupancy would be restricted to flightcrew members who the pilot in command has determined are able to use the evacuation routes rapidly and who are trained in the evacuation procedures for the OHCR compartment. The FAA considers this requirement necessary to support a finding that the OHCR compartment will provide an equivalent level of safety to that provided by main deck seating. Requirements are also proposed for the installation of ashtrays and to prohibit smoking and the stowage of cargo or passenger baggage in the OHCR compartment.

Proposed Special Condition No. 2

This special condition has the requirements for door access and locking. It provides requirements similar to those in Special Conditions No. 25–230–SC for the OHCR compartment that is not occupiable during TT&L, but also provides requirements to prevent doors from obstructing an evacuation after an emergency landing.

Proposed Special Condition No. 3

Section 25.562 was established in recognition that some standard beyond the static conditions of § 25.561 was necessary to provide more crash-resistant seats, with the new standard being one that traditional main deck floor-type structure could withstand. Numerous tests were conducted to establish this standard. The results were the 16G forward and 14G combined down and forward dynamic tests, as documented in § 25.562. Since § 25.562 was developed based on the inherent capability of traditional main deck floor structure, certification testing of main deck floor-type structure was not required by § 25.562.

The OHCR compartment structure bears little similarity in physical characteristics to main deck floor structure. In keeping with the intent of § 25.562, this different structure must be analyzed or tested to demonstrate that it will function with capability similar to traditional main deck floor structure in a crash event, retaining the seats and maintaining their attachments to the airplane. Therefore, it is proposed that the OHCR compartment structure must be demonstrated to be compatible with dynamic loads introduced by the seats, providing the same level of protection during a crash event as that provided to those seated on traditional main deck floor structure. The applicant must propose, for FAA approval, means to analyze or test the OHCR compartment structure to demonstrate this capability.

Proposed Special Condition No. 4

This special condition refers to emergency evacuation routes and crew rest outlets. A crew rest outlet is an opening (for example, a door or hatch) between the OHCR compartment and the main passenger deck. An emergency evacuation route, as used in the context of this special condition, is an egress path which leads OHCR compartment occupants to crew rest outlets and out of the compartment.

It is proposed that, to preclude occupants from being trapped in the OHCR compartment in the event of an emergency, there must be at least two emergency evacuation routes that could be used by each occupant of the OHCR compartment to rapidly evacuate to the main cabin. These two routes must be sufficiently separated to minimize the possibility of an event rendering both routes inoperative. The main entry route meeting the appropriate requirements may be utilized as one of the emergency evacuation routes or, alternatively, two other emergency routes must be provided.

The following clarifies the intent of Special Condition No. 4(b) concerning the utility of the egress routes. First, occupied passenger seats are not considered an impediment to the use of an egress route (if, for example, the egress route drops into one row of main deck seats by means of a hatch), provided that the seated occupants do not inhibit the opening of the egress route (the hatch in this example). Second, an egress route may utilize areas where normal movement or evacuation of passengers occurs if it is demonstrated that the passengers would not impede egress to the main deck. If the egress means opens into a main aisle, cross aisle, or galley complex, ninety-fifth percentile male passengers on the main deck must be considered. Third, the escape hatch should be provided with a means to prevent it from being inadvertently closed by a passenger on the main deck. This will ensure main deck passengers cannot prevent occupants of the OHCR compartment from using the escape route.

Training requirements for the occupants of the OHCR compartment are included in this proposal. Requirements to prevent passengers on the main deck from entering the OHCR compartment and requirements regarding door and hatch usability are also provided.

Special Conditions No. 25–230–SC has qualitative and quantitative criteria for determining that the evacuation routes have sufficient separation within the OHCR compartment. Those criteria have been incorporated into these special conditions to clarify how compliance can be shown to Special Condition No. 4(a).

Proposed Special Condition No. 5

This proposal would require a means of removing an incapacitated person

from the OHCR compartment to the main deck. The design and procedures for such an evacuation must be demonstrated to be adequate for all evacuation routes. Limits would be imposed on the assistance that may be provided in evacuating an incapacitated person in these demonstrations.

Proposed Special Condition No. 6

It is proposed that exit signs, placards for evacuation routes, and illumination for signs, placards, and door handles be required for the OHCR compartment. This proposed special condition allows for exit signs with a reduced background area to be used. If a reduced background is used, the material surrounding the sign must be light in color to more closely match and enhance the illuminated background of the sign that has been reduced in area (letter size stays the same). These reduced background area signs have been allowed under previous equivalent level of safety findings for small transport executive jets.

Proposed Special Condition No. 7

An emergency lighting system is proposed to prevent the occupants from being isolated in a dark area due to loss of lighting in the OHCR compartment. The emergency lighting must be activated under the same conditions as is the main deck emergency lighting system.

Proposed Special Condition No. 8

It is proposed that two-way voice communications and public address speaker(s) be required, and that provisions be made to prevent occupants of the OHCR compartment from being disturbed with normal, non-emergency announcements made to the passenger cabin.

Proposed Special Condition No. 9

It is proposed that occupants of the OHCR compartment be advised of an emergency situation via emergency alarm means, use of the public address system, or crew interphone system. A requirement for maintaining power to the emergency alarm system for a specific duration after certain failures is also proposed.

Proposed Special Condition No. 10

This proposal requires a means of indicating when seat belts should be fastened that is readily detectable by occupants of the OHCR compartment whether they are seated or standing. The requirement for visibility of the sign by standing occupants may be met by a general area sign that is visible to occupants standing in the main floor area or corridor of the OHCR compartment. It would not be essential that the sign be visible from every possible location in the OHCR compartment. However, the sign should not be remotely located or located where it may be easily obscured.

Proposed Special Condition No. 11

This proposal requires that the OHCR compartment, which is remotely located from the passenger cabin, be equipped with the following:

- A hand-held fire extinguisher.
- Protective breathing equipment (PBE).
- A flashlight.

The following clarifies how this proposed special condition should be understood relative to the requirements of § 25.1439(a). Amendment 25–38 modified the requirements of § 25.1439(a) by adding, "In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation." But the PBE requirements of § 25.1439(a) are not appropriate in this case, because the OHCR compartment is novel and unusual in terms of the number of occupants. In 1976, when Amendment 25–38 was adopted, underfloor galleys were the only isolated compartments that had been certificated, with a maximum of two crewmembers expected to occupy those galleys. No. 11 of these special conditions addresses PBE requirements for OHCR compartments, which can accommodate up to 4 crewmembers. This number of occupants in an isolated compartment was not envisioned at the time Amendment 25–38 was adopted. In the event of a fire, the occupant's first action should be to leave the confined space, unless the occupant(s) is fighting the fire. It is not appropriate for all occupants of the OHCR compartment to don PBE. Taking the time to don the PBE would prolong the time for the occupant's emergency evacuation and possibly interfere with efforts to extinguish the fire. Therefore, No. 11 proposes to require two PBE units, or one PBE for each handheld fire extinguisher, whichever is greater, for this OHCR compartment.

Proposed Special Condition No. 12

Because the OHCR compartment is remotely located from the main passenger cabin and will not always be occupied, a requirement for a smoke detection system and appropriate warnings is proposed. The smoke detection system must be capable of detecting a fire within the OHCR compartment, including each area of the compartment created by the installation of a curtain or door.

Proposed Special Condition No. 13

This proposed special condition originated from a concern that a fire in an unoccupied OHCR compartment could spread into the passenger compartment or affect other vital systems before it could be extinguished. This proposal would require either installation of a manually activated fire suppression system accessible from outside the OHCR compartment or a demonstration that the crew could satisfactorily perform the function of extinguishing a fire under the prescribed conditions. A manually activated built-in fire extinguishing system would be required only if a crewmember could not successfully locate and extinguish the fire during a demonstration in which the crewmember is responding to the alarm. (Ref. S.C. 13 and 13(a) in general)

This proposal also provides requirements for the use of a combination of the two methods of fighting a fire if the applicant so chose. (Ref. S.C. 13(a)(2))

It is proposed that the OHCR compartment be designed so that fires within the compartment can be controlled without having to enter the compartment; or, the design of the access provisions must allow crew equipped for firefighting to have unrestricted access to the compartment. (Ref. S.C. 13(b)(2)) It is also proposed that the time for a crewmember on the main deck to react to the fire alarm, don firefighting equipment, and gain access must not exceed the time it would take for the OHCR compartment to become smoke filled, when it would be difficult to locate the fire source. (Ref. S.C. 13(b)(3)) (*See* additional information continued in the proposed Special Condition No. 14.)

The requirements for enabling crewmember(s) to quickly enter the OHCR compartment, locate a fire source (Ref. S.C. (13(b)), evacuate the compartment (Ref. S.C. (4)), or evacuate an incapacitated person from the compartment (Ref. S.C. (5)), inherently places limits on the size of the OHCR compartment and the amount of baggage that may be stowed there. The OHCR compartment is limited to stowage of crew personal luggage and it is not intended to be used for the stowage of cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require

additional requirements to ensure safe operation.

The OHCR compartment smoke or fire detection and fire suppression systems (including airflow management features which prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) is considered complex in terms of paragraph 6d of Advisory Circular (AC) 25.1309–1A, "System Design and Analysis." In addition, the FAA considers failure of the OHCR compartment fire protection system (*i.e.*, smoke or fire detection and fire suppression systems) in conjunction with an OHCR compartment fire to be a catastrophic event. Based on the "Depth of Analysis Flowchart" shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309–1A).

Proposed Special Condition No. 14

This proposal would require that means be provided to exclude hazardous quantities of smoke or extinguishing agent originating in the OHCR compartment from entering any other compartment. The FAA accepts the fact that during the one-minute smoke detection time and during access to fight a fire, penetration of a small quantity of smoke from this OHCR compartment into an occupied area on this airplane configuration would be acceptable, based upon the limitations placed in this and other associated special conditions. (Ref. S.C. 12(a) and 14(b), (c), (d) and (e)).

Proposed Special Condition No. 15

It is proposed that the oxygen equipment and a supplemental oxygen deployment warning for the OHCR compartment must be equivalent to that provided for main deck passengers.

Proposed Special Condition No. 16

Requirements are proposed for a divided OHCR compartment to address supplemental oxygen equipment and deployment means, signs, placards, curtains, doors, emergency illumination, alarms, seat belt fasten signals, and evacuation routes.

Proposed Special Condition No. 17

It is proposed that if a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher.

Proposed Special Condition No. 18

This proposal requires that materials in the OHCR compartment meet the flammability requirements of § 25.853 at Amendment 25–83. It is also proposed that seat cushions and mattresses must meet the fire blocking requirements of § 25.853(c).

Section 25.853(e) indicates that crew rest quarters need not meet the standards of § 25.853(d) provided the interiors of these compartments are isolated from the main passenger cabin by doors or equivalent means that would normally be closed during an emergency landing. Since the OHCR compartment is occupiable during TT&L, the OHCR main entrance door must be latched open during TT&L, and hence, its interior must comply with § 25.853(d) in the manner consistent with the main passenger cabin.

Proposed Special Condition No. 19

This proposed requirement is a reiteration of existing main deck lavatory requirements to provide clear applicability. OHCR compartment lavatories, if installed, would be required to comply with the existing rules on lavatories in the absence of other specific requirements. In addition, any lavatory located in the OHCR compartment must also meet the requirements of Special Condition No. 12 for smoke detection due to placement within this remote area.

Proposed Special Condition No. 20

This proposal requires fire protection for stowage areas within an OHCR compartment as a function of size (compartment interior volume). The proposed fire protection requirements for stowage compartments in the OHCR compartment are more stringent than those for stowage in the main passenger cabin, because the OHCR compartment is a remote area that can remain unoccupied for long periods of time, in contrast to the main cabin that is under continuous monitoring by the cabin crew and passengers. For stowage compartments less than 25 ft^3, the safety objective of these proposed requirements is to contain the fire. FAA research indicates that properly constructed compartments meeting the proposed material requirements will prevent burn-through. For stowage compartments greater than 25 ft^3 but less than 200 ft^3, the safety objective of these proposed requirements is to detect and contain the fire for sufficient time to allow it to be extinguished by the crew. The requirements for these sizes of compartments are comparable to the requirements for Class B cargo compartments. The fire protection requirements proposed are intended to provide a level of safety for the OHCR compartment equivalent to the level of safety established by existing regulations for the main cabin.

Section 25.787(a) requires each stowage compartment in the passenger cabin, except for underseat and overhead compartments for passenger convenience, to be completely enclosed. This requirement is not applicable to the flight deck so that flightcrew members may quickly access items and better perform their duties. Occupants of the OHCR compartment will not be performing flight deck duties, and the FAA considers that stowage compartments in the OHCR compartment, except for under-seat compartments for occupant convenience, should be completely enclosed. This will provide occupants of the OHCR compartment a level of safety similar to that provided to main deck passengers. Note that typical literature pockets and magazine racks are not considered stowage compartments and, therefore, are not required to be completely enclosed by this special condition.

The addition of galley equipment or a kitchenette incorporating a heat source (cook tops, microwaves, coffee pots, etc.), other than a conventional lavatory or kitchenette hot water heater, within the OHCR compartment may require further special conditions to be considered. A hot water heater is acceptable without further special condition consideration.

Applicability

These special conditions are applicable to Boeing Model 777 series airplanes. Should the Boeing Commercial Airplane Group apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 777 series airplanes with an overhead crew rest (OHCR) compartment installed adjacent to or

immediately aft of the first pair of exits (Door 1).

1. During flight, occupancy of the OHCR compartment is limited to the total number of bunks and seats installed in the compartment that are approved to the maximum flight loading conditions. During taxi, takeoff, and landing (TT&L), occupancy of the OHCR compartment is limited to the total number of installed seats approved to the flight and ground load conditions and emergency landing conditions. The OHCR compartment is limited to a maximum of four crewmembers during flight and two flightcrew members during TT&L.

(a) There must be appropriate placards, inside and outside each entrance to the OHCR compartment to indicate:

(1) The maximum number of crewmembers allowed during flight and flightcrew members allowed during TT&L.

(2) That occupancy is restricted to crewmembers who the pilot in command has determined are trained in the evacuation procedures for the OHCR compartment and able to rapidly use the evacuation routes.

(3) That smoking is prohibited in the OHCR compartment.

(4) That stowage in the crew rest area is limited to crew personal luggage. The stowage of cargo or passenger baggage is not allowed.

(b) There must be at least one ashtray on the inside and outside of any entrance to the OHCR compartment.

(c) A limitation in the Airplane Flight Manual must be established to restrict occupancy to crewmembers who the pilot in command has determined are able to rapidly use the evacuation routes.

2. The following requirements are applicable to crew rest door(s):

(a) There must be a means for any door installed between the OHCR compartment and passenger cabin to be quickly opened from inside the OHCR compartment, even when crowding from an emergency evacuation occurs at each side of the door.

(b) Doors installed across emergency egress routes must have a means to latch them in the open position. The latching means must be able to withstand the loads imposed upon it when the door is subjected to the ultimate inertia forces, relative to the surrounding structure, listed in § 25.561(b).

(c) A placard must be displayed in a conspicuous place on the outside of the entrance door of the OHCR compartment and any other door(s) installed across emergency egress routes of the OHCR compartment, that requires these doors to be latched open during TT&L when the OHCR compartment is occupied. This requirement does not apply to emergency escape hatches installed in the floor. A placard must be displayed in a conspicuous place on the entrance door to the OHCR compartment that requires it to be closed and locked when it is not occupied. Procedures for meeting these requirements must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

(d) For all doors installed in the OHCR compartment, there must be a means to preclude anyone from being trapped inside the OHCR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of a key or other special tools. The lock must not prevent opening from the inside of the OHCR compartment at any time.

3. In addition to the requirements of § 25.562 for seats, which are occupiable during takeoff and landing, and restraint systems, the OHCR compartment structure must be compatible with the loads imposed by the seats as a result of the conditions specified in § 25.562(b).

4. There must be at least two emergency evacuation routes that could be used by each occupant of the OHCR compartment to rapidly evacuate to the main cabin. In addition—

(a) The routes must be located with sufficient separation within the OHCR compartment to minimize the possibility of an event either inside or outside of the crew rest compartment rendering both routes inoperative.

Compliance to the requirements of Special Condition No. 4(a) may be shown by inspection or by analysis. Regardless of which method is used, the maximum acceptable distance between crew rest outlets is 60 feet.

Compliance by Inspection

Inspection may be used to show compliance with Special Condition No. 4. An inspection finding that an OHCR compartment has evacuation routes located so that each occupant of the seats and berths has an unobstructed route to at least one of the crew rest outlets regardless of the location of a fire would be reason for a finding of compliance. A fire within a berth that only blocks the occupant of that berth from exiting the berth need not be considered. Therefore, crew rest outlets that are located at absolute opposite ends (*i.e.*, adjacent to opposite end walls) of the OHCR compartment would require no further review or analysis with regard to their separation.

Compliance by Analysis

Analysis must show that the OHCR compartment configuration and interior features allow all occupants of the OHCR compartment to escape the compartment in the event of a hazard inside or outside of the compartment. Elements to consider in this evaluation are as follows:

(1) Fire inside or outside the OHCR compartment, considered separately, and the design elements used to reduce the available fuel for the fire.

(2) Design elements to reduce the fire ignition sources in the OHCR compartment.

(3) Distribution and quantity of emergency equipment within the OHCR compartment.

(4) Structural failure or deformation of components that could block access to the available evacuation routes (for example seats, folding berths, contents of stowage compartments, etc).

(5) An incapacitated person blocking the evacuation routes.

(6) Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. Possibilities for design components affecting evacuation that should be considered include, but are not limited to, seat deformations in accordance with §§ 25.561(d) and 25.562(c)(8), seat back break-over, rigid structure that reduces access from one part of the compartment to another, and items known to be the cause of potential hazards. Factors that also should be considered are availability of emergency equipment to address fire hazards, availability of communications equipment, supplemental restraint devices to retain items of mass that, if broken loose, could hinder evacuation, and load path isolation between components containing evacuation routes.

Analysis of fire threats should be used in determining placement of required fire extinguishers and protective breathing equipment (PBE). This analysis should consider the possibility of fire in any location in the OHCR compartment. The location and quantity of PBE and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the OHCR compartment.

The intent of this special condition is to provide sufficient egress route separation. Therefore the separation analysis described above should not be used to approve crew rest outlets which have less physical separation (measured

between the centroid of each outlet opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For an OHCR compartment with one outlet located near the forward or aft end of the compartment (as measured by having the centroid of the outlet opening within 20 percent of the total length of the compartment from the forward or aft end of the compartment) the outlet separation from one outlet to the other should not be less than 50 percent of the total OHCR compartment length.

For OHCR compartments with neither required crew rest outlet located near the forward or aft end of the OHCR compartment (as measured by not having the centroid of either outlet opening within 20 percent of the forward or aft end of the total OHCR compartment length), the outlet separation from one outlet to the other should not be less than 30 percent of the total OHCR compartment length.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against crew rest outlets. One of the two crew rest outlets should not be located where normal movement or evacuation by passengers occurs (main aisle, cross aisle, or galley complex, for example) that would impede egress from the OHCR compartment. If an evacuation route is in an area where normal movement or evacuation of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants (of the OHCR compartment) from head injury. The use of evacuation routes must not be dependent on any powered device. If a crew rest outlet is over an area where there are passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the evacuation process of an incapacitated person(s). If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures, including the emergency evacuation of an incapacitated occupant from the OHCR compartment, must be established. The applicant for a change in type design must transmit all of these procedures to the operator for incorporation into their training programs and appropriate operational manuals.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of the OHCR compartment evacuation routes. This training must instruct them to ensure that the OHCR compartment (including seats, doors, etc.) is in its proper TT&L configuration.

(e) There must be a means to prevent passengers on the main deck from entering the OHCR compartment when no flight attendant is present or in the event of an emergency, including an emergency evacuation.

(f) Doors or hatches that separate the OHCR compartment from the main deck must not adversely affect evacuation of occupants on the main deck (slowing evacuation by encroaching into aisles, for example) or cause injury to those occupants during opening or while opened.

(g) The means of opening doors and hatches to the OHCR compartment must be simple and obvious. In addition, the crew rest doors and hatches must be able to be closed from the main passenger cabin.

5. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the OHCR compartment to the passenger cabin floor.

Evacuation must be demonstrated for all evacuation routes. A crewmember may provide assistance in the evacuation (a total of one assistant within the OHCR compartment). Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes having stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OHCR compartment, or to the first landing, whichever is lower.

6. The following signs and placards must be provided in the OHCR compartment:

(a) At least one exit sign, located near each crew rest outlet, meeting the requirements of § 25.812(b)(1)(i). An allowable exception would be a sign with reduced background area of no less than 5.3 square inches (excluding the letters), provided that it is installed so that the material surrounding the exit sign is light in color (white, cream, light beige, for example). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would be acceptable.

(b) An appropriate placard must be located conspicuously on or near each OHCR compartment door or hatch that defines the location and the operating instructions for access to and operation of the outlet door or hatch.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The door or hatch handles and operating instruction placards required by Special Condition No. 6(b) of these special conditions must be illuminated to at least 160 microlamberts under emergency lighting conditions.

7. There must be a means in the event of failure of the aircraft's main power system, or of the normal OHCR compartment lighting system, for emergency illumination to be automatically provided for the OHCR compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the OHCR compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

(d) The illumination level must be sufficient, with the privacy curtains in the closed position, for each occupant of the crew rest to locate a deployed oxygen mask.

8. There must be means for two-way voice communications between crewmembers on the flight deck and occupants of the OHCR compartment. There must also be two-way communications between the occupants of the OHCR compartment and each flight attendant station required to have a public address system microphone per § 25.1423(g) in the passenger cabin. In addition, the public address system must include provisions to provide only the relevant information to the crewmembers in the OHCR compartment (for example fire in flight, aircraft depressurization, preparation of the compartment for landing, etc.). That is, provisions must be made so that occupants of the OHCR compartment will not be disturbed with normal, non-emergency announcements made to the passenger cabin.

9. There must be a means for manual activation of an aural emergency alarm system, audible during normal and

emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the OHCR compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units (APU), for a period of at least ten minutes.

10. There must be a means, readily detectable by seated or standing occupants of the OHCR compartment, to indicate when seat belts should be fastened. Seat belt type restraints must be provided for berths and must be compatible with the sleeping position during cruise conditions. There must be a placard on each berth requiring that these restraints be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

11. Protective breathing equipment (PBE) must be provided in accordance with § 25.1439, except that in lieu of a device for each crewmember, the following must be provided: Two PBE devices approved to Technical Standard Order (TSO)–C116 or equivalent, suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater. The following equipment must also be provided in the OHCR compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur.

(b) One flashlight.

Note: Additional PBE and fire extinguishers in specific locations, beyond the minimum numbers prescribed in Special Condition No. 11, may be required as a result of the egress analysis accomplished to satisfy Special Condition No. 4(a).

12. A smoke or fire detection system (or systems) must be provided that monitors each occupiable area within the OHCR compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flight deck within one minute after the start of a fire.

(b) An aural warning in the OHCR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

13. Means to fight a fire must be provided. The means can either be a built-in extinguishing system or manual hand-held bottle extinguishing system.

(a) For a built-in extinguishing system:

(1) The system must have adequate capacity to suppress a fire considering the fire threat, volume of the compartment, and the ventilation rate. The system must have sufficient extinguishing agent to provide an initial knockdown and suppression environment per the minimum performance standards (MPS) that have been established for the agent being used.

(2) If the capacity of the extinguishing system does not provide effective fire suppression that will last for the duration of flight from the farthest point in route to the nearest suitable landing site expected in service, an additional manual firefighting procedure must be established. For the built-in extinguishing system, the time duration for effective fire suppression must be established and documented in the firefighting procedures in the airplane flight manual. If the duration of time for demonstrated effective fire suppression provided by the built-in extinguishing agent will be exceeded, the firefighting procedures must instruct the crew to:

1. Enter the crew rest at the time that demonstrated fire suppression effectiveness will be exceeded.

2. Check for and extinguish any residual fire.

3. Confirm that the fire is out.

(b) For either a built-in extinguishing system of limited suppression duration or a manual hand held bottle-extinguishing system:

(1) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the firefighting procedures.

(2) The compartment design must allow crewmembers equipped for firefighting to have unrestricted access to all parts of the compartment. The firefighting procedures must describe the methods for searching the crew rests for fire sources(s).

(3) The time for a crewmember on the main deck to react to the fire alarm, don the firefighting equipment, and gain access to the crew rest compartment must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

14. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the OHCR compartment from entering any other occupiable compartment.

(a) Small quantities of smoke may penetrate from the crew rest compartment into other occupied areas during the one-minute smoke detection time.

(b) There must be a provision in the firefighting procedures to ensure that all door(s) and hatch(es) at the crew rest compartment outlets are closed after evacuation of the crew rest and during firefighting to minimize smoke and extinguishing agent from entering other occupiable compartments.

(c) Smoke entering any occupiable compartment when access to the OHCR compartment is open for evacuation of the crew rest must dissipate within five minutes after the access to the OHCR compartment is closed.

(d) Hazardous quantities of smoke may not enter any occupied compartment during subsequent access to manually fight a fire in the crew rest compartment. The amount of smoke entrained by a firefighter exiting the crew rest compartment is not considered hazardous.

(e) Flight tests must be conducted to show compliance with this requirement.

15. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the OHCR compartment. The system must provide an aural and visual warning to alert the occupants of the OHCR compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the OHCR compartment is depressed. Procedures for crew rest occupants in the event of decompression must be established. These procedures must be transmitted to the operators for incorporation into their training programs and appropriate operational manuals.

16. The following requirements apply to OHCR compartments that are divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, an aural alert that can be heard in each section of the OHCR compartment must accompany automatic presentation of supplemental oxygen masks. A visual indicator that occupants must don an oxygen mask is required in each section where seats or berths are not installed. A minimum of two supplemental oxygen masks are required for each seat or berth. There

must also be a means by which the oxygen masks can be manually deployed from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the OHCR compartment into small sections. The placard must require that the curtain(s) remains open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each section of the OHCR compartment created by the installation of a curtain, requirements for the following must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1).

(2) Emergency illumination (Special Condition No. 7).

(3) Emergency alarm system (Special Condition No. 9).

(4) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 10).

(5) The smoke or fire detection system (Special Condition No. 12).

(d) OHCR compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway outlet. The exit signs must be provided in each separate section of the OHCR compartment, except for curtained bunks, and must meet the requirements of § 25.812(b)(1)(i). An exit sign with reduced background area as described in Special Condition No. 6(a) may be used to meet this requirement.

(e) For sections within an OHCR compartment that are created by the installation of a partition with a door separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside a section of the compartment. Removal of an incapacitated occupant from within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for short time duration, such as a changing area or lavatory, is not required. However, removal of an incapacitated occupant from within a small room, such as a changing area or lavatory, must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway door.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway outlet. An exit sign with reduced background area as described in Special Condition No. 6(a) may be used to meet this requirement.

(5) Special Conditions No. 1 (no smoking placards), No. 7 (emergency illumination), No. 9 (emergency alarm system), No. 10 (fasten seat belt signal or return to seat signal as applicable) and No. 12 (smoke or fire detection system) must be met with the door open or closed.

(6) Special Conditions No. 8 (two-way voice communication) and No. 11 (emergency firefighting and protective equipment) must be met independently for each separate section except for lavatories or other small areas that are not intended to be occupied for extended periods of time.

17. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

18. Materials (including finishes or decorative surfaces applied to the materials) must comply with the requirements of § 25.853 as amended by Amendment 25–83. Seat cushions and mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83, and the test requirements of part 25, appendix F, part II, or other equivalent methods.

19. The addition of a lavatory within the OHCR compartment would require the lavatory to meet the same requirements as those for a lavatory installed on the main deck except with regard to Special Condition No. 12 for smoke detection.

20. Each stowage compartment in the crew rest, except for underseat compartments for occupant convenience, must be completely enclosed. All enclosed stowage compartments within the OHCR compartment that are not limited to stowage of emergency equipment or airplane supplied equipment must meet the design criteria given in the table below. Enclosed stowage compartments greater than 200 ft^3 in interior volume are not addressed by this special condition. The in-flight accessibility of very large enclosed stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

REQUIREMENTS FOR FIRE PROTECTION FEATURES FOR STOWAGE COMPARTMENTS DEPENDING ON INTERIOR VOLUME SIZE

Fire protection features	Applicability of fire protection requirements by interior volume		
	Less than 25 cubic feet	25 cubic feet to less than 57 cubic feet	57 cubic feet to 200 cubic feet
Materials of Construction [1]	Yes	Yes	Yes.
Smoke or Fire Detectors [2]	No	Yes	Yes.
Liner [3]	No	Conditional	Yes.
Location Detector [4]	No	Yes	Yes.

[1] *Material*

The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (*i.e.*, 14 CFR part 25 Appendix F, Parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft^3 in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] *Smoke or Fire Detectors*

Enclosed stowage compartments equal to or exceeding 25 ft^3 in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire.

(b) An aural warning in the OHCR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

[3] *Liner*

If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment (*i.e.*, § 25.855 at Amendment 25–93, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft^3 in interior volume but less than 57 ft^3 in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft^3 in interior volume but less than or equal to 200 ft^3, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

[4] *Location Detector*

OHCR compartments that contain enclosed stowage compartments exceeding 25 ft^3 in interior volume and are located away from one central location such as the entry to the OHCR compartment or a common area within the OHCR compartment would require additional fire protection features and/or devices to assist the firefighter in determining the location of a fire.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2436 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–54–AD]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Model 525 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: We must receive any comments on this proposed AD by April 15, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–54–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–54–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–54–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.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

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

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

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

What has happened since AD 2003–21–07 to initiate this proposed action? AD 2003–21–07 is considered an interim action since compliance corrected the condition where the control wheel autopilot/trim disconnect switch did not stop the runaway condition. However, AD 2003–21–07 did not correct the issue of the single-point failure while still utilizing the desired equipment. Cessna has now developed and made changes in the design of the affected trim printed circuit board (PCB) assembly to eliminate the single-point failure while allowing the use of the equipment, and identified additional airplanes that have the same unsafe condition.

What is the potential impact if FAA took no action? Failure of the electric trim system would result in a large pitch mistrim and would cause excessive

control forces that the pilot could not overcome.

Is there service information that applies to this subject? Cessna has issued Citation Service Bulletin No. SB525–27–17, dated December 9, 2003.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting the electric elevator trim motor;
—Removing the trim PCB assembly;
—Modifying the trim PCB assembly;
—Installing a trim PCB assembly; and
—Removing any tie straps or extension caps installed on the AP servos and pitch trim circuit breakers.

FAA's Determination and Requirements of This Proposed 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. Therefore, we are proposing AD action.

What would this proposed AD require? This proposed AD would supersede AD 2003–21–07 with a new AD that would require you to:

—Remove any 6518351–3 or 6518351–5 trim PCB assembly and replace with a 6518351–10 (EX) trim PCB assembly; or
—Modify the 6518351–8 trim PCB assembly to a 6518351–10 trim PCB assembly.

How does the revision to 14 CFR part 39 affect this proposed 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.

Costs of Compliance

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

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

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

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

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

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

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

Compliance Time of This Proposed AD

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

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

Regulatory Findings

Would this proposed AD impact various entities? 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.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed 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 proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–54–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Cessna Aircraft Company: Docket No. 2003–CE–54–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by April 15, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2003–21–07.

What Airplanes Are Affected by This AD?

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

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

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

What Is the Unsafe Condition Presented in This AD?

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

What Must I Do To Address This Problem?

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

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

May I Request an Alternative Method of Compliance?

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

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

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

approved as alternative methods of compliance for this AD.

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

(g) You may get copies of the documents referenced in this AD from The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–6000; facsimile: (316) 517–8500. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 29, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2403 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–97–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model EMB–135 and –145 series airplanes. This proposal would require modification of the pitch trim system, which includes replacing certain components of the system with new or serviceable components, and upgrading certain software to a newer version. This action is necessary to prevent the temporary loss of the pitch trim command, which could result in reduced controllability of the airplane and consequent injury to the flightcrew and passengers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

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

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that several operators have reported temporary loss of the pitch trim command during the climb after take-off caused by probable failure of various components of the pitch trim system. The pitch trim system consists of several components including the horizontal stabilizer control unit (HSCU), the horizontal stabilizer actuator (HSA), the aural warning unit (AWU), integrated computer (IC) units, engine indicating and crew alerting system/electronic flight information system (EICAS/EFIS) software, the control yoke pitch trim switch, and the data acquisition unit (DAU). Failure of the pitch trim system, if not corrected, could result in reduced controllability of the airplane and consequent injury to the flightcrew and passengers.

Explanation of Relevant Service Information

EMBRAER has issued the following service bulletins related to the modification of the pitch trim system.

- EMBRAER Service Bulletin 145LEG–27–0002, dated February 5, 2003 (for Model EMB–135BJ series airplanes); and EMBRAER Service Bulletin 145–27–0084, Revision 04, dated October 21, 2003 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes); which describe procedures for replacing the HSCU with a new unit having improved features. EMBRAER Service Bulletin 145–27–0084 specifies that EMBRAER Service Bulletin 145–

27–0091, Change 02, dated November 27, 2002, must be accomplished either previously or concurrently with the replacement of the HSCU.

EMBRAER Service Bulletins 145LEG–27–0002 and 145–27–0084 also describe procedures for connecting the HSCU and the DAU (including the replacement of the pitch trim system circuit breakers with new circuit breakers sized for the new system load capacity, as applicable). EMBRAER Service Bulletin 145–27–0084 specifies that EMBRAER Service Bulletins 145–31–0028, Change 04, dated December 20, 2002; 145–31–0033, Revision 03, dated August 25, 2003; and 145–27–0083, Change 04, dated November 27, 2002 must be accomplished prior to the connection of the HSCU and the DAU.

- EMBRAER Service Bulletin 145–27–0083, Change 04, dated November 27, 2002 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes), must be accomplished either previously or concurrently with Service Bulletin 145–27–0084. Service Bulletin 145–27–0083 contains procedures for installing electrical provisions for the new pitch trim system, which includes adding new cable harnesses in the front electronic compartment, the entire center fuselage, the cockpit, and the entire rear fuselage; to enable the connection of the HSCU through certain electrical connections, and to enable the connection of DAU #2 to the HSCU.
- EMBRAER Service Bulletin 145–27–0091, Change 02, dated November 27, 2002 (for all affected models); which describes procedures for replacing the HSA with a new HSA.
- EMBRAER Service Bulletin 145–31–0028, Change 04, dated December 20, 2002 (for all affected models); which describes procedures for replacing the AWU with an AWU having improved features. This service bulletin also references Grimes Aerospace Company Service Bulletin 80–0694–33–SB01, dated January 1, 2002, as an additional source of service information for accomplishment of the replacement. The Grimes Aerospace service bulletin is included in the EMBRAER service bulletin.
- EMBRAER Service Bulletin 145LEG–31–0001, dated August 19, 2002 (for Model EMB–135BJ series airplanes); and EMBRAER Service Bulletin 145–31–0033, Revision 03, dated August 25, 2003 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes); which describe procedures for replacing any IC units having certain part numbers with new units having new modification letters and new part numbers. These service bulletins also describe procedures for installing an updated version of the software for the EICAS/EFIS. EMBRAER Service Bulletin 145–31–0033 specifies that EMBRAER Service Bulletins 145–31–0020, Change 03, dated July 30, 2002; and 145–27–0084, Revision 04, dated October 21, 2003 (described previously); must be accomplished previously. EMBRAER Service Bulletin 145LEG–31–0001 and 145–31–0033 reference Honeywell Service Bulletin 7017000–22–6089, Revision 003, dated October 16, 2003, as an additional source of service information for accomplishment of the replacement and installation.
- EMBRAER Service Bulletin 145–31–0020, Change 03, dated July 30, 2002 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes), must be accomplished prior to accomplishment of Service Bulletin 145–31–0033. Service Bulletin 145–31–0020 contains procedures for replacing the IC–600#1 and IC–600#2, and the DAU; and for upgrading the EICAS to version 17.
- EMBRAER Service Bulletin 145LEG–27–0004, dated January 21, 2003 (for Model EMB–135BJ series airplanes); and EMBRAER Service Bulletin 145–27–0096, Revision 03, dated September 2, 2003 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes); which describe procedures for replacing the control yoke pitch trim switch with a new switch; and procedures for replacing the placard around the switch knob, as applicable, with a new placard.
- EMBRAER Service Bulletin 145–27–0073, Change 02, dated February 26, 2002 (for all affected models); which describes procedures for replacing the pitch trim back-up control switch with a new switch (including reidentifying the trim control panel).

The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 2003–03–01, dated April 3, 2003, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

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

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing additional modifications that will address the unsafe condition identified in this proposed AD. Once these modifications are developed, approved, and available, we may consider additional rulemaking.

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 365 airplanes of U.S. registry would be affected by this proposed AD.

For all affected airplanes, we estimate that it would take approximately 1 work hour per airplane to accomplish the proposed replacement of the HCSU, and that the average labor rate is $65 per work hour. The manufacturer will provide replacement parts at no cost. Based on these figures, the cost impact of this proposed replacement on U.S. operators is estimated to be $23,725, or $65 per airplane.

For airplanes subject to EMBRAER Service Bulletin 145–27–0091, we estimate that it would take approximately 6 work hours per airplane to accomplish the proposed replacement of the HSA, and that the average labor rate is $65 per work hour. The manufacturer will provide replacement parts at no cost. Based on these figures, the cost impact of this proposed replacement on U.S. operators is estimated to be $390 per airplane.

For airplanes subject to EMBRAER Service Bulletin 145–31–0028, we estimate that it would take approximately 2 work hours per airplane to accomplish the proposed replacement of the AWU, and that the average labor rate is $65 per work hour.

Required parts would cost approximately $1,100 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,230 per airplane.

For airplanes subject to EMBRAER Service Bulletins 145LEG–31–0001, or 145–31–0033, we estimate that it would take between 3 and 6 work hours per airplane to accomplish the proposed installation of the new EICAS/EFIS, and that the average labor rate is $65 per work hour. Required parts would cost approximately $10 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $205 and $400 per airplane.

For airplanes subject to EMBRAER Service Bulletins 145LEG–27–0004, or 145–27–0096, we estimate that it would take between 4 and 5 work hours per airplane to accomplish the proposed replacement of the yoke pitch trim switch, and that the average labor rate is $65 per work hour. Required parts would cost approximately between $1,042 and $1,056 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $1,302 and $1,381 per airplane.

For airplanes subject to EMBRAER Service Bulletin 145–27–0073, we estimate that it would take approximately 3 work hours per airplane to accomplish the proposed replacement of pitch trim back-up control switch, and that the average labor rate is $65 per work hour. Required parts would cost approximately $371 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $566 per airplane.

For airplanes subject to the requirements in EMBRAER Service Bulletin 145–27–0083, Change 04, dated November 27, 2002, we estimate that it would take approximately 38 hours to accomplish the proposed modifications, and that the average labor rate is $65 per work hour. Required parts would cost approximately $448. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,918 per airplane.

For airplanes subject to the requirements in EMBRAER Service Bulletin 145–31–0020, Change 03, dated July 30, 2002, we estimate that it would take between 9 and 56 hours to accomplish the proposed upgrade, and that the average labor rate is $65 per work hour. Required parts would cost between $3 and $5,100. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be approximately between $588 and $8,740 per airplane.

For all affected airplanes, we estimate that it would take between 1 and 3 hours per airplane to accomplish the proposed connection between the HSCU and the DAU, and that the average labor rate is $65 per work hour. Required parts would cost between $3 and $52 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $24,820 and $90,155, or between $68 and $247 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.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–97–AD.

Applicability: Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145LEG–27–0002, dated February 5, 2003; EMBRAER Service Bulletin 145–27–0084, Revision 04, dated October 21, 2003; and EMBRAER Service Bulletin 145–27–0096, Revision 03, dated September 2, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the temporary loss of the pitch trim command, which could result in reduced controllability of the airplane and consequent injury to the flightcrew and passengers, accomplish the following:

Prior or Concurrent Requirements

(a) Prior to the accomplishment of the actions in paragraph (b) of this AD, accomplish any applicable prior or concurrent requirement listed in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes listed in EMBRAER Service Bulletin 145–31–0020, Change 03, dated July 30, 2002, that are equipped with engine indicating and crew alerting system/electronic flight information system (EICAS/EFIS) software version 16.5 or earlier: Upgrade to software version 17 of the EICAS/EFIS software, in accordance with the Accomplishment Instructions of the service bulletin.

(2) For airplanes listed in EMBRAER Service Bulletin 145–27–0083, Change 04, dated November 27, 2002: Install electrical provisions for the new pitch trim system in accordance with the Accomplishment Instructions of the service bulletin.

Modification of the Pitch Trim System: Replacement, Installation, and Connection

(b) Within 18 months or 5,000 flight hours after the effective date of this AD, whichever occurs first, but following any applicable prior or concurrent requirement listed in paragraph (a)(1) or (a)(2) of this AD: Modify the pitch trim system for the affected airplanes by accomplishing the actions in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7), as applicable. Accomplish the actions in the sequence specified in this AD.

(1) For all airplanes: Replace the horizontal stabilizer control unit (HSCU) with a new unit with improved features, and having a new part number in accordance with paragraph 3.J. (Part I) of EMBRAER Service Bulletin 145LEG–27–0002, dated February 5,

2003 (for Model EMB–135BJ series airplanes); or paragraph 3.J. (Part I) of EMBRAER Service Bulletin 145–27–0084, Revision 04, dated October 21, 2003 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes); as applicable.

(2) For airplanes listed in EMBRAER Service Bulletin 145–27–0091, Change 02, dated November 27, 2002: Replace the horizontal stabilizer actuator (HSA) with a new HSA having a new part number in accordance with the Accomplishment Instructions of the service bulletin.

(3) For airplanes listed in EMBRAER Service Bulletin 145–31–0028, Change 04, dated December 20, 2002: Replace the aural warning unit (AWU) with an AWU having improved features and a new part number in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: EMBRAER Service Bulletin 145–31–0028 references Grimes Aerospace Company Service Bulletin 80–0694–33–SB01, dated January 1, 2002, as an additional source of service information for accomplishment of the replacement. The Grimes Aerospace service bulletin is included in the EMBRAER service bulletin.

(4) For airplanes listed in EMBRAER Service Bulletin 145LEG–31–0001, dated August 19, 2002 (for Model EMB–135BJ series airplanes); or EMBRAER Service Bulletin 145–31–0033, Revision 03, dated August 25, 2003 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes): Replace any IC–600 units having part numbers (P/N) 7107000–82407, –82407 MODS–B, –82427, –83407, and –83407 MODS–B, with new IC–600 MOD AB units having P/Ns 7107000–82428, or –83428, as applicable; and install a new software version 18.5 (phase 8.5) of the EICAS/EFIS system for all IC–600 MOD AB hardware. Accomplish the actions in accordance with the Accomplishment Instructions of the applicable service bulletin.

Note 2: EMBRAER Service Bulletins 145LEG–31–0001 and 145–31–0033 reference Honeywell Service Bulletin 7017000–22–6089, Revision 003, dated October 16, 2003, as an additional source of service information for accomplishment of the replacement and installation.

(5) For airplanes listed in EMBRAER Service Bulletin 145LEG–27–0004, dated January 21, 2003 (for Model EMB–135BJ series airplanes); or EMBRAER Service Bulletin 145–27–0096, Revision 03, dated September 2, 2003 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes): Replace the control yoke pitch trim switch with a new switch having a new part number; and replace the placard around the switch knob, as applicable, with a new placard having a new part number in accordance with the Accomplishment Instructions of the applicable service bulletin.

(6) For airplanes listed in EMBRAER Service Bulletin 145–27–0073, Change 02, dated February 26, 2002: Replace the pitch trim back-up control switch with a new switch having a new part number (including reidentifying the trim control panel) in accordance with the Accomplishment Instructions of the service bulletin.

(7) For all airplanes: Connect the HSCU and the data acquisition unit (DAU) (including the replacement of the pitch trim system circuit breakers with new circuit breakers sized for the new system load capacity, as applicable) in accordance with paragraph 3.K. (Part II) of EMBRAER Service Bulletin 145LEG–27–0002, dated February 5, 2003 (for Model EMB–135BJ series airplanes); or paragraphs 3.K., 3.L., 3.M., and 3.N. (Parts II, III, IV, and V) of EMBRAER Service Bulletin 145–27–0084, Revision 04, dated October 21, 2003 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes).

Parts Installation

(c) As of the effective date of this AD, no person may install, on any airplane, a part unless it has been modified in accordance with the applicable paragraph of the affected service bulletins listed in Table 1 of this AD.

TABLE 1.—PARTS INSTALLATION PARAGRAPHS

EMBRAER service bulletin	Parts installation paragraph
145–27–0084, Revision 04, dated October 21, 2003.	1.C.(1)(a)
145LEG–27–0002, dated February 5, 2003.	1.C.(1)(a)
145–27–0091, Change 02, dated November 27, 2002.	1.C.(1)(a)
145–31–0028, Change 04, dated December 20, 2002.	1.C.(a)
145–31–0033, Revision 03, dated August 25, 2003.	1.C.(1)

Actions Accomplished Per Previous Issues of Service Bulletins

(d) Actions accomplished before the effective date of this AD in accordance with the service bulletins listed in Table 2 of this AD are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 2.—PREVIOUS ISSUES OF SERVICE BULLETINS

EMBRAER service bulletin	Revision and date
145–31–0028	Original Issue, December 13, 2001.
	Revision 01, January 22, 2002.
	Revision 02, April 2, 2002.
	Revision 03, August 22, 2002.
145–31–0033	Revision 02, April 27, 2003.
	Revision 03, August 25, 2003.
145–27–0083	Original Issue, October 4, 2001.
	Revision 01, March 15, 2002.
	Revision 02, April 11, 2002.
	Revision 03, July 16, 2002.
145–27–0084	Revision 01, December 20, 2002.
	Revision 02, February 25, 2003.
	Revision 03, July 15, 2003.
145–27–0096	Revision 01, April 7, 2003.
	Revision 02, July 1, 2003.
	Revision 03, September 2, 2003.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2003–03–01, dated April 3, 2003.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2467 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–262–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all CASA Model C–212 series airplanes. This proposal would require rework of the nose landing gear (NLG); modification of the hydraulic steering system; a test of the cable tension for the nosewheel steering system when abnormal vibration occurs, and adjustment of the cable tension, if necessary; and a revision to the

Limitations section of the airplane flight manual to include certain procedures to be performed during the takeoff run. This action is necessary to prevent failure of the auxiliary landing gear direction system, which could result in abnormal vibrations during takeoff and landing runs, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–262–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–262–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–262–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–262–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación Civil (DGAC), which is the airworthiness authority for Spain, notified the FAA that an unsafe condition may exist on all CASA Model C–212 series airplanes. The DGAC advises that failures of the auxiliary landing gear direction system have been reported, which produced abnormal vibrations during takeoff and landing runs. The failure was caused by a gradual loss of hydraulic oil pressure in the selector direction valve, and by a loss of tension in the cable for the nosewheel steering system. This condition, if not corrected, could result in the failure of the auxiliary landing gear direction system, which could cause abnormal vibrations during takeoff and landing runs, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

CASA has issued CASA Service Bulletin 212–32–21, Revision 2, dated November 10, 1987, which describes procedures for reworking the nose landing gear (NLG). The rework of the NLG includes replacing bushings and washers with new parts, if necessary; installing a new helicoil; re-identifying and re-installing the lower attachment fitting; installing a new lockwasher and nut; installing a new nut on the shock absorber assembly; removing any gear crown assembly that has broken teeth, dirt, corrosion, or uneven wear, and replacing it with a new or serviceable gear crown assembly; re-identifying and re-installing the ring nut of the shock absorber assembly; and installing a new actuator.

CASA has also issued EADS CASA Service Bulletin SB–212–32–22, Revision 2, dated July 28, 1997, which describes procedures for modifying the hydraulic steering system of the NLG. The modification of hydraulic steering system involves modifying the hydraulic installation and the nose fuselage; modifying the electrical installation and the center instrument panel, as applicable; and modifying the electrical system and overhead panel, as applicable. This service bulletin also contains procedures for testing the cable tension of the nosewheel steering system, and adjusting the tension, if necessary.

CASA has also issued EADS CASA COM 212–172, Revision 04, dated December 9, 2002; and CASA COM 212–173, Revision 3, dated February 22, 1995. These communications contain information and procedures related to maintenance, troubleshooting, overhaul, tests, and tolerances for landing gear units of the affected airplanes. The information in these documents has been consolidated from several different documents including service bulletins, maintenance manuals, technical orders, and the structural repair manual.

Accomplishment of the actions specified in the service bulletins and the COMs is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins and COMs as mandatory and issued Spanish airworthiness directive 01/02, dated April 17, 2002, to ensure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The

FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below. The proposed AD would also require revising the Limitations section of the airplane flight manual to include certain procedures to be performed during the takeoff run.

Cost Impact

The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed rework of the NLG; and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $10,530, or $390 per airplane.

We estimate that it would take approximately 92 work hours per airplane to accomplish the proposed modification of the hydraulic steering system. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $161,460, or $5,980 per airplane.

We estimate that it would take approximately 1 work hour per airplane to revise the Limitations section of the airplane flight manual. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $1,755, or $65 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.

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:

Construcciones Aeronauticas, S.A. (CASA): Docket 2002–NM–262–AD.

Applicability: All Model C–212 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the auxiliary landing gear direction system, which could result in abnormal vibrations during takeoff and landing runs, and consequent reduced controllability of the airplane, accomplish the following:

Rework and Modification

(a) Within 6 months after the effective date of this AD, accomplish the actions in paragraphs (a)(1) and (a)(2) of this AD in accordance with the applicable service bulletin.

(1) Rework the nose landing gear (NLG) in accordance with the Accomplishment Instructions of CASA Service Bulletin SB212–32–21, Revision 2, dated November 10, 1987.

(2) Modify the hydraulic steering system of the NLG in accordance with the Instructions for Accomplishment of EADS CASA Service Bulletin SB–212–32–22, Revision 2, dated July 28, 1997.

Tension Test and Adjustment

(b) Within 600 flight hours after any abnormal vibration of the nosewheel steering system occurs, test the cable tension of the nosewheel steering system. Adjust the tension, if necessary. Accomplish these actions in accordance with EADS CASA COM 212–172, Revision 04, dated December 9, 2002; or CASA COM 212–173, Revision 3, dated February 22, 1995; as applicable.

Airplane Flight Manual Revision

(c) Within 6 months after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Nose wheel malfunction during take-off run—Initiate or "perform" normal RTO procedures."

Note 1: When a statement identical to that in paragraph (c) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Parts Installation

(d) As of the effective date of this AD, no person may install on any airplane an NLG unless it has been reworked in accordance with paragraph (a)(1) of this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Spanish airworthiness directive 01/02, dated April 17, 2002.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2468 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–107–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Model 747 series airplanes. This proposal would require a repetitive detailed inspection of the aft pressure bulkhead for indications of "oil cans" and previous "oil can" repairs, and corrective actions, if necessary. An "oil can" is an area on a pressure dome web that moves when pushed from the forward side. This action is necessary to detect and correct the propagation of fatigue cracks in the vicinity of "oil cans" on the web of the aft pressure bulkhead, which could result in rapid decompression and overpressurization of the tail section, and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–107–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Nicholas Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–107–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that a 2.1-inch long crack in the web of the aft pressure bulkhead at the perimeter of an "oil can" was found on a Model 747SR series airplane. An "oil can" is an area on a pressure dome web that moves when pushed from the forward side. The cause of the crack is fatigue. This condition, if not detected and corrected, could result in the propagation of fatigue cracks in the vicinity of "oil cans" on the web of the aft pressure bulkhead, which could result in rapid decompression and overpressurization of the tail section, and consequent loss of control of the airplane.

The subject area on Model 747SR series airplanes is almost identical to that on Model 747–100, –200B, –200F, –200C, –100B, –300, –100B–SUD, –400, –400D, and –400F series airplanes; and Model 747SP series airplanes. Therefore, those airplanes may be subject to the unsafe condition revealed on the Model 747SR series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2482, dated October 3, 2002, which describes procedures for performing a repetitive detailed inspection of the aft pressure bulkhead for indications of "oil cans" and previous "oil can" repairs, and corrective actions, if necessary. The corrective actions include performing a repetitive eddy current inspection of the web around the periphery of the "oil can" for cracks, and repair if necessary; and performing a detailed inspection of the web around previous "oil can" repairs for cracks. Repair of all "oil cans" eliminates the need for the repetitive eddy current inspection of existing "oil cans." Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Bulletin

Operators should note that when a previous "oil can" repair is found, section 3.B.9.a. of the service bulletin states that if no cracking is found, no

action on the repaired area is required at this time, and that the repetitive inspections of the aft pressure bulkhead for "oil cans" at 2,000 flight cycle intervals are to continue. The FAA has determined, however, that the actions specified in the service bulletin for "oil cans" found at previous "oil can" repairs are insufficient. It is possible that the "oil can" that was originally repaired within the allowable limits of the service bulletin has since grown to exceed the allowable limits. In accordance with Figure 4 or Figure 5 of the service bulletin, this proposed AD would require an eddy current inspection for cracks if "oil cans" are found at previous "oil can" repairs. In addition, if no cracking is found, this proposed AD would require verification that any "oil cans" at previous "oil can" repairs are within the allowable limits of the service bulletin. For any "oil can" that meets the allowable limits, this proposed AD would require repetitive eddy current inspections at intervals not to exceed 1,000 flight cycles until a repair that terminates the "oil can" is completed. For any "oil can" that does not meet the allowable limits, this proposed AD would require repair of the "oil can" and, if any "oil can" remains after the repair, this proposed AD would require repetitive eddy current inspections at intervals not to exceed 1,000 flight cycles.

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

Cost Impact

There are approximately 1,140 airplanes of the affected design in the worldwide fleet. The FAA estimates that 254 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $99,060, or $390 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–107–AD.

Applicability: All Model 747 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD refers to certain portions of a Boeing service bulletin for inspections and repair information. In addition, this AD specifies requirements beyond those included in the service bulletin. Where the AD and the service bulletin differ, the AD prevails.

To detect and correct the propagation of fatigue cracks in the vicinity of "oil cans" on the web of the aft pressure bulkhead, which could result in rapid decompression and overpressurization of the tail section, and consequent loss of control of the airplane, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2482, dated October 3, 2002.

Initial and Repetitive Inspections

(b) Prior to the accumulation of 30,000 flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later, perform a detailed inspection of the aft pressure bulkhead for indications of "oil cans" and previous "oil can" repairs, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(c) If no indication of an "oil can" is found and no indication of a previous "oil can" repair is found, during the detailed inspection required by paragraph (b) of this AD, repeat the detailed inspection thereafter at intervals not to exceed 2,000 flight cycles.

Indication of "Oil Can"

(d) If any indication of an "oil can" is found during the detailed inspection required by paragraph (b) or (c) of this AD, before further flight, perform an eddy current inspection of the web around the periphery of the "oil can" indication for cracks, as shown in Figure 3 of the service bulletin.

(e) If no crack is found during the eddy current inspection required by paragraphs (d) and (f)(2) of this AD, do the actions specified in paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For the "oil can" that meets the allowable limits specified in the service bulletin: Repeat the eddy current inspection specified in paragraph (d) of this AD thereafter at intervals not to exceed 1,000 flight cycles. As an option, repair the "oil can" in accordance with paragraph (e)(2) of this AD.

(2) For the "oil can" that does not meet the allowable limits specified in the service bulletin: Before further flight, repair the "oil can" in accordance with the service bulletin. If the repair eliminates the "oil can," accomplishment of this repair constitutes a terminating action for the repetitive eddy

current inspection requirements of paragraph (e)(1) of this AD for this location only. However, the repetitive detailed inspection required by paragraph (c) of this AD is still required. If any "oil can" remains after the repair, repeat the eddy current inspection thereafter at intervals not to exceed 1,000 flight cycles.

Indication of Previous "Oil Can" Repairs

(f) If any previous "oil can" repair is found during the detailed inspection required by paragraph (b) or (c) of this AD, before further flight, do a detailed inspection of the web for cracks and "oil cans," as shown in Figure 4 or Figure 5 of the service bulletin, as applicable.

(1) If no crack and no "oil can" are found, repeat the detailed inspection in accordance with paragraph (c) of this AD.

(2) If any "oil can" is found, before further flight, do the eddy current inspection for cracks as shown in Figure 3 of the service bulletin.

(3) If no crack is found during the eddy current inspection required by paragraph (f)(2) of this AD, do the actions specified in paragraph (e)(1) or (e)(2) of this AD, as applicable.

Repair of Cracks

(g) If any crack is found during any inspection required by this AD, before further flight, repair in accordance with the service bulletin. If cracks or damage exceeds limits specified in the service bulletin and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

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

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2469 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–227–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Fan Jet Falcon Series Airplanes and Model Mystere-Falcon 20 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Fan Jet Falcon series airplanes and Model Mystere-Falcon 20 series airplanes. This proposal would require inspecting and testing for fatigue cracking due to stress corrosion in the vertical posts of the window frames in the flight compartment. This action is necessary to prevent fatigue cracking of the window frames, which could result in rapid depressurization of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

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

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–227–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–227–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the

airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Model Fan Jet Falcon series airplanes and Model Mystere-Falcon 20 series airplanes. The DGAC advises that cracking has been found in the vertical posts of window frames in the flight compartment that were not included in the maintenance program inspection area. The airplane manufacturer, Dassault Aviation, has revised certain work cards in the maintenance manual to include procedures for inspecting and testing these window frames. Cracking of the window frames could result in rapid depressurization of the fuselage and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Dassault has issued revised Work Card 53–30–07, "Non-Destructive Ultrasonic Testing of Vertical Posts on Screw-Mounted Windows" of the Dassault Aviation Fan Jet Falcon Maintenance Manual, dated November 2001. The work card describes procedures for testing (including calibrating the equipment) the posts of the window frames in the flight compartment, including the right side window, left and right rear windows, front window, and pilot and co-pilot windows, for stress corrosion cracking.

Dassault has also issued revised Work Card 53–30–12, "Endoscopic Inspection of the Frames of Pilot, Co-Pilot, and Front Glass Panels (Aircraft Not Changed Per SB No. 701)" of the Dassault Aviation Fan Jet Falcon Maintenance Manual, dated November 2001. The work card describes procedures for using an endoscope and inspecting the window frames of the pilot, co-pilot, and front windows in the flight compartment for stress corrosion and subsequent cracking. Accomplishment of the actions specified in the service information is intended to adequately address the identified unsafe condition. The DGAC classified this service information as mandatory and issued French airworthiness directive 2001–600–028(B), dated December 12, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed AD

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

Difference Between the Proposed AD and the French Airworthiness Directive

The French airworthiness directive is applicable to "all Fan Jet Falcon and Mystere Falcon 20-(x)5 aircraft, all serial numbers." The applicability of this proposed AD is "Model Fan Jet Falcon series airplanes and Model Mystere-Falcon 20 series airplanes; certificated in any category; except those which have incorporated Dassault Service Bulletin AMD–BA FJF–701, Revision 1, dated October 22, 1987." This exception appears in Dassault Aviation Work Card 53–30–12, titled "Endoscopic Inspection of the Frames of Pilot, Co-Pilot, and Front Glass Panels (Aircraft Not Changed Per SB No. 701)," of the Dassault Aviation Fan Jet Falcon Maintenance Manual, dated November 2001. This difference has been coordinated with the DGAC.

Cost Impact

The FAA estimates that 220 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $57,200, or $260 per airplane.

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

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:

Dassault Aviation: Docket 2002–NM–227–AD.

Applicability: Model Fan Jet Falcon series airplanes and Model Mystere-Falcon 20 series airplanes; certificated in any category; except those which have incorporated Dassault Service Bulletin AMD–BA FJF–701, Revision 1, dated October 22, 1987.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the window frames in the flight compartment, which could result in rapid depressurization of the

fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Inspection and Test of Flight Compartment Window Frames

(a) Do an inspection and test for stress corrosion and cracking as specified in paragraphs (a)(1) and (a)(2) of this AD, at the applicable time specified in paragraph (b) of this AD.

(1) Do a detailed inspection (using an endoscope) to detect stress corrosion and cracking of the window frames in the flight compartment, including the pilot, co-pilot, and front windows. Do the inspection in accordance with Dassault Aviation Work Card 53–30–12, titled "Endoscopic Inspection of the Frames of Pilot, Co-Pilot, and Front Glass Panels (Aircraft Not Changed Per SB No. 701)," of the Dassault Aviation Fan Jet Falcon Maintenance Manual, dated November 2001.

(2) Do an ultrasonic test for cracking in the posts of the window frames, including the right side window, left and right rear windows, front window, and pilot and co-pilot windows. Do the test in accordance with Dassault Aviation Work Card 53–30–07, titled "Non-Destructive Ultrasonic Testing of Vertical Posts on Screw-Mounted Windows," of the Dassault Aviation Fan Jet Falcon Maintenance Manual, dated November 2001.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Do the inspection and test required by paragraph (a) of this AD, at the times specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes having 35 or more years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever is first; or having accumulated 20,000 or more total flight cycles; as of the effective date of this AD: Within 7 months after the effective date of this AD.

(2) For airplanes not identified in paragraph (b)(1) of this AD: Within 25 months or 2,500 flight cycles after the effective date of this AD, whichever is first.

Repair

(c) If any stress corrosion or cracking is found during any inspection or test required by paragraph (a) of this AD: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

Reporting Requirement

(d) At the applicable time specified in paragraph (d)(1) or (d)(2) of this AD: Submit a report of the findings (positive and negative) of the inspection required by paragraph (a) of this AD to: Dassault Falcon Jet, Attn: Service Engineering/Falcon 20, fax: (201) 541–4706, at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD. The report must include the airplane serial number, number of landings, number of flight hours, airplane age, and the number and length of any cracks found. Submission of the Charts of Records (part of French airworthiness directive 2001–600–028(B), dated December 12, 2001), is an acceptable method of complying with this requirement. 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 5 days after the inspection.

(2) If the inspection was done prior to the effective date of this AD: Submit the report within 5 days after the effective date of this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in French airworthiness directive 2001–600–028(B), dated December 12, 2001.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2470 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 series airplanes. This proposal would require performing an inspection of the shear attachment fitting for the fin-to-fuselage front spar, and of the shear cleat for the fin root rib at the aft spar location for corrosion; reporting inspection results; and performing corrective action, if necessary. This action is necessary to detect and correct corrosion in the area of the main spar web fittings of the vertical stabilizer, which could result in reduced structural integrity of the vertical stabilizer. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–127–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 Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–127–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–60 series airplanes. The CAA advises that operators have reported corrosion in the area of the main spar web fittings, which act as shear attachments for the vertical stabilizer. This condition, if not detected and corrected, could result in reduced structural integrity of the vertical stabilizer.

Explanation of Relevant Service Information

Shorts has issued Short Brothers Service Bulletin SD360–53–44, Revision 1, dated January 24, 2003, which describes procedures for performing an inspection of the shear attachment fitting for the fin-to-fuselage front spar, and of the shear cleat for the fin root rib at the aft spar location for corrosion, and submitting an inspection report. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–11–2002, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for disposition of repairs, this proposal would require operators to repair those conditions per a method approved by either the FAA or the CAA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the CAA would be acceptable for compliance with this proposed AD.

Interim Action

This proposed AD is considered to be interim action. The inspection reports required by this proposed AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the corrosion, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Cost Impact

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,970, or $195 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Short Brothers plc: Docket 2003–NM–127–AD.

Applicability: All Model SD3–60 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion in the area of the main spar web fittings of the vertical stabilizer, which could result in reduced structural integrity of the vertical stabilizer, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD, perform a detailed inspection to detect corrosion of the shear attachment fitting for the fin-to-fuselage front spar and of the shear cleat for the fin root rib at the aft spar location, in accordance with the Accomplishment Instruction of Short Brothers Service Bulletin SD360–53–44, Revision 1, dated January 24, 2003.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Disposition of Repairs

(b) If any corrosion is detected during the inspection required by paragraph (a) of this AD, before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

Inspection Report

(c) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (a) of this AD to Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, or as specified in the Shorts service bulletin, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

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

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

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in British airworthiness directive 004–11–2002.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2471 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–109–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes. This proposal would require repetitive detailed inspections of the aft pressure bulkhead for indications of "oil cans" and previous "oil can" repairs, and corrective actions, if necessary. An "oil can" is an area on a pressure dome web that moves when pushed from the forward side. This action is necessary to detect and correct the propagation of fatigue cracks in the vicinity of "oil cans" on the web of the aft pressure bulkhead, which could result in rapid decompression of the passenger cabin, possible damage or interference with the airplane control systems that pass through the bulkhead, and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–109–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–109–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–109–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003-NM–109-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that a 2.1-inch crack in the web of the aft pressure bulkhead at the perimeter of an "oil can" was found on a Model 747 series airplane. An "oil can" is an area on a pressure dome web that moves when pushed from the forward side. The cause of the crack in the web is fatigue. This condition, if not detected and corrected, could lead to the propagation of fatigue cracks in the vicinity of "oil cans" on the web of the aft pressure bulkhead, which could result in rapid decompression of the passenger cabin, possible damage or interference with the airplane control systems that pass through the bulkhead, and consequent loss of control of the airplane.

The aft pressure bulkhead on Model 767 series airplanes is almost identical to that on the affected Model 747 series airplanes. Therefore, those Model 767 series airplanes may be subject to the unsafe condition revealed on the Model 747 series airplanes.

Other Related Rulemaking

The FAA may consider further rulemaking to address the unsafe condition identified on Model 747 series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–53A0105, dated April 10, 2003; and Boeing Alert Service Bulletin 767–53A0106, dated April 10, 2003; which describe procedures for performing repetitive detailed inspections of the aft pressure bulkhead for indications of "oil cans" and previous "oil can" repairs, and corrective actions, if necessary. The corrective actions include performing a detailed inspection of the web around any "oil can" repair for cracks and smaller "oil cans" and repairing cracks; and performing repetitive high frequency eddy current inspections of the web around the periphery of the "oil can" indication for cracks and repairing cracks. Repair of all "oil cans" eliminates the need for the repetitive high frequency eddy current inspections.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Bulletins

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Clarification of Actions in Service Bulletins

Operators should note that paragraph 1.b. of "Part 3—Inspection of 'Oil Cans,'" of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0106, dated April 10, 2003, states, "* * * limits shown in 767–200, 767–300, or 767–300F Structural Repair Manual (SRM) 53–80–08, Figure 102." However, the service bulletin applies to Model 767–400ER series airplanes, and thus the reference should be to 767–400 SRM 53–80–08, Figure 102, as specified in the previous paragraph 1.a. of the service bulletin.

Operators should note that "Part 2—Inspection of Previous 'Oil Can' Repairs" of the Accomplishment Instructions of both service bulletins states, "Do the inspections shown in Part 2 again at the time shown in Figure 1." However, Figure 1 of the service bulletins specifies that the inspection in "Part 1—Access and Inspection" is to be repeated. We have determined that the correct reference is Part 1. Therefore this proposed AD would require repetitive inspection per Part 1.

Interim Action

This is considered to be interim action. The FAA may consider further rulemaking to reduce thresholds if cracks are reported earlier than the predicted fatigue life.

Cost Impact

There are approximately 890 airplanes of the affected design in the worldwide fleet. The FAA estimates that 398 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed detailed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $362,180, or $910 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–109–AD.

Applicability: All Model 767 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct the propagation of fatigue cracks in the vicinity of "oil cans" on the web of the aft pressure bulkhead, which could result in rapid decompression of the passenger cabin, possible damage or interference with the airplane control systems that pass through the bulkhead, and consequent loss of control of the airplane, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 767–200, –300, and –300F series airplanes: Boeing Alert Service Bulletin 767–53A0105, dated April 10, 2003; and

(2) For Model 767–400ER series airplanes: Boeing Alert Service Bulletin 767–53A0106, dated April 10, 2003.

Initial and Repetitive Inspections

(b) Perform a detailed inspection of the aft pressure bulkhead for indications of "oil cans" and previous "oil can" repairs, in accordance with the service bulletin, at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. Repeat the detailed inspection thereafter at intervals not to exceed 6,000 flight cycles.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For Model 767–200 and –300 series airplanes: Prior to the accumulation of 50,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later.

(2) For Model 767–300F and –400ER series airplanes: Prior to the accumulation of 40,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later.

Indication of Previous "Oil Can" Repairs

(c) If any previous "oil can" repair is found during any detailed inspection required by paragraph (b) of this AD: Before further flight, do a detailed inspection of the web around any "oil can" repair for cracks or smaller "oil cans," in accordance with the service bulletin.

(1) If any crack is found, before further flight, repair in accordance with the service bulletin. Where the service bulletin specifies to contact Boeing for repair, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

(2) If any "oil can" is found, before further flight, perform the surface high frequency eddy current (HFEC) inspection specified in paragraph (d) of this AD.

Indication of "Oil Can"

(d) If any indication of an "oil can" is found during any detailed inspection specified in paragraph (b) or (c) of this AD: Before further flight, perform a surface HFEC inspection of the web around the periphery and in the center of the "oil can" indication for cracks, at all "oil cans," and perform a detailed inspection of the web for cracks, in accordance with the service bulletin. Alternative inspection specified in the service bulletin is acceptable for this AD.

(1) If no crack is found and the "oil can" meets the allowable limits specified in the service bulletin, do the action in either paragraph (d)(1)(i) or (d)(1)(ii) of this AD.

(i) Repeat the surface HFEC inspection specified in paragraph (d) of this AD thereafter at intervals not to exceed 3,000 flight cycles.

(ii) Before further flight, repair the "oil can" in accordance with the service bulletin. Repair of all "oil cans" is considered a terminating action for the repetitive HFEC inspections required by paragraph (d)(1)(i) of this AD. However, continue to repeat the detailed inspection required by paragraph (b) of this AD.

(2) If no crack is found and the "oil can" does not meet the specified allowable limits specified in the service bulletin: Before further flight, repair the "oil can" in accordance with the service bulletin. If, following the repair, any "oil can" remains that meets the allowable limits specified in the service bulletin, do the action required by either paragraph (d)(1)(i) or (d)(1)(ii) of this AD.

(3) If any crack is found, before further flight, repair in accordance with the service bulletin. Where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair per a method approved by the Manager, ACO, FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

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

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2472 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–51–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900 EX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes. This proposal would require installing a shield plate over the tank structure above the Stormscope antenna and replacing the Stormscope antenna plug connector with a new connector. This action is necessary to prevent puncture of the fuel tank, in the event of a belly landing, which could result in a post-landing fire if fuel leaking from the tank makes contact with the sparks from the airplane sliding on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–51–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 Dassault Falcon Jet, PO Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–51–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes. The DGAC advises that the Stormscope antenna connector could puncture the fuel tank located above the antenna, in the event of a belly landing. This condition, if not corrected, could result in a post-landing fire if fuel leaking from the tank makes contact with the sparks from the airplane sliding on the ground.

Explanation of Relevant Service Information

Dassault has issued Service Bulletins F50–404, dated November 6, 2002 (for Model Mystere-Falcon 50 series airplanes); F900–293, dated November 13, 2002 (for Model Mystere-Falcon 900 series airplanes); and F900EX–158, dated November 13, 2002 (for Model Falcon 900EX series airplanes); which describe procedures for installing a shield plate over the tank structure above the Stormscope antenna and replacing the Stormscope antenna plug connector with a new connector. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–569(B), dated November 13, 2002, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletins describe procedures for submitting a sheet recording compliance with the service bulletin, this proposed AD would not require that action. The FAA does not need this information from operators.

Cost Impact

The FAA estimates that 394 Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900 EX series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts are provided free of charge by the manufacturer. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $204,880, or $520 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific

actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket 2003–NM–51–AD.

Applicability: Model Mystere-Falcon 50 series airplanes with a Stormscope antenna installed between frames 22 and 23 by Dassault modification M2208 or by a DFJ Little Rock modification, except on airplanes on which Dassault modification M2838 has been performed; and Model Mystere-Falcon 900 and Falcon 900EX series airplanes with a Stormscope antenna installed between frames 23 and 24 by Dassault modification M2993 or by a DFJ Little Rock modification, except airplanes on which Dassault modification M3498 has been performed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent puncture of the fuel tank, in the event of a belly landing, which could result in a post-landing fire if fuel leaking from the tank makes contact with the sparks from the airplane sliding on the ground, accomplish the following:

Install and Replace

(a) Within 25 months after the effective date of this AD, install a shield plate over the tank structure above the Stormscope antenna, and replace the Stormscope antenna plug connector with a new connector, in accordance with the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD.

TABLE 1.—APPLICABLE SERVICE BULLETINS

For model	Dassault service bulletin
Mystere-Falcon 50 series airplanes.	F50–404, dated November 6, 2002
Mystere-Falcon 900 series airplanes.	F900–293, dated November 13, 2002
Falcon 900EX series airplanes.	F900EX–158, dated November 13, 2002

Reporting Difference

(b) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–569(B), dated November 13, 2002.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2473 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–260–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This proposal would require revising the airplane flight manual to advise the flightcrew of special operating limitations associated with a reduction in airplane performance due to loss of propeller efficiency. This proposal also would require installing placards in the flight compartment and operating the airplane per certain special operating limitations; or performing repetitive flight checks to verify the adequacy of the airplane's climb performance, and accomplishing follow-on actions if necessary. This action is necessary to ensure that the flightcrew accounts for the potential loss of airplane performance due to loss of propeller efficiency, which could result in an increased risk of collision with terrain. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–260–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–260–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–260–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–260–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The CAA advises that a shortfall in engine performance, compared to the performance standards shown in the airplane flight manual (AFM), has been observed during climb-performance test flights. The shortfall has been attributed to a loss of propeller efficiency due to erosion or profile changes of the propeller blade's leading edge. The flightcrew may be unaware of the potential loss of airplane performance due to loss of propeller efficiency. This condition, if not corrected, could result in an increased risk of collision with terrain.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin J41–A61–012, Revision 1, dated February 25, 2002. That service bulletin describes procedures for revising the BAE Jetstream Series 4100 Airplane Flight Manual by inserting AFM Supplement 8, and installing placards near the limitations placards in the flight compartment to advise the flightcrew to operate the airplane per the special operating limitations in AFM Supplement 8. AFM Supplement 8 revises the General, Performance, Supplements, and Appendices sections of the AFM to include information associated with a reduction in airplane performance due to loss of propeller efficiency.

BAE Systems (Operations) Limited also has issued Service Bulletin J41–61–013, Revision 1, dated February 25, 2002, which describes procedures for repetitive flight checks (which the service bulletin refers to as "flight tests") to verify the adequacy of the airplane's climb performance. If the airplane's climb performance is adequate, the service bulletin provides for removal of placards installed per Service Bulletin J41–A61–012, Revision 1 (if such placards were installed previously), and operation of the airplane without limitation by AFM Supplement 8.

Accomplishment of the actions specified in the applicable service bulletins is intended to adequately address the identified unsafe condition. The CAA classified BAE Systems (Operations) Limited Service Bulletin J41–A61–012, Revision 1, as mandatory and issued British airworthiness directive 001–11–2001 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising the airplane flight manual (AFM) to advise the flightcrew of special operating limitations associated with a reduction in airplane performance due to loss of propeller efficiency. This proposed AD also would require installing placards in the flight compartment and operating the airplane per certain special operating limitations; or performing repetitive flight checks to verify the adequacy of the airplane's climb performance, and accomplishing follow-on actions if necessary. The actions would be required to be accomplished in accordance with the service information described previously, except as discussed below.

Difference Between Proposed AD and CAA Airworthiness Directive

Although this proposed AD would provide for accomplishment of repetitive flight checks per BAE Systems (Operations) Limited Service Bulletin J41–61–013, Revision 1, as one alternative for compliance, British airworthiness directive 001–11–2001 does not reference the flight checks specified in that service bulletin. The CAA acknowledges the availability of flight checks as another alternative to

address the unsafe condition associated with this proposed AD.

Differences Between Proposed AD and Service Information

As explained previously, BAE Systems Service Bulletin J41–61–013, Revision 1, describes procedures for repetitive flight tests to determine the climb performance of both engines of the airplane. This proposed AD refers to those flight tests as flight checks to differentiate them from FAA certification flight tests. We have determined that the procedures in the service bulletin describe a post-maintenance flight and not an FAA certification flight test. The check must be performed by an appropriately rated flightcrew. Paragraph (c) of this proposed AD clarifies this issue.

Although BAE Systems (Operations) Limited Service Bulletin J41–A61–012, Revision 1, and J41–61–013, Revision 1, specify to submit information on the accomplishment of these service bulletins to the manufacturer, this proposed AD does not include such a requirement.

Cost Impact

We estimate that 57 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, 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 $3,705, or $65 per airplane.

This proposed AD also provides for either installation of placards or accomplishment of repetitive flight checks as acceptable necessary follow-on actions. Either action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of either of these proposed actions is estimated to be $65 per airplane, though for the repetitive flight checks, this cost impact would be per check cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2002–NM–260–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew accounts for the potential loss of airplane performance due to loss of propeller efficiency, which could result in an increased risk of collision with terrain, accomplish the following:

Initial Compliance Times

(a) At the applicable time specified in paragraph (a)(1) or (a)(2) of this AD: Revise the General, Performance, Supplements, and Appendices sections of the BAE Jetstream Series 4100 Airplane Flight Manual (AFM) by incorporating the information in AFM Supplement 8; then, before further flight, do the actions in paragraph (b) or (c) of this AD.

(1) For propeller blades that have not been overhauled: Prior to the accumulation of 6,000 total flight hours on any propeller blade, or within 30 days after the effective date of this AD, whichever is later.

(2) For overhauled propeller blades: Within 7 days since the most recent overhaul of any propeller blade, or within 7 days after the effective date of this AD, whichever is later.

Alternative 1: Installation of Placards and Special Operating Limitations

(b) Do all actions in paragraphs 2.A.(2) and 2.A.(3) of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–A61–012, Revision 1, dated February 25, 2002. These actions include installing placards in the flight compartment to advise the flightcrew of special operating limitations associated with AFM Supplement 8. Although BAE Systems (Operations) Limited Service Bulletin J41–A61–012, Revision 1, specifies to submit information on the accomplishment of this service bulletin to the manufacturer, this AD does not include such a requirement.

Alternative 2: Flight Check

(c) Do a flight check to verify the adequacy of the airplane's climb performance, per BAE Systems (Operations) Limited Service Bulletin J41–61–013, Revision 1, dated February 25, 2002. This flight check is considered a post-maintenance flight and is not an FAA certification flight test. This check must be performed by an appropriately rated flightcrew. If there is any difference between the referenced service bulletin and this AD, this AD prevails. Accomplishment of the actions specified in BAE Systems (Operations) Limited Document AE1150/J41 ("Jetstream 41 Propeller Performance Fleet Monitoring Programme"), Issue 2, dated January 18, 2002, is an acceptable means of compliance with this paragraph.

(1) If the climb rate during the flight check is less than 35 feet per minute below the gross climb rate specified in the AFM: Repeat the flight check at intervals not to exceed 3,000 flight hours.

(2) If the climb rate during any flight check per paragraph (c) or (c)(1) of this AD is 35 feet per minute or more below the gross climb rate specified in the AFM: Before further flight, do the actions required by paragraph (b) of this AD.

Removal of Placards and Eventual Re-Installation of Same

(d) If the propeller blades on the left and right propellers on an airplane are replaced so that no propeller blade installed on the airplane has accumulated 6,000 or more total flight hours and no propeller blade has been overhauled: The placards installed per paragraph (b) of this AD may be removed from the airplane, and operation of the

airplane per AFM Supplement 8, or accomplishment of the repetitive flight checks per paragraph (c) of this AD, is no longer required. Then, at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable, repeat the actions required by paragraph (b) or (c) of this AD.

(1) For propeller blades that have not been overhauled: Prior to the accumulation of 6,000 total flight hours on any propeller blade.

(2) For overhauled propeller blades: Within 7 days after overhauling any propeller blade.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in British airworthiness directive 001–11–2001.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2474 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–18–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and Model SAAB 340B series airplanes. This proposal would require inspections of the internal structure of the nacelles for cracks, deformations, or other damage, and corrective actions if necessary. This action is necessary to prevent fatigue cracks in the outer flange of the nacelle frame, which could result in reduced structural integrity of the nacelle supporting structure. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–18–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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–18–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that it has received reports of fatigue cracks in the outer flange of nacelle frame station 203 between water line (WL) 92 to WL96. This condition, if not detected and corrected in a timely manner, could lead to reduced structural integrity of the nacelle supporting structure.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–54–043, dated December 18, 2002, which describes procedures for detailed and ultrasonic inspections of the internal structure of the nacelles for cracks, deformations and damage, and corrective actions if necessary. The corrective actions include replacement of the firedeck attachment angle with a new angle and repair of cracks, deformation, and damage. This service bulletin recommends compliance times for the inspections at the following approximate flight cycle levels:

1. For airplanes with less than 20,000 total flight cycles, accomplish before 24,000 total flight cycles; and

2. For airplanes with 20,000 total flight cycles or more, accomplish within 2,000 to 4,000 flight cycles after the service bulletin's release date, depending on the airplane's total flight cycles.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the

identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive No 1–176, dated December 20, 2002, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repairs, this proposal would require operators to repair per a method approved by either the FAA or LFV (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or LFV would be acceptable for compliance with this proposed AD.

Clarification of Compliance Times

For compliance times, the service bulletin specifies "accumulated flights" and "flights". However, for these compliance times, paragraph (c) of this proposed AD specifies "total flight cycles" and "flight cycles". This decision is based on our determination that "accumulated flights" and "flights" may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these cycles with certainty.

Cost Impact

The FAA estimates that 224 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $58,240, or $260 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab Aircraft AB: Docket 2003–NM–18–AD.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks in the outer flange of the nacelle frame, which could result in reduced structural integrity of the nacelle supporting structure, accomplish the following:

Inspection

(a) Perform detailed and ultrasonic inspections, as applicable, of the internal structure of the nacelles for cracks, deformations, or other damage, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–54–043, dated December 18, 2002. Do the inspection at the applicable time specified by paragraph 1.D, "Compliance", of the service bulletin, except as required by paragraph (b) and (c) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Where the service bulletin specified in paragraph (a) of this AD specifies a compliance time relative to the release date of the service bulletin, this AD requires compliance following the effective date of this AD.

(c) Where the service bulletin specified in paragraph (a) of this AD uses "accumulated flights" and "flights" for compliance times, this AD requires operators to use "total flight cycles" and "flight cycles".

Repair

(d) If any crack, deformation, or damage is found during any inspection required by paragraph (a) of this AD, before further flight, repair and replace the firedeck attachment angle with a new angle, as applicable, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–54–

043, dated December 18, 2002. Where the service bulletin specifies contacting the manufacturer for disposition of repairs, before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfartsvarket (or its delegated agent).

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Swedish airworthiness directive No 1–176, dated December 20, 2002.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2475 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–160–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain CASA Model C–235 series airplanes. This proposal would require modification of the electrical wiring of the rudder trim control unit. This action is necessary to prevent the flight crew from being able to inhibit the aural warning for the landing gear up. If the flight crew of the next flight or possibly of the same flight is unaware that the aural warning had been disabled, they could inadvertently land the airplane with the landing gear not down and locked. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–160–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–160–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación Civil (DGAC), which is the airworthiness authority for Spain, notified the FAA that an unsafe condition may exist on Construcciones Aeronauticas, S.A. (CASA), Model C–235 series airplanes. The DGAC advises that an operator did not have an aural warning that the landing gear was in the "up" position when the airplane was in a landing configuration (wing flaps extended) as required by paragraph (e)(4) of Section 25.729 ("Retracting Mechanism") of the Federal Aviation Regulations (FAR) (14 CFR 25.729). Investigation revealed that the operator had inhibited the aural warning during the previous approach for landing. If the flight crew is able to inhibit the aural warning for the landing gear up, the flight crew of the next flight or possibly of the same flight could be unaware that the aural warning had been disabled and could inadvertently land the airplane with the landing gear not down and locked.

Explanation of Relevant Service Information

CASA has issued Service Bulletin SB–235–27–20, dated March 7, 2001, which describes procedures for modification of the electrical wiring of the rudder trim control unit. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued Spanish airworthiness directive 02/02, dated April 30, 2002, to ensure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

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

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $40 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $495 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Construcciones Aeronauticas, S.A. (CASA): Docket 2002–NM–160–AD.

Applicability: Model C–235 series airplanes, serial numbers C–006, C–007, C–010, C–012, C–018, C–029, C–030, C–032, C–033, and C–042; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight crew from being able to inhibit the aural warning for the landing gear up, and the possibility that the flight crew of the next flight or possibly of the same flight could inadvertently land the airplane with the landing gear not down and locked; accomplish the following:

Modification

(a) Within 6 months after the effective date of this AD, modify the electrical wiring of the rudder trim control unit per the Accomplishment Instructions of CASA Service Bulletin SB–235–27–20, dated March 7, 2001.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in Spanish airworthiness directive 02/02, dated April 30, 2002.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2476 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SR, and 747SP Series Airplanes Equipped With Pratt & Whitney JT9D–3, –7, –7Q, and –7R4G2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing transport category airplanes listed above, that would have required drilling witness holes through the cowl skin at the cowl latch locations in the left-hand side of the cowl panel assembly of each engine. This new action revises the proposed rule by adding certain airplanes and removing certain JT9D engines from the applicability. The actions specified by this new proposed AD are intended to prevent improper connection of the latch, which could result in separation of a cowl panel from the airplane. Such separation could cause damage to the airplane, consequent rapid depressurization, and hazards to persons or property on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-*

nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–207–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Dan Kinney, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6499; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–207–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SR, and 747SP series airplanes equipped with Pratt & Whitney JT9D series engines, was published as a notice of proposed rulemaking (NPRM) (hereafter referred to as the "original NPRM") in the **Federal Register** on July 9, 2003 (68 FR 40827). That original NPRM would have required drilling witness holes through the cowl skin at the cowl latch locations in the left-hand side of the cowl panel assembly of each engine. That original NPRM was prompted by a report of in-flight separation of the cowl panels on the left- and right-hand sides of a Model 747 series airplane. That condition, if not corrected, could result in damage to the airplane, consequent rapid depressurization, and hazards to persons or property on the ground.

Comments

Due consideration has been given to the comment received in response to the original NPRM. That comment, as discussed below, has resulted in changes to the supplemental NPRM.

Request for Change in Applicability

One commenter requests that we remove Pratt & Whitney JT9D–70A engines from the applicability of the original NPRM. The commenter states that the side cowl panels for JT9D–70A engines have a different configuration than the other JT9D series engines.

We agree. Since Pratt & Whitney JT9D–70A engines have a different configuration, the corrective action as specified in paragraph (a) of this supplemental NPRM is not applicable to JT9D–70A engines. We have revised the applicability of this supplemental NPRM to identify only the affected engines.

The commenter also requests that we add Model 747 series airplanes, line numbers 670 to 814 inclusive, to the applicability of the original NPRM. The commenter states that since the side cowls are readily interchangeable among JT9D series engines equipped on Model 747 series airplanes, the applicability should include all delivered Model 747 series airplanes equipped with JT9D–3, –7, –7Q, and –7R4G2 series engines.

We agree. Since issuance of the original NPRM, we have reviewed and approved Revision 1 of Boeing Special Attention Service Bulletin 747–71–2301, dated August 21, 2003, which adds additional airplanes, line numbers 670 through 814 inclusive, to the applicability. We have revised this supplemental NPRM to specify the new applicability and to reference Revision 1 of the service bulletin as the appropriate source of service information for accomplishing the required actions. We have also added paragraph (b) of this supplemental NPRM to give credit for actions accomplished per the original issue of the service bulletin. Furthermore, we have revised the cost impact to include the additional cost of these airplanes to U.S. operators.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 481 airplanes of the affected design in the worldwide fleet. The FAA estimates that 114 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane (2 work hours per engine) to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $59,280, or $520 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2002–NM–207–AD.

Applicability: Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SR, and 747SP series airplanes; equipped with Pratt & Whitney JT9D–3, –7, –7Q, and –7R4G2 series engines; line numbers 1 through 814 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper connection of the cowl latch located in the left-hand side of the cowl panel assembly of each engine, which could result in separation of a cowl panel from the airplane, accomplish the following:

Drill Holes

(a) Within 36 months after the effective date of this AD: Drill witness holes through the cowl skin at each of the six cowl latch locations located on the left-hand side of the cowl panel assembly of each engine, per paragraphs 3.B.1. through 3.B.4. of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–71–2301, Revision 1, dated August 21, 2003.

Credit for Actions Accomplished Per Previous Service Bulletin

(b) Actions accomplished before the effective date of this AD per the Accomplishment Instructions of Boeing Service Bulletin 747–71–2301, dated May 30, 2002, are acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2477 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–151–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767–200 and –300 series airplanes. This proposal would require inspection of the actuators for the off-wing slide compartment door on the right and left sides of the airplane to determine the actuator cartridge serial number, and corrective actions, if necessary. This action is necessary to prevent the actuators for the off-wing slide compartment door from not firing, which could cause the door to open improperly and prevent the deployment of the off-wing escape slide, leading to the loss of an evacuation route. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–151–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–151–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; and Universal Propulsion Company, Inc. (formerly OEA Inc.), P.O. Box KK, Highway 12, Explosive Technology Rd., Fairfield, California 94533–0659. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Susan Rosanske, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6448; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–151–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–151–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an actuator for the off-wing slide compartment door did not fire during an off-wing escape slide test of a Boeing Model 767 series airplane. The actuator for the off-wing slide compartment door did not fire because of a manufacturing defect. This condition, if not corrected, could cause the door to open improperly and prevent the deployment of the off-wing escape slide, leading to the loss of an evacuation route.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001, which describes procedures for performing an inspection of the actuators for the off-wing slide compartment door to determine the actuator cartridge serial number, and corrective actions, if necessary. The corrective actions include removing the actuators for the off-wing slide compartment door; performing an inspection of the actuator cartridge for the presence of a clearance hole, replacing the actuator cartridge with a new actuator cartridge or a serviceable actuator cartridge from a recharge kit; and installing the actuators of the off-wing slide compartment door. Accomplishment of the actions specified in the Boeing service bulletin is intended to adequately address the identified unsafe condition.

Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001 references OEA Aersospace, Inc. Service Bulletin 5262 (02) SB (NC), dated October 2, 2000, as an additional source of service information for the inspection of the actuator cartridge, and corrective actions, if necessary.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the Boeing service bulletin recommends accomplishing the actions "at the earliest time when parts and labor are available," the FAA has determined that "the earliest time when parts and labor are available" would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but 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 inspection (six hours). In light of all of these factors, the FAA finds a compliance time of within two years after the effective date of this AD for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators should also note that, although the Boeing service bulletin lists the effectivity as Model 767–200 and –300 series airplanes, line numbers 725 through 815 inclusive, the FAA has determined the applicability should be all Model 767–200 and –300 series airplanes. The increased number of affected airplanes is due to configuration control issues with the off-wing slide compartment door actuators. Since we cannot be sure the parts were limited to the airplanes listed in the service bulletin, we need to include all airplanes.

Cost Impact

There are approximately 829 airplanes of the affected design in the worldwide fleet. The FAA estimates that 346 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $134,940, or $390 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2002–NM–151–AD.

Applicability: All Model 767–200 and –300 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the actuators for the off-wing slide compartment door from not firing, which could cause the door to open improperly and prevent the deployment of the off-wing escape slide, leading to the loss of an evacuation route, accomplish the following:

Inspection and Corrective Action

(a) Within two years after the effective date of this AD, do an inspection of the actuators for the off-wing slide compartment door on the right and left sides of the airplane to determine the actuator cartridge serial number, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001.

(b) If any actuator cartridge having serial numbers 5481 through 5741 inclusive is found during the inspection required by paragraph (a) of this AD: Before further flight, perform the actions specified in paragraphs (b)(1) through (b)(3) of this AD in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001.

(1) Remove the actuator for the off-wing slide compartment door.

(2) Perform an inspection of the actuator cartridge for the presence of a clearance hole and corrective actions if necessary (includes replacing the actuator cartridge with a new actuator cartridge or a serviceable actuator cartridge from a recharge kit).

(3) Install the actuator for the off-wing slide compartment door.

Note 1: Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001, references OEA Aersospace, Inc. Service Bulletin 5262 (02) SB (NC), dated October 2, 2000, as an additional source of service information for performing the inspection of the actuator cartridge and corrective actions.

Parts Installation

(c) As of the effective date of this AD, no person shall install an actuator for the off-wing escape slide having OEA part number 5262200 cartridge assembly with actuator cartridge serial numbers 5481 through 5741 inclusive that do not have a clearance hole between the two firing pins, on any airplane.

Alternative Methods of Compliance

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

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2478 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–83–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 and 767 series airplanes. This proposal would require inspection to determine the serial number of the hydraulic pump in the ram air turbine (RAT), and corrective action, if necessary. This action is necessary to prevent a cracked hanger arm of the hydraulic pump of the RAT that can fracture under load and lead to failure of the RAT to provide hydraulic power to the primary flight control system during an emergency when both engines have failed. Loss of hydraulic power to the primary flight controls could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–83–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–83–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Kenneth Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6468; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket Number 2003–NM–83–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–83–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that some ram air turbines (RAT) may have hydraulic pumps with cracked hanger arms on certain Boeing Model 757 and 767 series airplanes. The supplier of the RATs identified a departure from the defined manufacturing process as the cause for production of hanger arms with potential surface cracks, which affects approximately 154 hydraulic pumps with certain serial numbers. A cracked hanger arm of the hydraulic pump of the RAT, if not corrected, can fracture under load and lead to failure of the RAT to provide hydraulic power to the primary flight control system during an emergency when both engines have failed. Loss of hydraulic power to the primary flight controls could result in loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 757–29–0060, dated September 12, 2002 (for Model 757–200, –200CB, and –200PF series airplanes); Boeing Special Attention Service Bulletin 757–29–0061, dated September 12, 2002 (for Model 757–300 series airplanes); Boeing Special Attention Service Bulletin 767–29–0103, dated September 12, 2002 (for Model 767–200, –300, and –300F series airplanes); and Boeing Special Attention Service Bulletin 767–29–0106, dated September 12, 2002 (for Model 767–400ER series airplanes).

These service bulletins describe procedures for inspection to determine the serial number of the hydraulic pump in the RAT, and corrective action, if necessary. The corrective action(s) includes either replacing the hydraulic pump with a serviceable hydraulic pump that is outside the range of the affected serial numbers, or reworking and reidentifying the existing hydraulic pump. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

These service bulletins also refer to Parker Service Bulletin 6513902–29–305, dated November 30, 2001, as an additional source of service information for the list of affected hydraulic pump serial numbers and for accomplishment of the reworking and reidentifying of the existing hydraulic pump for Model 757 and 767 series airplanes.

Explanation of Requirements of Proposed Rule

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

Cost Impact

There are approximately 1,851 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,038 airplanes of U.S. registry would be affected by this proposed AD.

We estimate that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $67,470, or $65 per airplane.

We also estimate that it would take approximately 4 work hours per airplane (affecting approximately 154 airplanes) to accomplish the proposed replacement of the hydraulic pump, if required, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $260 per airplane.

We also estimate that it would take approximately 5 work hours per airplane (affecting approximately 154 airplanes) to accomplish the proposed reworking and reidentification of the hydraulic pump, if required, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed reworking and reidentification on U.S. operators is estimated to be $325 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–83–AD.

Applicability: Model 757–200, –200CB, –200PF, and –300 series airplanes, line numbers 1 through 998 inclusive; and Model 767–200, –300, –300F, and –400ER series airplanes, line numbers 1 through 869 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a cracked hanger arm of the hydraulic pump of the ram air turbine (RAT)

that can fracture under load and lead to failure of the RAT to provide hydraulic power to the primary flight control system during an emergency when both engines have failed, which could result in loss of hydraulic power to the primary flight controls and consequent loss of control of the airplane; accomplish the following:

Service Bulletin Reference

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins in Table 1 of this AD, as applicable:

TABLE 1.—SERVICE BULLETINS

Molded	Service bulletin	Date
Model 757–200, –200CB, and –200PF series airplanes	Boeing Special Attention Service Bulletin 757–29–0060	September 12, 2002.
Model 757–300 series airplanes	Boeing Special Attention Service Bulletin 757–29–0061	September 12, 2002.
Model 767–200, –300, and –300F series airplanes	Boeing Special Attention Service Bulletin 767–29–0103	September 12, 2002.
Model 767–400ER series airplanes	Boeing Special Attention Service Bulletin 767–29–0106	September 12, 2002.

Note 1: These service bulletins refer to Parker Service Bulletin 6513902–29–305, dated November 30, 2001, as an additional source of service information for the list of affected hydraulic pump serial numbers and for accomplishment of the reworking and reidentifying of the existing hydraulic pump for Model 757 and 767 series airplanes.

Inspection of Serial Number

(b) Within 36 months after the effective date of this AD, do an inspection to determine the serial number of the hydraulic pump in the RAT, per the service bulletin.

Corrective Actions

(c) If the hydraulic pump is found to have an affected serial number during the inspection required by paragraph (b) of this AD, within 36 months after the effective date of this AD, do the corrective action(s) in either paragraph (c)(1) or (c)(2) of this AD.

(1) Replace the hydraulic pump with a serviceable hydraulic pump that is outside the range of the affected serial numbers, per the service bulletin.

(2) Rework and reidentify the hydraulic pump, per the service bulletin.

Part Installation

(d) As of the effective date of this AD, no person shall install on any airplane a RAT hydraulic pump, Parker part number (P/N) 65139–02 or Hamilton Sunstrand P/N 5903420, with an affected serial number as listed in Parker Service Bulletin 6513902–29–305, dated November 30, 2001, unless it has been modified per paragraph (c)(2) of this AD.

Alternative Methods of Compliance

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

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2479 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–19–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600), A310, A319, A320, A321, A330, and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600, A310, A319, A320, A321, A330, and A340 series airplanes. This proposal would require a one-time inspection to determine if certain Thales pitot probes are installed, a check for certain part numbers and serial numbers of the affected pitot probes, and cleaning of the drain hole of any affected pitot probes if obstructed. This action is necessary to prevent obstruction of the air intake of the pitot probes, which could result in misleading information being provided to the flightcrew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–19–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–19–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600), A310, A319, A320, A321, A330, and A340 series airplanes. The DGAC advises that an operator reported airspeed discrepancy events due to obstruction of the pitot probes on a Model A320 series airplane. Investigation by the parts manufacturer revealed that the obstruction of the air intake of the pitot probes was due to a manufacturing defect at the drain hole. Such obstruction could result in misleading information being provided to the flightcrew.

The pitot probes installed on the affected Model A320 series airplane are also installed on the affected Airbus Model A300–600, A310, A319, A321, A330, and A340 series airplanes. Therefore, the pitot probes on all of these airplane models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins, all including Appendix 01:

Service bulletin	Revision level	Date	Model
A300–34–6149	Original	April 4, 2003	A300–600
A310–34–2181	Original	April 4, 2003	A310
A320–34–1263	01	June 25, 2003	A319, A320, A321
A330–34–3119	Original	February 27, 2003	A330
A340–34–4130	Original	February 27, 2003	A340

The service bulletins describe the following procedures:

A300–34–6149 (for Model A300–600 series airplanes) describes procedures for a one-time detailed visual inspection to determine if pitot probes 40DA, 41DA, and 42DA are installed, and a check of those pitot probes for part number (P/N) C16254AA and serial number (S/N) 660 or higher, and cleaning of the drain hole of any affected pitot probe.

A310–34–2181 (for Model A310 series airplanes) describes procedures for a one-time detailed visual inspection to determine if pitot probes 40DA, 41DA, and 42DA are installed, and a check of those pitot probes for P/N C16254AA and S/N 660 or higher, and cleaning of the drain hole of any affected pitot probe.

A320–34–1263 (for Model A319, A320, and A321 series airplanes) describes procedures for a one-time detailed visual inspection to determine if pitot probes 9DA1, 9DA2, and 9DA3 are installed, and a check of those pitot probes for P/N C16195AA and S/N lower than 4760, and cleaning of the drain hole of any affected pitot probe.

A330–34–3119 (for Model A330 series airplanes) describes procedures for a one-time detailed visual inspection to determine if pitot probes 4DA1, 4DA2, and 3DA are installed, and a check of those pitot probes for P/N C16195AA and S/N lower than 4760, and cleaning of the drain hole of any affected pitot probe.

A340–34–4130 (for Model A340 series airplanes) describes procedures for a one-time detailed visual inspection to determine if pitot probes 9DA1, 9DA2, and 9DA3 are installed, and a check of those pitot probes for P/N C16195AA and S/N lower than 4760, and cleaning of the drain hole of any affected pitot probe.

Thales Avionics Service Bulletin, C16195A–34–002, Revision 01 dated February 7, 2003, is referenced in the Airbus service bulletins as an additional source of service information for accomplishment of the cleaning of the drain holes of the pitot probes.

Accomplishment of the actions specified in the Airbus service information is intended to adequately address the identified unsafe condition. The DGAC classified this service information as mandatory and issued French airworthiness directives 2003–148(B), dated April 16, 2003; 2002–586(B) R1, dated April 2, 2002; and 2002–594(B), dated November 27, 2002; to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Difference Between Airbus Service Bulletins and Proposed AD

The service bulletins recommend completing and submitting an inspection report, included as Appendix 01 of the service bulletins; however, this proposed AD would not require those actions; we do not need this information from operators.

Cost Impact

We estimate that 758 airplanes of U.S. registry would be affected by this

proposed AD, that it would take about 2 work hours per airplane to do the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $98,540, or $130 per airplane.

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

Currently, there are no Airbus Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would take about 2 work hours per airplane to do the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $130 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2003–NM–19–AD.

Applicability: Airbus Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600), A310, A319, A320, A321, A330, and A340 series airplanes; certificated in any category; as listed in the Airbus service bulletins specified in Table 1 of this AD.

TABLE 1.

Model	Service bulletin	Revision	Date
A300–600	A300–34–6149	Original	April 4, 2003.
A310	A310–34–2181	Original	April 4, 2003.
A319, A320, A321	A320–34–1263	01	June 25, 2003.
A330	A330–34–3119	Original	February 27, 2003.
A340	A340–34–4130	Original	February 27, 2003.

Compliance: Required as indicated, unless accomplished previously.

To prevent obstruction of the air intake of the pitot probes, which could result in misleading information being provided to the flightcrew, accomplish the following:

One-Time Detailed Inspection

(a) Within 700 flight hours after the effective date of this AD: Do a detailed inspection to determine if certain Thales Avionics pitot probes are installed, and a check of affected pitot probes for certain part numbers (P/N) and serial numbers (S/N), as specified in the Accomplishment Instructions of the applicable Airbus service bulletin listed in Table 1 of this AD, all excluding Appendix 01. Do the inspection and check (including cleaning and marking the drain hole) by doing all the actions per Part 3.A. through Part 3.E. of the Accomplishment Instructions of the applicable Airbus service bulletin. If the specified P/N and S/N are found, before further flight, clean and mark the drain hole if obstructed, per the Accomplishment Instructions of the applicable Airbus service bulletin. If the specified P/N and S/N are not found, no further action is required by this AD.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 2: The referenced Airbus service bulletins refer to Thales Avionics Service Bulletin, C16195A–34–002, Revision 01, dated February 7, 2003, as an additional source of service information for the cleaning of the drain holes of the pitot probes.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in French airworthiness directives 2003–148(B), dated April 16, 2003; 2002–586(B) R1, dated April 2, 2002; and 2002–594(B), dated November 27, 2002.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2480 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–177–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires repetitive inspections to detect fatigue cracking of the lower surface panel on the wing center box; and repair if necessary. That AD also requires modification of the lower surface panel on the wing center box, which constitutes terminating action for the repetitive inspections. This action would reduce the compliance times for the inspections required by the existing AD. The actions specified by the proposed AD are intended to prevent fatigue cracking of the lower surface panel on the wing center box, 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 March 8, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–177–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–177–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 19, 1998, the FAA issued AD 98–22–05, amendment 39–10851 (63 FR 56542, October 22, 1998), applicable to certain Airbus Model A320 series airplanes, to require repetitive inspections to detect fatigue cracking of the lower surface panel on the wing center box; and repair if necessary. That AD also requires modification of the lower surface panel on the wing center box, which constitutes terminating action for the repetitive inspections. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent fatigue cracking of the lower surface panel on the wing center box, which could result in reduced structural integrity of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 98–22–05, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that a full-scale fatigue survey on the Model A320 fleet revealed that the weight of fuel at landing and the average flight duration are higher than those defined for the analysis of fatigue-related tasks. This has led to an adjustment of the fatigue mission for the A320 fleet, in that the DGAC has required compliance thresholds and repetitive intervals for accomplishment of the inspections for fatigue cracking shorter than those required by AD 98–22–05. Fatigue-related cracking of the lower surface panel on the wing center box could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1082, Revision 03, dated April 30, 2002. The procedures specified in Revision 03 are essentially the same as those in Revision 01 of the service bulletin, which was referenced in the existing AD for accomplishment of the inspections and corrective action. However, Revision 03 has a change that recommends a reduction in the compliance thresholds and repetitive intervals specified in Revision 01.

Airbus also has issued Service Bulletin A320–57–1043, Revision 05, dated April 30, 2002. The procedures in Revision 05 are essentially the same as those in Revision 02 of the service bulletin, which was referenced in the

existing AD for accomplishment of the modification. Revision 05 recommends a reduction in the compliance thresholds specified in Revision 03, and contains editorial changes.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–342(B), dated June 26, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–22–05 to continue to require repetitive inspections to detect fatigue cracking of the lower surface panel on the wing center box; and repair if necessary. The proposed AD also would continue to require modification of the lower surface panel on the wing center box, which constitutes terminating action for the repetitive inspections. This new action would reduce both the threshold and repetitive intervals for the inspections for fatigue cracking of the same area. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed AD and Service Information

Although Airbus Service Bulletin A320–57–1082, Revision 03, specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by either us or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, we have determined that a repair approved by either us or the DGAC (or its delegated agent) would be acceptable for compliance with this proposed AD.

Unlike the procedures described in Service Bulletin A320–57–1082, this proposed AD would not permit further flight if fatigue cracks are detected on the lower surface panel of the wing center box. We have determined that, because of the safety implications and consequences associated with such fatigue cracking, any subject lower surface panel that is found to be cracked must be repaired prior to further flight in accordance with a method approved by either us or the DGAC (or its delegated agent).

Service Bulletin A320–57–1082 describes procedures for completing and submitting a sheet recording compliance with the service bulletin. This proposed AD would not require those actions; we do not need this information from operators.

Work Hour Rate Increase

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 60 airplanes of U.S. registry that would be affected by this proposed AD. This proposed AD would reduce the compliance time for the inspections required by AD 98–22–05, and consequently adds no additional costs or work. The current costs associated with that AD are repeated as follows for the convenience of affected operators:

The inspections that are currently required by AD 98–22–05, and retained in this proposed AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required inspections is estimated to be $130 per airplane, per inspection cycle.

The modification that is currently required by AD 98–22–05, and retained in this proposed AD, would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hours. There are no parts necessary to accomplish the modification. Based on these figures, the cost impact of the modification currently required is estimated to be $130 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.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment AD 39–10851 (63 FR 56542, October 22, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–177–AD. Supersedes AD 98–22–05, Amendment 39–10851.

Applicability: Model A320 series airplanes, certificated in any category, on which Airbus Modification 22418 (reference Airbus Service Bulletin A320–57–1043) has not been done.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower surface panel on the wing center box, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 98–22–05

Repetitive Inspections

(a) Except as provided by paragraph (e) of this AD: Prior to the accumulation of 20,000 total flight cycles, or within 60 days after November 27, 1998 (the effective date of AD 98–22–05, amendment 39–10851), whichever occurs later, perform a high frequency eddy current inspection to detect fatigue cracking of the lower surface panel on the wing center box, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997, or Revision 03, dated April 30, 2002. Repeat the eddy current inspection thereafter at intervals not to exceed 7,500 flight cycles until the actions required by paragraph (c) of this AD are accomplished.

Repair

(b) Except as provided by paragraph (d) of this AD: If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997, or Revision 03, dated April 30, 2002. Accomplishment of the repair constitutes terminating action for the repetitive inspections for the repaired area only.

Inspection/Modification/Repair

(c) Prior to the accumulation of 25,000 total flight cycles, or within 60 days after November 27, 1998, whichever occurs later: Perform a high frequency eddy current inspection to detect fatigue cracking of the lower surface panel on the wing center box, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997, or Revision 03, dated April 30, 2002.

(1) If no cracking is detected: Prior to further flight, modify the lower surface panel on the wing center box, in accordance with Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997, or Revision 05, dated April 30, 2002. Accomplishment of the modification constitutes terminating action for the requirements of paragraph (a) of this AD.

(2) Except as provided by paragraph (d) of this AD, if any cracking is detected: Prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997, or Revision 03, dated April 30, 2002; and modify any uncracked area in accordance with Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997, or Revision 05, dated April 30, 2002. Accomplishment of the repair of cracked area(s) and modification of uncracked area(s) constitutes terminating action for the requirements of paragraph (a) of this AD.

(d) If any cracking is detected during any inspection required by paragraph (b) or (c)(2) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

(e) The actions required by paragraph (a) of this AD are not required to be accomplished if the requirements of paragraph (c) of this AD are accomplished at the time specified in paragraph (a) of this AD.

New Requirements of This AD

Initial Inspection

(f) For airplanes on which the inspection required by paragraph (a) of this AD has not been done before the effective date of this AD: Perform a high frequency eddy current inspection to detect fatigue cracking of the lower surface panel on the wing center box, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; or Revision 03, dated April 30, 2002; at the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD. Accomplishment of the inspections required by this paragraph terminates the requirements of paragraph (a) of this AD.

(1) Prior to the accumulation of 13,200 total flight cycles or 39,700 total flight hours, whichever is first.

(2) Prior to the accumulation of 20,000 total flight cycles, or within 3,500 flight cycles after the effective date of this AD, whichever is first.

Repetitive Inspections

(g) If no cracking is detected during the inspection required by paragraph (a) or (f) of this AD: Repeat the inspection at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD.

(1) For airplanes on which the inspections required by paragraph (a) of this AD have been done before the effective date of this AD: Do the next inspection within 5,700 flight cycles after accomplishment of the last inspection, or within 1,800 flight cycles after the effective date of this AD, whichever is later. Repeat the inspection thereafter at intervals not to exceed 5,700 flight cycles.

(2) For airplanes on which no inspection required by paragraph (a) of this AD has been done before the effective date of this AD: Do the next inspection within 5,700 flight cycles after accomplishment of the inspection required by paragraph (f) of this AD. Repeat the inspection thereafter at intervals not to exceed 5,700 flight cycles.

Repair/Modification

(h) If any cracking is detected during any inspection required by paragraph (f) or (g) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; or Revision 03, dated April 30, 2002; and modify any uncracked area in accordance with Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997; or Revision 05, dated April 30, 2002. Where Service Bulletin A320–57–1082 specifies to contact Airbus for an appropriate repair action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). Accomplishment of the repair of cracked area(s) and modification of uncracked area(s) constitutes terminating action for the requirements of this AD.

Actions Done per Previous Issues of Service Bulletins

(i) Accomplishment of inspections and repairs before the effective date of this AD in accordance with Airbus Service Bulletin A320–57–1082, Revision 02, dated July 26, 1999; and accomplishment of the modification before the effective date of this AD in accordance with Airbus Service Bulletin Airbus Service Bulletin A320–57–1043, dated February 16, 1993; Revision 01, dated June 14, 1996; Revision 03, dated October 24, 1997; or Revision 04, dated March 15, 1999; are considered acceptable for compliance with the applicable actions specified in this AD.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–342(B), dated June 26, 2002.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2481 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–25–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require replacement of certain assistor springs and bearings with certain new assistor springs and bearings. This action is necessary to prevent possible collapse of a main landing gear upon landing and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–25–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–25–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–25–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–25–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. LFV advises that certain assistor springs of the main landing gear with the wire-formed end loop design have failed in service. Further, one known incident has been reported where the assistor spring cable (wire-rope) prevented the main landing gear from locking in fully down position. Such assistor spring failure, if not corrected, could result in collapse of a main landing gear upon landing and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–32–130, dated April 28, 2003, which describes procedures for replacement of assistor springs and bearings of the main landing gear with new assistor springs and bearings, respectively. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive No 1–191, dated April 28, 2003 to ensure the continued airworthiness of these airplanes in Sweden.

LFV refers to Saab Service Bulletin 340–32–126, dated December 18, 2002, as a factor in determining the appropriate compliance time for accomplishment of the actions required by this AD.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 288 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $750 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $253,440, or $880 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab Aircraft AB: Docket 2003–NM–25–AD.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent possible collapse of a main landing gear upon landing and consequent reduced controllability of the airplane, accomplish the following:

Replacements

(a) Within the Compliance Times listed in Table 1 of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Saab Service Bulletin (SB) 340–32–130, dated April 28, 2003.

TABLE 1.—COMPLIANCE TIMES

Within—	If—
6 months after the effective date of this AD	Saab SB 340–32–126, dated December 18, 2002 has been performed.
3 months after the effective date of this AD	Saab SB 340–32–126, dated December 18, 2002 has not been performed.

(1) Replace the assistor springs of the main landing gear with new assistor springs, per Part 1 of the service bulletin.

(2) Replace the bearings of the main landing gear with new bearings, per Part 2 of the service bulletin.

Parts Installation

(b) As of the effective date of this AD, no person may install an assistor spring, part number AIR125132 or AIR131330, on any airplane.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in Swedish airworthiness directive No 1–191, dated April 28, 2003.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2482 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–278–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319 and A320 series airplanes. This proposal would require modifying the electrical bonding of the fuel return line in each wing between ribs 7 and 8. This action is necessary to reduce the potential for electrical arcing within the fuel tank due to insufficient electrical bonding, which could result in a fire or explosion in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–278–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte,

31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–278–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319 and A320 series airplanes. The DGAC advises that a review of the electrical bonding methods applied on various components in the fuel tank and fuel pipe couplings of these airplane models has revealed that electrical bonding of certain components must be improved. One of these subject components is the fuel return line in each wing between ribs 7 and 8. Insufficient electrical bonding may, in certain conditions such as a lightning strike or static charge accumulation, lead to electrical arcing inside the fuel tank. This condition, if not corrected, could result in a fire or explosion in the fuel tank.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–28–1103, Revision 01, dated April 1, 2003, which describes procedures for improving (modifying) the electrical bonding of the fuel return line in each wing between ribs 7 and 8. The procedures include installing a grounding tag to a certain check valve attachment bolt; installing bonding leads between the check valve, the fuel return line, and the adjacent rib 8; and performing an electrical bonding resistance test. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002–476(B), dated September 18, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Clarification of Proposed Requirements

The service bulletin describes procedures for an electrical resistance test at each bonding lead but does not explicitly specify corrective actions if this test fails. For clarification, this proposed AD specifies that, if any electrical resistance test of any bonding lead fails, corrective actions involve disassembling the bonding lead, repeating the applicable cleaning procedures, reassembling the bonding lead, and repeating the electrical resistance test per the service bulletin.

Cost Impact

We estimate that 534 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $157,530, or $295 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1)

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2002–NM–278–AD.

Applicability: Model A319 and A320 series airplanes, certificated in any category; except those on which Airbus Modification 31888 has been accomplished.

Compliance: Required as indicated, unless accomplished previously.

To reduce the potential for electrical arcing within the fuel tank due to insufficient electrical bonding, which could result in a fire or explosion in the fuel tank, accomplish the following:

Modification of Electrical Bonding

(a) Within 60 months after the effective date of this AD, modify the electrical bonding of the fuel return line in each wing between ribs 7 and 8, by installing a grounding tag to a certain check valve attachment bolt; installing bonding leads between the check valve, the fuel return line, and the adjacent rib 8; and performing an electrical bonding resistance test; per the Accomplishment Instructions of Airbus Service Bulletin A320–28–1103, Revision 01, dated April 1, 2003. If the electrical resistance test of any bonding lead fails: Before further flight, disassemble the bonding lead, repeat the applicable cleaning procedures, reassemble the bonding lead, and repeat the electrical resistance test per the Accomplishment Instructions of the service bulletin.

Credit for Actions Accomplished Previously

(b) Actions accomplished before the effective date of this AD per Airbus Service Bulletin A320–28–1103, dated June 14, 2002, are acceptable for compliance with the corresponding actions required by paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–476(B), dated September 18, 2002.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2483 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4874–C–03]

Operating Fund Program; Notice of Intent To Establish a Negotiated Rulemaking Committee and Notice of First Meeting; Correction

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

ACTION: Correction.

SUMMARY: On January 28, 2004, HUD published a notice announcing its intent to establish a negotiated rulemaking advisory committee under the Federal Advisory Committee Act. The purpose of the Committee is to provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard University Graduate School of Design's "Public Housing Operating Cost Study." Among other information, the January 28, 2004, notice contains a list of the proposed committee members, and solicits public comment on the proposed membership of the committee. The list of committee members contains a typographical error. Specifically, the January 28, 2004, notice incorrectly identifies the location of the Alameda County Housing Authority as Alameda, California. The housing authority is located in the city of Hayward, California. This document makes the necessary correction.

DATES: *Comment Due Date:* The due date for public comments provided in the January 28, 2004, notice is unchanged. Comments on the committee and its proposed membership are due on or before: February 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding the committee and its proposed members to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments or any other communications submitted should consist of an original and four copies and refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. The docket will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Kubacki, Director, Funding and Financial Management Division, Public and Indian Housing—Real Estate Assessment Center, Suite 800, Department of Housing and Urban Development, 1280 Maryland Ave., SW., Washington, DC 20024–2135; telephone (202) 708–4932 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On January 28, 2004 (69 FR 4212), HUD published a notice announcing its intent to establish a negotiated rulemaking advisory committee under the Federal Advisory Committee Act. The purpose of the Committee is to provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard University Graduate School of Design's "Public Housing Operating Cost Study." Among other information, the January 28, 2004, notice contains a list of the proposed committee members, and solicits public comment on the proposed membership of the committee. The list of committee members contains a typographical error. Specifically, the January 28, 2004, notice incorrectly identifies the location of the Alameda County Housing Authority as Alameda, California. The housing authority is located in the city of Hayward, California. This document makes the necessary correction.

For the convenience of readers, HUD is republishing the complete list of committee members, including the corrected location of the Alameda

County Housing Authority. The list of proposed committee members is as follows:

Housing Agencies

1. Atlanta Housing Authority, Atlanta, GA
2. New York City Housing Authority, NYC, NY
3. Puerto Rico Housing Authority, San Juan, PR
4. Chicago Housing Authority, Chicago, IL
5. Dallas Housing Authority, Dallas, TX
6. Anne Arundel Housing Authority, Anne Arundel, MD
7. Indianapolis Housing Authority, Indianapolis, IN
8. Albany Housing Authority, Albany, NY
9. Jackson Housing Authority, Jackson, MS
10. Boise City/Ada County Housing Authority, Boise City, ID
11. Reno Housing Authority, Reno, NV
12. Alameda County Housing Authority, Hayward, CA
13. Athens Housing Authority, Athens, GA
14. Housing Authority of East Baton Rouge, Baton Rouge, LA
15. Housing Authority of the City of Montgomery, Montgomery, AL

Tenant Organizations

1. Jack Cooper, Massachusetts Union of Public Housing Tenants, Needham, MA

Other Interests/Policy Groups

1. Ned Epstein, Housing Partners, Inc.
2. Howard Husock, Director of Kennedy School Case Program
3. Greg Byrne, Project Director for Harvard Cost Study
4. Dan Anderson, Bank of America
5. David Land, Lindsey and Company
6. Council of Large Public Housing Agencies
7. National Association of Housing and Redevelopment Officials
8. Public Housing Authorities Directors Association
9. National Organization of African Americans in Housing

Federal Government

1. Assistant Secretary Michael Liu, U.S. Department of Housing and Urban Development
2. Deputy Assistant Secretary William Russell, U.S. Department of Housing and Urban Development

Dated: January 30, 2004.

William O. Russell III,

Deputy Assistant Secretary, Office of Public Housing and Voucher Programs.

[FR Doc. 04–2543 Filed 2–5–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–160330–02]

RIN 1545–BB65

Section 704(c), Installment Obligations and Contributed Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–106330–02) that was published in the **Federal Register** on Monday, November 24, 2003 (68 FR 65864). These proposed regulations relate to the tax treatment of installment obligations and property acquired pursuant to a contract under sections 704(c) and 737.

FOR FURTHER INFORMATION CONTACT: Christopher L. Trump, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking that is the subject of this correction is under sections 704(c) and 737 of the Internal Revenue Code.

Need for Correction

As published REG–160330–02 contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–160330–02), which is the subject of FR Doc. 03–29323, is corrected as follows:

1. On page 65865, column 2, under the paragraph heading "Part 1—INCOME TAXES", Par. 2 amendatory instruction 6a, line four, the language "paragraphs (a)(8)(ii), and (a)(8)(ii) and" is corrected to read "paragraphs (a)(8)(ii), and (a)(8)(iii) and".

§ 1.704–4 [Corrected]

2. On page 65865, column 3, § 1.704–4, paragraph (g) Effective date, line four the language "except that paragraphs (d)(1)(i) and (ii)" is corrected to read "except that paragraphs (d)(1)(ii) and (iii)".

§ 1.737–5 [Corrected]

3. On page 65866, column 1, § 1.737–5 under the section heading, § 1.737–5 Effective dates., line five, the language "2(d)(3)(ii) and (ii) apply to distributions" is corrected to read "2(d)(3)(ii) and (iii) apply to distributions".

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04–2502 Filed 2–5–04; 8:45 am]

BILLING CODE 4830–01–P

SELECTIVE SERVICE SYSTEM

32 CFR Parts 1602, 1605, 1609 and 1656

RIN 3240–AA01

Alternative Service Worker Appeals of Denied Job Reassignments

AGENCY: Selective Service System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Selective Service System (SSS) proposes to amend its regulations regarding the procedures for conscientious objectors, who have been placed in the Alternative Service Program as Alternative Service Workers (ASW), to appeal denied requests for job reassignments during a military draft. Civilian Review Boards (CRB), whose sole responsibility is to decide ASW appeals of denied job reassignments, would be abolished with their responsibilities transferred to the more numerous District Appeal Boards (DAB). Under existing regulations, the sole responsibility of DABs is to decide appeals of local board classification decisions. This organization change is necessary to ensure a more efficient and economical administration of the SSS. Its primary intended effect is to eliminate the administrative costs of maintaining separate appeal boards for ASWs without adversely impacting on the Agency's ability to expeditiously decide appeals of denied job reassignments or appeals of local board classification decisions. A secondary intended effect is to improve customer service to ASWs during a military draft.

DATES: Comments must be received on or before April 6, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov* Follow the instructions for submitting comments.
- E-mail: *information@sss.gov*
- Mail: Rudy G. Sanchez, Jr., Office of the General Counsel, Selective Service System, Arlington, VA 22209–2425.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Thomas J. Hornada, (703) 605–4074; Mary B. Lawson, (703) 605–4077.

Legal Information: Rudy G. Sanchez, Jr., (703) 605–4012.

SUPPLEMENTARY INFORMATION:

Background

These proposed amendments to Selective Service regulations are published pursuant to section 13(b) of the Military Selective Service Act (MSSA), 50 U.S.C. App. 463(b), and Executive Order 11623. The regulations implement the MSSA (50 U.S.C. App. 451 *et seq.*), which authorizes the President to create and establish within the Selective Service System civilian local boards, civilian appeal boards, and such other civilian agencies, including agencies of appeal, as may be necessary to carry out its functions [50 U.S.C. App. 460(b)(3)]. Executive Order 11623 delegates to the Director of Selective Service the authority to prescribe the necessary rules and regulations to carry out the provisions of the MSSA.

Under existing regulations, 48 Civilian Review Boards (CRB) have been established to decide appeals of denied requests for job reassignments made by conscientious objectors who have been placed in the Alternative Service Program as Alternative Service Workers (ASW). The sole function of CRBs is to decide such appeals during a military draft. A determination has been made that maintaining CRBs is unnecessary for the Selective Service to carry out its functions.

Discussion of Proposal

It is proposed that the 48 CRBs be abolished with their responsibilities transferred to the 96 DABs, which are currently solely responsible for deciding appeals of local board classification decisions during a military draft. This conversion would have three significant benefits. First, it would eliminate the unnecessary administrative costs of maintaining separate boards for ASW appeals of denied job reassignments. Second, it would result in more frequent pre-mobilization training of board members on the requirements for deciding ASW appeals. Finally, customer service to ASWs would be improved by doubling the number of locations for them to appeal denied job reassignments. It has been determined that the proposed rule changes would not result in a significant increase in the workload of DABs, and its primary responsibility of deciding appeals of local board decisions would be unimpeded. If necessary to accommodate an unexpectedly high workload during a draft, the number of members on a DAB could be increased to create separate panels thereof.

To implement the proposed conversion, the following parts and sections in 32 CFR Chapter XVI must be amended: § 1602 .11—To change the definition of "District Appeal Board" to include the ability to act on cases in accordance with part 1656 (Alternative Service); § 1605.24—To give DABs jurisdiction to decide appeals of denied job reassignments; § 1609.1—To remove members of "civilian review boards" as uncompensated positions within Selective Service; § 1656.1—To remove the definition of "Civilian Review Board" and renumber the section's definitions accordingly; § 1656.3—To remove the paragraph establishing CRBs, and renumber the paragraphs accordingly; § 1656.13—To remove paragraph "e", which requires the establishment of CRBs, and to re-letter the section's paragraphs accordingly; § 1656.18—To amend paragraph "c" for conformity of citations therein to the re-lettering of paragraphs in § 1656.13; Finally, throughout part 1656 several sections must be amended to remove the words, "Civilian Review Board", and add the words, "District Appeal Board" in their place.

Matters of Proposed Rule Making Procedure

In promulgating these proposed amendments to Selective Service regulations, I have adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. The proposed amendments have not been reviewed by the Office of Management and Budget under that Executive Order, as they are not deemed "significant" thereunder.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), I have determined that the proposed amendments do not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain an information collection requirement that requires approval of the Office of Management and Budget.

Interested persons are invited to submit written comments on the proposed rule changes. All written comments received in response to this notice of proposed rulemaking will be available for public inspection in the Office of the General Counsel from 8:30 a.m. to 3:30 a.m., Monday through Friday, excluding legal holidays.

List of Subjects in 32 CFR Parts 1602, 1605, 1609, and 1656

Selective Service System.

For the reasons stated in the preamble, the Selective Service System proposes to amend 32 CFR parts 1602, 1605, 1609, and 1656 as follows:

PART 1602—DEFINITIONS

1. The authority citation for part 1602 continues to read as follows:

Authority: Military Selective Service Act (50 U.S.C. App. 451 *et seq.*); E.O. 11623.

2. Revise § 1602.11 to read as follows:

§ 1602.11 District appeal board.

A district appeal board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in accord with the provisions of parts 1651 and 1656 of this chapter.

PART 1605—SELECTIVE SERVICE SYSTEM ORGANIZATION

1. The authority citation for part 1605 continues to read as follows:

Authority: Military Selective Service Act (50 U.S.C. App. 451 *et seq.*); E.O. 11623.

2. Amend § 1605.24 by redesignating the introductory text, paragraph (a), paragraph (b), and paragraph (c) as paragraph (a) introductory text, paragraph (a)(1), paragraph (a)(2) and paragraph (a)(3), respectively, and by adding paragraph (b) to read as follows:

§ 1605.24 Jurisdiction.

* * * * *

(b) The district appeal board shall have jurisdiction to review and to affirm or change any Alternative Service Office Manager decision appealed to it by an Alternative Service Worker pursuant to part 1656 of this chapter.

PART 1609—UNCOMPENSATED PERSONNEL

1. The authority citation for part 1609 continues to read as follows:

Authority: Military Selective Service Act (50 U.S.C. App. 451 *et seq.*); E.O. 11623.

2. Amend § 1609.1 by revising the first sentence to read as follows:

§ 1609.1 Uncompensated positions.

Members of local boards, district appeal boards, and all other persons volunteering their services to assist in the administration of the Selective Service Law shall be uncompensated.

* * *

PART 1656—ALTERNATIVE SERVICE

1. The authority citation for part 1656 continues to read as follows:

Authority: Military Selective Service Act (50 U.S.C. App. 451 *et seq.*); E.O. 11623.

2. Amend part 1656, Alternative Service, to remove the words "Civilian Review Board" and add, in their place, the words "District Appeal Board", in the following places:

a. Section 1656.11(b)(4)

b. Section 1656.13(d) and (f) and (g) and (h)

c. Section 1656.18(c)

§ 1656.1 [Amended]

3. Amend § 1656.1 to remove paragraph (b)(6) and redesignate paragraphs (b)(7) through (14) as paragraphs (b)(6) through (13).

§ 1656.3 [Amended]

4.–5. Amend § 1656.3 to remove paragraph (a)(10) and redesignate paragraphs (a)(11) through (13) as paragraphs (a)(10) through (12).

§ 1656.13 [Amended]

6.–7. Amend § 1656.13 by removing paragraph (e) and by redesignating paragraphs (f) through (h) as paragraphs (e) through (g).

§ 1656.18 [Amended]

8. Amend § 1656.18(c) by revising the phrase "§ 1656.13(c) or (g)" to read "§ 1656.13(c) or (f)".

Dated: January 28, 2004.

Lewis C. Brodsky,

Acting Director of Selective Service.

[FR Doc. 04–2427 Filed 2–5–04; 8:45 am]

BILLING CODE 8015–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD01

Lake Roosevelt National Recreation Area, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to designate areas where personal watercraft (PWC) may be used in Lake Roosevelt National Recreation Area, Washington. This proposed rule implements the provisions of the NPS general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The NPS *Management Policies 2001* require individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

DATES: Comments must be received by April 6, 2004.

ADDRESSES: Comments on the proposed rule should be sent or hand delivered to Superintendent, Lake Roosevelt National Recreation Area, 1008 Crest Drive, Coulee Dam, WA 99116. E-mail comments may also be sent to *laro@den.nps.gov*. If you comment by e-mail, please include "PWC rule" in the subject line and your name and return address in the body of your Internet message.

For additional information *see* "Public Participation" under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Special Assistant, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone: (202) 208–4206. e-mail: *Kym_Hall@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

Additional Alternatives

The information contained in this proposed rule supports implementation of portions of the preferred alternative in the Environmental Assessment published April 28, 2003. The public should be aware that two other alternatives were presented in the EA, including a no-PWC alternative, and those alternatives should also be reviewed and considered when making comments on this proposed rule.

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of personal watercraft (PWC) use within all units of the national park system (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000. The regulation established a 2-year grace period for 21 park units with existing PWC use to consider whether PWC use should be permitted to continue.

Description of Lake Roosevelt National Recreation Area

Lake Roosevelt National Recreation Area was established in eastern Washington State in 1946 following the Secretary of the Interior's approval of a Tri-Party Agreement among the National Park Service, the Bureau of Reclamation, and the Bureau of Indian Affairs. The reservoir and related lands were administered as the recreation area under this agreement until 1974 when Interior Secretary Rogers C.B. Morton directed that the agreement for the management of the lake be expanded to include the Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians. Secretary Morton's directive was prompted by the Interior Solicitor's opinion that the tribes have exclusive rights to hunting, boating, and fishing within those areas of the reservoir that are within the boundaries of the two Indian reservations. An accord was reached on April 5, 1990, when the Secretary of the Interior approved the Lake Roosevelt Cooperative Management Agreement. The agreement confirmed and established management authority of the two Indian tribes over the portions of Lake Roosevelt and related lands within the boundaries of their respective reservations that were previously administered as part of the national recreation area. In 1997, the name of the park was changed from Coulee Dam National Recreation Area to Lake Roosevelt National Recreation Area.

With the approval of the Lake Roosevelt Cooperative Management Agreement, Lake Roosevelt National Recreation Area was defined as the waters and lands managed by the National Park Service. Lake Roosevelt National Recreation Area consists of 312 miles of shoreline along the Columbia River. The National Park Service administers 47,438 acres of the 81,389-acre water surface (at full pool), and 12,936 acres of adjacent land. The lands of Lake Roosevelt National Recreation Area consist primarily of a narrow band of shore above the maximum high water mark (1,290 feet), which was originally purchased by the Bureau of Reclamation for construction of the reservoir. The national recreation area also includes shoreline along about 29 miles of the Spokane River Arm of the lake and about 7 miles along the Kettle River Arm. Most of the remainder of the shoreline and surface area of Lake Roosevelt lies within the reservation boundaries of the Spokane Tribe and the Colville Confederated Tribes and is not part of the national recreation area. The Bureau of Reclamation retains the

management of the dam, an area immediately around the dam, and a few other locations that are necessary for operating the reservoir.

The NPS at Lake Roosevelt preserves and protects a rich cultural history throughout the park. 9,000 years of human use of the area is evident throughout the park through a variety of archeological resources. Historical features such as St. Paul's Mission and Fort Spokane attest to a more recent history. The natural features around the lake tell the story of the Ice Age Floods that shaped this landscape about 13,000 years ago. The recreation area is home to many species of wildlife and fish, including bald eagles, peregrine falcons, black bear, kokanee salmon and walleye. Ponderosa Pine and Douglas Fir are plentiful. Popular types of recreation include fishing, swimming, boating, water skiing, picnicking, and camping from boats and vehicles.

Purpose of Lake Roosevelt National Recreation Area

The purpose and significance statements below are from Lake Roosevelt's Strategic Plan (NPS 2000) and General Management Plan (NPS 2000). Lake Roosevelt National Recreation Area was established for the following purposes:

(1) To provide opportunities for diverse, safe, quality, outdoor recreational experiences for the public.

(2) To preserve, conserve, and protect the integrity of natural, cultural, and scenic resources.

(3) To provide opportunities to enhance public appreciation and understanding about the area's significant resources.

The Recreation Area has no specific enabling legislation and was created under an act passed in 1946 authorizing the administration of the areas by the NPS pursuant to cooperative agreements. [Act of August 7, 1946, ch. 788, 60 Stat. 855; 16 U.S.C. 17j–2(b)].

Significance of Lake Roosevelt National Recreation Area

The following statements summarize the significance of Lake Roosevelt National Recreation Area:

(1) It offers a wide variety of recreation opportunities in a diverse natural setting on a 154-mile-long lake that is bordered by 312 miles of publicly owned shoreline that is available for public use.

(2) It contains a large section of the upper Columbia River and a record of continuous human occupation dating back more than 9,000 years.

(3) It is contained within three distinct geologic provinces—the Okanogan Highlands, the Columbia Plateau, and the Kootenay Arc, which were sculpted by Ice Age floods.

The park's mission statement is as follows: As a unit of the national park system, Lake Roosevelt National Recreation Area is dedicated to conserving, unimpaired, the natural and cultural resources and recreational and scenic values of Lake Roosevelt for the enjoyment, education, and inspiration of this and future generations. The recreation area also shares responsibility for advancing a great variety of programs designed to help extend the benefits of natural and cultural resource conservation and outdoor recreation.

Authority and Jurisdiction

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *"

16 U.S.C. 1a–1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *"

As with the United States Coast Guard, the NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U.S. Constitution. In regard to the NPS, Congress in 1976 directed the NPS to "promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *" (16 U.S.C. 1a–2(h)). In 1996 the NPS published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

PWC Use at Lake Roosevelt National Recreation Area

A variety of watercraft can be found on Lake Roosevelt during the summer season, *e.g.*, ski boats, PWC, runabouts, day cruisers, sailboats (some with auxiliary motors), houseboats, and, to a lesser degree, canoes, kayaks, and rowboats. Activities on the lake associated with boating include sightseeing, water skiing, fishing, swimming, camping, picnicking, and sailing. The park estimates that there were over 50,000 boat launches during the 2001 primary boating season based on the launch fees counted at the park. Most boaters reside within 100 miles of Lake Roosevelt but others come from cities and communities throughout Washington, as well as from Idaho, Oregon and Canada. PWC use is estimated at approximately 56 PWC users on a peak use summer day in 2002, increasing to an average of 62 PWC users per peak use day by 2012.

PWC use began on Lake Roosevelt during the 1980s but did not become fairly common until the mid-1990s. PWC are often used as a houseboat accessory. Activities undertaken by PWC on Lake Roosevelt include running up and down sections of the lake, towing skiers, jumping wakes, and general boating activities. Surveys of boat trailers conducted in 2001 and 2002 estimate the number of PWC to be approximately 4% of all boating use at Lake Roosevelt. PWC are allowed to launch, operate, and beach from dawn to dusk throughout the national recreation area. The primary PWC use season is June through September with some use from April through May and October through December, but no use in winter months because the weather and water is generally too cold.

In the past, PWC were regulated as vessels under the Superintendent's Compendium and, along with other vessels, were allowed in all areas of the lake. The Superintendent's Compendium is terminology the NPS uses to describe the authority provided to the Superintendent under 36 CFR 1.5 and 1.7. It allows for local, park-specific regulations for a variety of issues and under specific criteria. Before the closure, areas 100 feet around swim beaches, marinas, and narrow sections of the lake had speed or "flat-wake" restrictions applicable to all boats based on Washington State boating regulations. In addition, before the closure, flat-wake zones on the lake included Hawk Creek from the waterfall at the campground to an area called "the narrows" and on the Kettle River above the Napoleon Bridge. Crescent Bay Lake, located near Lake Roosevelt but not a connected waterway, was closed to all motorized craft. In flat-wake zones boats and PWC could not exceed flat-wake speed which is defined as a minimal disturbance of the water by a vessel in order to prevent damage or injury.

None of the concessioners at Lake Roosevelt currently rent PWC. Within 60 to 100 miles of the park, a total of five PWC dealerships were identified in Wenatchee, Spokane, and Okanogan. No PWC dealerships were identified closer to the park. A total of three rental shops were found within 30 miles of the park including Banks Lake, Sun Lake, and Blue Lake.

Within 100 miles of Lake Roosevelt National Recreation Area there are several major lakes and many smaller lakes that allow PWC. The larger lakes include Banks Lake and Lake Chelan in Washington and Lake Coeur d'Alene and Lake Pend Oreille in Idaho.

Some research suggests that PWC are viewed by some segments of the public as a "nuisance" due to their noise, speed, and overall effects on the environment while others view PWC as no different from other watercraft and that PWC users have a "right" to enjoy their sport. There has been some conflict between PWC and fishermen, canoeists, and swimmers at Lake Roosevelt.

Due to their ability to reach speeds in the 60 miles per hour range and their ability to access shallow-draft areas, PWC can create wakes that pose a conflict for both shore and boat fishermen and a safety hazard to other users such as canoeists, kayakers and windsurfers. At Lake Roosevelt National Recreation Area, some complaints by fisherman, canoeists or swimmers have been received concerning wakes created by PWC. Some complaints have also been received concerning the operating speed of PWC.

A total of only eight safety incidents involving PWC were reported on Lake Roosevelt during the years 1997 through 2002.

Resource Protection and Public Use Issues

Lake Roosevelt National Recreation Area Environmental Assessment

In addition to this proposed rule, NPS has issued the *Personal Watercraft Use Environmental Assessment for Lake Roosevelt National Recreation Area.* The Environmental Assessment (EA) was open for public review and comment from April 28, 2003 to May 28, 2003. Copies of the EA may be downloaded at *http://www.nps.gov/laro* or by calling 509–633–9441 ext. 110 or by writing to the Superintendent, Lake Roosevelt National Recreation Area, 1008 Crest Drive, Coulee Dam, WA 99116.

The purpose of the EA was to evaluate a range of alternatives and strategies for the management of PWC use at Lake Roosevelt to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Recreation Area's enabling legislation, purpose, mission, and goals. The analysis assumed alternatives would be implemented beginning in 2002 and considered a 10-year use period, from 2002 to 2012. In addition, the analysis assumes that PWC annual use will increase approximately 1% annually and due to the narrow and linear characteristics of the reservoir, each PWC that launches is assumed to recreate on waters managed by both NPS and tribal entities during an average trip, regardless of launch point. The NPS assumes no jurisdiction over tribal waters and generally does not enforce regulations in those areas, however, because of existing Memorandums of Understanding with the tribes the park may respond to law enforcement or emergency situations on tribal waters.

The EA evaluates three alternatives concerning the use of PWC at Lake Roosevelt National Recreation Area.

Alternative A would allow PWC use under a special NPS regulation in accordance with NPS *Management Policies 2001,* park practices, and state regulations. That is, after the effective date of a final rule, PWC use would be the same as it was before the closure on November 7, 2002. Therefore, under Alternative A, PWC use would be allowed throughout the recreation area, with limitations only in areas where restrictions existed before the closure. These areas include the following: Crescent Bay Lake (motorized watercraft restricted), Upper Kettle River, above the Napoleon Bridge (flat wake), and Upper Hawk Creek from the waterfall near the campground through the area known as the "narrows" (flat wake). Launch and retrieval of PWC would continue to be permitted only at designated boat launch ramps within Lake Roosevelt National Recreation Area. PWC users would be able to land anywhere along the shoreline, except in designated swimming areas. All non-conflicting State and Federal watercraft laws and regulations would continue to be enforced.

As with Alternative A, Alternative B would reinstate PWC use under a special regulation, but specific limits and use areas would be defined. However, based on comments received from the public during the EA scoping process and through the comment period, this proposed rule would implement Alternative B with one modification; the Kettle River would be closed to PWC above the Hedlund Bridge. The EA does not discuss this modification but impacts from this additional closure have been analyzed by the NPS and will be discussed in the decision document for this EA and we are soliciting additional comments on this closure in this proposed rule. Throughout this proposed rule, the preferred alternative will continue to be referred to as Alternative B however it differs slightly from the Alternative B referred to in the EA.

Under Alternative B, PWC use would be reinstated within Lake Roosevelt in most locations of the recreation area where it was allowed prior to November 7, 2002 with some new restrictions. Under this alternative, the current flat-wake zone in Hawk Creek and the restriction on motorized watercraft use on Crescent Bay Lake would remain. In addition, extra flat-wake speed zoning would be implemented. These flat-wake restrictions would apply to the following areas: Within 200 feet from launch ramps, marina facilities, campgrounds, beaches occupied by swimmers, water skiers and other persons in the water and the Spokane Arm from 100 feet west of the Two Rivers Marina on the downstream end, to 100 feet east of the Fort Spokane launch ramp on the upstream end, above the vehicle bridge. In addition to the extra flat-wake zones, PWC use would be prohibited on the Kettle River from Hedlund Bridge, north to the headwaters. Except for Napoleon Bridge launch on the Kettle River where PWC launching would be prohibited, launch and retrieval of PWC would be permitted only at designated boat launch ramps within Lake Roosevelt National Recreation Area. As with Alternative A, PWC users would be able to land anywhere along the shoreline, except in designated swimming areas and all state and federal watercraft laws and regulations would continue to be enforced.

The no-action alternative would continue the current closure on PWC use within this national park system unit.

Based on the environmental analysis prepared for PWC use at Lake Roosevelt National Recreation Area, Alternative B is the preferred alternative and is also considered the environmentally preferred alternative because it would best fulfill park responsibilities as trustee of this sensitive habitat; ensuring safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attaining a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

This document proposes regulations to implement Alternative B at Lake Roosevelt National Recreation Area.

The NPS will consider the comments received on this proposal, as well as the comments received on the EA. In the final rule, the NPS will implement Alternative B as proposed, or choose a different alternative or combination of alternatives. Therefore, the public should review and consider the other alternatives contained in the EA when making comments on this proposed rule.

The following summarizes the predominant resource protection and public use issues associated with reinstating PWC use at Lake Roosevelt National Recreation Area under the proposed rule which implements Alternative B. Each of these issues is analyzed in the *Lake Roosevelt National Recreation Area, Personal Watercraft Use Environmental Assessment.*

Water Quality

Most research on the effects of PWC on water quality focuses on the impacts of two-stroke engines, and it is assumed that any impacts caused by these engines also apply to the PWC powered by them. There is general agreement that two-stroke engines discharge a gas-oil mixture into the water. Fuel used in PWC engines contains many hydrocarbons, including BTEX. Polycyclic aromatic hydrocarbons (PAH) also are released from boat engines, including those in PWC. These compounds are not found appreciably in the unburned fuel mixture, but rather are products of combustion. Discharges of these compounds—BTEX and PAH—have potential adverse effects on water quality. A common gasoline additive, MTBE, is currently being used in the state of Washington; however, a ban on its use took effect on December 31, 2003. A small percentage of all types of boaters may come from surrounding states or Canada and could potentially be carrying fuel that contains MTBE but the numbers of these users would be low.

A typical conventional (*i.e.*, carbureted) two-stroke PWC engine discharges as much as 30% of the unburned fuel mixture directly into the water. At common fuel consumption rates, an average two-hour ride on a PWC may discharge 3 gallons of fuel into the water. According to the California Air Resources Board, an average PWC can discharge between 1.2 and 3.3 gallons of fuel during one hour at full throttle. However, hydrocarbon (HC) discharges to water are expected to decrease substantially over the next 10 years due to mandated improvements in engine technology by the EPA.

Under this proposed rule, PWC use would be reinstated within Lake Roosevelt in all locations where it was allowed prior to November 7, 2002 except on the Kettle River. In addition to the current flat wake zone on Hawk Creek, and the restriction on motorized watercraft use on Crescent Bay Lake, additional flat wake speed zoning would be implemented. These flat wake restrictions would apply to the following areas: Within 200 feet of launch ramps, marina facilities, campgrounds, beaches occupied by swimmers, water skiers, and other persons in the water and on the Spokane Arm from 100 feet west of the Two Rivers Marina on the downstream end, to 100 feet east of the Fort Spokane launch ramp on the upstream end, above the vehicle bridge.

Since PWC are assumed to operate for only short periods of time in flat-wake zones, effects from low throttle operation in these areas would likely be insignificant. Therefore, calculations only address full throttle operation in the main body of the reservoir. However, it is acknowledged that emissions could potentially build up in areas where use is heavy such as around launch facilities and shallow water high activity areas where flat-wake zoning would be extended. Retention time for waters contained in the lake range from 28 to 52 days depending on the time of year and how much water the dam is releasing. This proposal would also establish a resource monitoring program addressing water quality sampling for watercraft emissions in areas of high PWC and motorized vessel use. These efforts would assist in the detection and future prevention of adverse impacts from PWC and other boating use in the above flat-wake zones.

Under this proposed rule, cumulative adverse impacts from PWC and other watercraft would be negligible and long-term for benzo(a)pyrene, benzene and MTBE. (For an explanation of terms such as "negligible" and "adverse" in regard to water quality, see page 93 of the EA.). The proposed additional flat-wake zone restrictions would not change the cumulative impacts on water quality in NPS or tribal managed waters. The impacts to water quality on the Kettle River would result in localized, long-term, minor, beneficial impacts due to the elimination of pollutant loads.

PWC use under this proposed rule would have negligible adverse effects on water quality based on ecotoxicological threshold volumes. Cumulative pollutant loads in 2002 and 2012 from PWC and other motorboats would be well below ecotoxicological benchmarks and criteria. Adverse water quality impacts from PWC from benzo(a)pyrene, benzene and MTBE based on human health (ingestion of water and fish) benchmarks would be negligible in both 2002 and 2012, based on Environmental Protection Agency (EPA) and state of Washington water quality criteria. Cumulative adverse impacts from PWC and other watercraft would be negligible for benzo(a)pyrene, benzene and MTBE. Cumulative impacts from PWC and other motorboats to water quality would also be applicable to tribal managed waters. Therefore the implementation of this proposed rule would not result in an impairment of the water quality resource at Lake Roosevelt.

Air Quality

PWC emit various compounds that pollute the air. In the two-stroke engines commonly used in PWC, the lubricating oil is used once and is expelled as part of the exhaust; and the combustion process results in emissions of air pollutants such as volatile organic compounds (VOC), nitrogen oxides (NO_X), particulate matter (PM), and carbon monoxide (CO). PWC also emit fuel components such as benzene that are known to cause adverse health effects. Even though PWC engine exhaust is usually routed below the waterline, a portion of the exhaust gases go into the air. These air pollutants may adversely impact park visitor and employee health, as well as sensitive park resources.

For example, in the presence of sunlight VOC and NO_X emissions combine to form ozone. Ozone causes respiratory problems in humans, including cough, airway irritation, and chest pain during inhalations. Ozone is also toxic to sensitive species of vegetation. It causes visible foliar injury, decreases plant growth, and increases plant susceptibility to insects and disease. Carbon monoxide can affect humans as well. It interferes with the oxygen carrying capacity of blood, resulting in lack of oxygen to tissues. NO_X and PM emissions associated with PWC use can also degrade visibility. NO_X can also contribute to acid deposition effects on plants, water, and soil. However, because emission estimates show that NO_X from PWC are minimal (less than 5 tons per year), acid deposition effects attributable to PWC use are expected to be minimal.

In this proposed rule, negligible adverse impacts for HC, PM_{10}, and NO_X, and minor impacts for CO would occur for 2002 and 2012. (For an explanation of terms such as "negligible" and

"adverse" in regard to air quality, see page 105 of the EA.) The risk from PAH would also be negligible in 2002 and 2012. Cumulative adverse impacts from PWC and other boating emissions within the national recreation area would be moderate for CO and HC, and negligible for PM_{10} and NO_X in 2002. In 2012, NO_X impact would increase to minor; impacts for the other pollutants would remain at 2002 levels. A beneficial impact to regional ozone emissions would occur due to a reduction in HC emissions.

This proposed rule would not interfere with, maintain or improve existing human health air quality conditions, with future reductions in PM_{10} and HC emissions due to improved emission controls from EPA. The PWC contribution to emissions of HC is estimated to be 10% to 11% of the cumulative boating emissions in 2002 and 2012. Cumulative impacts from watercraft emissions would also be applicable to adjacent areas under tribal jurisdiction. All impacts would be long term. Therefore, the implementation of this proposed rule would not result in an impairment of air quality.

Soundscapes

The primary soundscape issue relative to PWC use is that other visitors may perceive the sound made by PWC as an intrusion or nuisance, thereby disrupting their experiences. This disruption is generally short term because PWC travel along the shore to outlying areas. However, as PWC use increases and concentrates at beach areas, related noise becomes more of an issue, particularly during certain times of the day. Additionally, visitor sensitivity to PWC noise varies from fishermen (more sensitive) to swimmers at popular beaches (less sensitive).

The biggest difference between noise from PWC and noise from motorboats is that the PWC repeatedly leave the water during use, which magnifies noise in two ways. Without the muffling effect of water, the engine noise is typically 15 dBA louder and the smacking of the craft against the water surface results in a loud "whoop" or series of them. With the rapid maneuvering and frequent speed changes, the impeller has no constant "throughput" and no consistent load on the engine. Consequently, the engine speed rises and falls, resulting in a variable pitch. This constantly changing noise is often perceived as more disturbing than the constant noise from motorboats.

PWC users tend to operate close to shore, to operate in confined areas, and to travel in groups, making noise more noticeable to other recreationists. Motorboats traveling back and forth in one area at open throttle or spinning around in small inlets also generate complaints about noise levels; however, most motorboats tend to operate away from shore and to navigate in a straight line, thus being less noticeable to other recreationists.

Under this proposal, PWC use would be reinstated with new restrictions to enhance overall visitor experience. This proposal would result in a reduction in noise levels from PWC to park visitors, including fishermen and near shoreline users of the swimming, picnic, and camping areas, as flat-wake speed would be implemented in these areas, resulting in beneficial impacts.

Overall, minor to moderate adverse impacts would result from PWC use on the soundscape of the recreation area. Impacts would generally be short-term, although they could periodically be more consistent and bothersome at shoreline areas on the very high use days, where motorized watercraft noise may predominate off and on for most of the day. Most visitors to Lake Roosevelt National Recreation Area during those high use periods expect to hear motorized craft during the day, as the lake is known by the mostly local and regional users for providing this type of recreational opportunity, in addition to other activities.

Noise from PWC would have minor to moderate adverse impacts at most locations at Lake Roosevelt National Recreation Area and the immediate surrounding area. (For an explanation of impact terms such as "minor", "moderate" and "adverse" in regard to soundscape, see page 118 of the EA.) Impact levels would relate to the number of PWC operating as well as the sensitivity of other visitors. The new proposed restrictions on PWC use and proposed flat-wake areas would have beneficial impacts to some park visitors from reduced noise levels. Cumulative adverse noise impacts from PWC and other watercraft, automobiles on SR 25, aircraft, lumber operations, and other visitor activities would be minor to moderate because these sounds would be heard occasionally throughout the day, and may predominate on busy days during the high use season. Cumulative impacts to the soundscape at adjacent tribal managed visitor use areas would be similar to impacts in NPS-managed areas. Therefore, implementation of this proposed rule would not result in an impairment of the park's soundscape.

Wildlife and Wildlife Habitat

Some research suggests that PWC use affects wildlife by causing interruption of normal activities, flight and alarm responses, avoidance or degradation of habitat, and effects on reproductive success. This is thought to be a result of a combination of PWC speed, noise and ability to access sensitive areas, especially in shallow-water depths. Waterfowl and nesting birds are the most vulnerable to PWC. Fleeing a disturbance created by PWC may force birds to abandon eggs during crucial embryo development stages, prevent nest defense from predators, and contribute to stress and associated behavior changes. Impacts to sensitive species, such as the bald eagle, are documented under "Threatened, Endangered, or Special Concern Species."

Under the proposed rule, PWC use would occur in the recreation areas with additional limitations such as an extension of the previous 100′ zone to 200′ flat-wake restrictions around activity areas and along a small stretch of the Spokane Arm and a prohibition of PWC use on the Kettle River. The added flat-wake restrictions would be implemented in areas where visitor activities are currently high, precluding the existence of prime wildlife habitat. Therefore, these flat-wake restrictions would have beneficial impacts through a decrease in noise and disturbance by PWC.

Impacts to mammals would be negligible to minor because most species rarely use the shoreline. Most are either transient visitors from inland parts of the recreation area or are generally acclimated to human intrusion. Primary habitat areas for large mammals such as deer and elk are typically located further inland. Small mammals common to the area such as marmots, skunks, and chipmunks generally acclimate easily to human activity and have the ability to avoid use areas. Suitable breeding habitat for birds is located in the Hawk Creek and Kettle and Colville Rivers, but these locations are protected by flat-wake designations or are inaccessible to PWC. In addition, most PWC are not used in the spring due to low water and air temperatures, further minimizing the potential for disturbance to breeding individuals. Fish could potentially be affected through pollutant loads and/or physical disturbance but reinstated use of PWC would create pollutant loads that are well below ecotoxicological benchmarks. Adverse impacts from physical disturbance by PWC use to fish populations and spawning areas at Lake Roosevelt would be short-term, negligible to minor.

Under the proposal adverse impacts to fish and wildlife from PWC use at Lake Roosevelt National Recreation

Area would be negligible to minor. (For an explanation of terms such as "negligible" and "adverse" in regard to wildlife and wildlife habitat see pages 123–124 of the EA.) All wildlife impacts would be temporary and short term. Cumulative impacts would also be adverse, and minor to moderate. Therefore, implementation of this proposed rule would not result in impairment to wildlife or wildlife habitat.

Threatened, Endangered, or Special Concern Species

This proposed regulation aims to protect threatened or endangered species, or species of special concern, and their habitats from PWC disturbances. The same issues described for PWC use and general wildlife also pertain to special status species. Potential impacts from PWC include inducing flight and alarm responses, disrupting normal behaviors and causing stress, degrading habitat quality, and potentially affecting reproductive success. Special status species at the recreation area include federal or state listed threatened, endangered, or candidate species. Additionally, some species at Lake Roosevelt are designated by the state or other local governments as species of special concern.

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) mandates that all federal agencies consider the potential effects of their actions on species listed as threatened or endangered. If the National Park Service determines that an action may adversely affect a federally listed species, consultation with the U.S. Fish and Wildlife Service is required to ensure that the action will not jeopardize the species' continued existence or result in the destruction or adverse modification of critical habitat. No consultation with USFWS is required under this proposed rule.

PWC use at Lake Roosevelt may affect, but is not likely to adversely affect the following species with federal or state status: bald eagle, bull trout, California bighorn sheep, American peregrine falcon, American white pelican, black tern, moose, least bladdery milkvetch, Nuttal's pussytoes, or giant helleborine. The identified special status species are either not permanent residents that are present during times of PWC use, do not have preferred habitat in the areas used by PWC, are not usually accessible, or are generally acclimated to human activity. (For an explanation of terms such as "negligible" and "adverse" in regard to threatened, endangered, or special concern species see pages 129–130 of the EA.)

There would be no effect to all other federal or state listed species including the Canada lynx, gray wolf, grizzly bear, or woodland caribou. None of these species are believed to have resident populations within the recreation area, although habitat may exist in undeveloped forested areas near northern portions of the park.

For example, Lake Roosevelt provides opportunities for wintering activity for bald eagles. The over-wintering population is large while the resident population is low. The highest PWC use occurs in July and August, which does not coincide with wintering bald eagle activity. PWC use may affect, but is not likely to adversely affect bald eagles or their habitat.

Ute ladies'-tresses is not known to occur within the recreation area and potential habitat for the orchid is limited to side drainages where PWC use would not likely occur or would be restricted. Columbia crazyweed historically occurred along shoreline however, these populations were extirpated with the construction of the Grand Coulee Dam and no known populations occur in the recreation area now.

As outlined in the EA, and stated previously, several of the listed species that may occur in the Lake Roosevelt area are either not permanent residents that are present during times of PWC use, do not have preferred habitat in the areas used by PWC, are not usually accessible, or are generally acclimated to human activity. Reinstatement of PWC use within the national recreation area with additional management strategies may affect, but is not likely to adversely affect, any of the listed wildlife or plant species due to additional flat-wake restrictions and prohibited PWC use on the Kettle River. While some disturbance to special status species could occur from PWC use, other visitor activities on the lake and shoreline, or lake operations, these cumulative impacts would not be of sufficient duration or intensity to cause adverse impacts. Reduced impacts would occur in designated areas where PWC would be prohibited or where additional speed or flat-wake restrictions would be enforced.

Shoreline Vegetation

PWC use would result in negligible adverse effects on shoreline vegetation because shoreline vegetation is generally lacking. (For an explanation of terms such as "negligible" and "adverse" in regard to shorelines see page 135 of the EA.) Sensitive wetland and riparian areas are located in inaccessible or protected areas with regulated PWC access such as in the Kettle River and Crescent Bay Lake. Watercraft activity could cause negligible adverse impacts to shorelines through watercraft-induced wave action or visitor access. Wind-caused wave action and lake level fluctuation could cause negligible impacts through erosion to the shoreline of the open areas of the reservoir. Lake level fluctuations could also have minor adverse impacts to sensitive vegetation in side drainages. Cumulative impacts to tribal managed shorelines at Lake Roosevelt from motorized boating and PWC use would be similar to impacts on NPS-managed areas. Therefore, implementation of this proposed rule would not result in an impairment of shoreline vegetation.

Visitor Experience

In proposing this regulation for Lake Roosevelt, NPS aims to minimize conflicts between PWC users, other park visitors, and other water recreationists.

Impacts on PWC Users

Designation of the flat-wake zones and prohibited use on the Kettle River would have negligible to minor adverse impacts on most PWC users within the national recreation area since these areas would either not be accessible or would not be available for use. (For an explanation of terms such as "negligible" and "adverse" in regard to visitor experience see page 139–140 of the EA.) However, the majority of the lake surface would still be accessible and available to PWC users. PWC use was low on the Kettle River prior to the November 2002 closure; therefore, the restricted PWC use under the proposed rule would cause negligible adverse impacts to PWC users. Other visitors to the national recreation area would experience long-term benefits since conflicts between PWC users and other visitors, primarily fishermen using the Kettle River, would be reduced. PWC use on the Kettle River and use of the Napoleon Bridge boat launch has been very low. At times of low water in Lake Roosevelt, such as during the spring drawdown, the upper reaches of the Kettle River are unnavigable by boat because the river becomes too shallow to navigate. Impacts on alternative boat launches located on the main body of Lake Roosevelt within 10 river miles of the mouth of the Kettle River would be minimal. Visitors wanting to launch PWC in the area can use Snag Cove, approximately 6 river miles from the mouth of the Kettle River of the Marcus Island boat launch that is located approximately 2 river miles from the mouth of the Kettle River.

Impacts on Other Boaters. Other boaters at Lake Roosevelt National Recreation Area would interact with PWC operators on an increasing basis as overall boating numbers likely increase over the next ten years. PWC use is expected to increase at the same rate as other boat use; however, PWC would still only comprise approximately 4% of total boats on Lake Roosevelt by 2012. High-use areas for PWC users and boaters include Porcupine Bay, Fort Spokane, Kettle Falls, and Bradbury Beach.

Generally, few non-motorized watercraft (sea kayaks, canoes, and windsurfers) use Lake Roosevelt, so interactions with these user groups would be infrequent. In addition, prohibition of PWC use on Kettle River and the flat wake zone on upper Hawk Creek would provide calmer waters that lead to creeks favored by canoeists and kayakers. Motorized boats are more likely to interact with PWC. The most common area for PWC/boater interaction is near the boat launches, as the majority of motorized boats enter the water at the marinas and then motor into the main body of the lake.

Under this proposed rule, the 200-foot flat-wake zone around launch ramps, marina facilities, and the flat-wake zone on the stretch of the Spokane River at Two Rivers Marina would benefit other boaters (motorized and non-motorized). The prohibited use of PWC on the Kettle River would also benefit other motorized and non-motorized boaters since there would be less physical disturbance to other boaters. Boaters in other areas of the lake would see impacts similar to those previous to the closure to PWC use. Overall, long-term impacts on the experience of other boaters would be beneficial.

Impacts on Other Visitors. Campers, swimmers, water skiers, anglers, hikers, and other shoreline visitors to the lake would interact with PWC users and experience impacts similar to those previous to the closure on PWC use. Swimmers and other persons in the water at shoreline areas that are also popular with PWC would experience beneficial impacts as a result of the increased flat-wake zone designations and areas where PWC use is prohibited. Shoreline campers would experience a beneficial impact especially in areas along the Kettle River due to restrictions on PWC use. Shoreline hikers would experience impacts similar to before the closure or negligible to minor adverse. All visitors would experience negligible to minor beneficial impacts. Overall, implementation of this proposed rule would result in long-term negligible to minor beneficial impacts on other visitors.

Designation of the flat-wake zones, increasing the zone from 100′ to 200′, and prohibited PWC use on the Kettle River would have negligible to minor adverse impacts on most PWC users within the national recreation area since these areas would not be available for normal PWC use; however, the majority of the lake surface would still be accessible and available to PWC users. Other boaters and shoreline users would experience long-term, negligible to minor, beneficial impacts, especially at launch areas and high-use facilities. Swimmers, water skiers, and other persons in the water would experience beneficial impacts on their experience.

Cumulative effects of PWC use, other motorized boats, and other visitors would result in long-term, negligible to minor adverse impacts, while plans to improve or expand facilities would have long-term beneficial impacts on visitor experience within the national recreation area. Cumulative impacts from PWC use, motorized boats, and other visitors would also be applicable to adjacent tribal managed visitor use areas.

Visitor Conflict and Safety

Of the 46 incidents on Lake Roosevelt reported to the National Park Service between 1997 and 2002, 17% (or eight incidents) involved a PWC. Further, 55% of the incidents that involved two vessels making contact with each other (five out of nine incidents) involved at least one PWC, and three of the five two-vessel incidents (or 33%) involved two PWC striking each other. One PWC accident resulted in the death of the operator.

PWC speeds, wakes, and operations near other users can pose hazards and conflicts. Proportionally, there have been more complaints received by park staff about unsafe behavior by PWC users than any other watercraft users. Complaints have also been received from anglers, swimmers, and canoeists concerning speed of, and wakes created by, PWC.

Under this proposed rule, PWC use would be reinstated but PWC operation would be prohibited on Kettle River from Hedlund Bridge north to the headwaters and in other areas PWC use would only be allowed to occur at flat-wake speed within 200 feet of launch ramps, marina facilities, campground areas, beaches occupied by swimmers, water skiers and other persons in the NPS designated waters, and on the stretch of the Spokane Arm from 100 feet west of the Two Rivers Marina to 100 feet east of the Fort Spokane launch ramp above the vehicle bridge. In addition, the National Park Service would establish a monitoring program to determine if and when additional regulations would be needed to protect visitor safety. PWC use could potentially be discontinued in certain areas depending on the results of monitoring.

PWC User/Swimmer Conflicts. The greatest potential for conflict between PWC users and swimmers is at the high-use areas near Spring Canyon, Porcupine Bay, Fort Spokane, Kettle Falls, and Bradbury Beach. The 200-foot flat-wake designation around beaches occupied by swimmers would double the flat-wake zone relative to state regulations and would result in a beneficial impact on swimmers at high-use areas. Increasing the flat wake zone around beaches occupied by swimmers is beneficial to swimmers because the water turbulance created by PWC will dissipate significantly before reaching the shore. The remaining park locations would experience little or no conflict between PWC users and swimmers. There are few swimmers in other areas of the park that are frequented by PWC users, including the Kettle River, which PWC use would be prohibited. Thus conflicts in these segments would constitute negligible adverse impacts. (For an explanation of terms such as "negligible" and "adverse" in regard to visitor conflict and safety see page 146–147 of the EA.) Overall, impacts to the safety of swimmers would be long-term, negligible to minor, and beneficial.

PWC Users/Other Boater Conflicts. Impacts on other boaters on the majority of the lake would be long term, negligible to minor adverse. However, flat-wake restrictions near marinas, launch ramps, and on the stretch of the Spokane Arm near the Two Rivers marina and the prohibition of PWC use on Kettle River from Hedlund Bridge north to the headwaters would reduce the potential for conflict with other boaters in these areas. Impact on other boaters in the launch areas and marinas under this proposed rule would be long-term, negligible to minor beneficial.

Overall, PWC use would have a negligible to minor adverse impact on conflicts and safety of boat users within the national recreation area. The restrictions in this proposed rule would have beneficial impact on conflict and safety on boaters concentrated at high use areas and boat launches.

PWC Users/Other Visitor Conflicts. PWC users and other visitors would interact under this proposed rule; however, the prohibited use on the Kettle River, in addition to the 200 foot flat-wake zone designations around

waterskiers, beaches occupied by swimmers and persons in the water would result in a long term beneficial impact on other visitors. Shoreline campers would also experience a beneficial impact on safety and conflict issues under this propose rule. Overall, implementation of this proposed rule would have a beneficial impact on the safety of swimmers.

Reinstated PWC use with the additional restriction proposed in this rule would have short- and long-term, negligible to minor beneficial impacts on visitor conflicts and safety near the designated swim areas, boat launches, marinas, and campgrounds as well as on other visitors to Lake Roosevelt National Recreation Area. Cumulative impacts to visitor conflict and safety in tribal managed areas would be the same as before the closure on PWC use and the proposed restrictions would not affect tribal managed areas. Cumulative impacts related to visitor conflicts and safety would be negligible to minor adverse for all NPS user groups in the short and long term, particularly near the high use areas.

Cultural Resources

Under this proposed rule, Lake Roosevelt plans to manage PWC use and access to protect cultural resources including sacred sites important to Native Americans.

Reinstating PWC use within the national recreation area would have the potential to affect archeological resources by providing visitor access to resources or by causing wave action and erosion. However, potential impacts directly attributable to continued unrestricted PWC use are difficult to quantify. The most likely impact to archeological sites would result from PWC users landing in areas otherwise inaccessible to most other national recreation area visitors and illegally collecting or damaging artifacts. According to park staff, looting and vandalism of cultural resources is not a substantial problem. PWC-induced wave action is also not considered to be a large threat to archeological resources within the recreation area, as most PWC use does not occur during lake drawdowns when resources are most vulnerable.

Under the proposed rule, the creation or extension of flat-wake restrictions would reduce PWC-induced wave action. Project by project inventories and a monitoring program would determine if and when additional regulations would be necessary to protect cultural resources, resulting in minor to moderate beneficial impacts. Long-term impacts to archeological resources would continue to be minor. (For an explanation of terms such as "minor" and "moderate" in regard to cultural resources see pages 152–153 the EA.)

Although additional flat-wake restrictions and use prohibitions on the Kettle River within the national recreation area would reduce wave action in some areas and provide a minor beneficial impact, PWC use could have minor adverse impacts on listed or potentially listed archeological resources from possible illegal collection and vandalism. Continuing PWC use under a special regulation is not expected to negatively affect the overall condition of cultural resources due to resource monitoring that would be conducted. Archeological resources in areas managed by the Colville Confederated Tribes and Spokane Tribe of Indians could experience minor to moderate adverse impacts as a result of PWC and other visitor use. All impacts would occur over the short and long term. Therefore, implementation of this proposed rule would not result in an impairment of cultural resources.

Socioeconomic Effects

This proposed rule would continue PWC use in a way that would minimize the socioeconomic effects to park visitors and local businesses. Lake Roosevelt National Recreation Area experiences relatively low rates of PWC visitation. PWC make up only approximately 4% of motorized watercraft that recreate on Lake Roosevelt. There are other destinations in the area that are more popular with PWC users such as Lake Chelan and other parks of the Columbia River. No PWC sales or rental shops are located on the banks of Lake Roosevelt, and the nearest rental facility is located on Banks Lake only three miles away.

If PWC use decreases as a result of the restrictions and the closure on the Kettle River, then the suppliers of PWC sales and rental services would be adversely affected. It is unlikely that the proposed restrictions would have substantial impacts on the sales shops because they are located 60 to 100 miles away from the national recreation area and nearby substitute areas are more popular locations for PWC use.

Under the proposed rule it is anticipated that decrease in PWC use as a result of the regulation would be essentially zero because the prohibited use on the Kettle River and implementation of the extension of the flat-wake zones would not affect the number of visitors to the lake that use PWC and the majority of the recreation area would still be open for PWC use. The economic analysis shows an average annual economic benefit of $147,000 to the local economy upon implementation of the final rule.

Environmental Justice

This proposed rule continues PWC use in a manner that would have no adverse effects related to environmental justice. PWC users at the national recreation area represent a cross-section of ethnic groups and income levels from the surrounding counties. Under the proposed rule all PWC user groups would continue to have access to the lake, except Crescent Bay Lake that is closed to all motorized watercraft use and the Kettle River from Hedlund Bridge north to the headwaters that is closed to PWC use.

There would be no adverse effects related to environmental justice since reinstating PWC use within the national recreation area would not disproportionately affect minority or low income populations. Recreational use facilities managed by the Indian Tribes would continue to be available to PWC users, providing long-term beneficial impacts to tribal managed facilities on both NPS and tribal lands from the reinstatement of PWC use. Reduced conflicts with other watercraft would result from the dispersion of PWC use from tribal waters to other areas of the lake, resulting in a long-term beneficial impact.

National Recreation Area Management and Operations

This proposed rule manages PWC use in a manner that minimizes the conflicts with state, tribal, and local requirements to the extent possible. PWC use under the proposed rule would be managed similar to state boating regulations with additional management prescriptions. These management strategies are more restrictive than state PWC regulations and include additional flat-wake speed zoning and areas of restricted use. The prescriptions are within the NPS legal mandate to regulate recreational activities under their jurisdiction, and there would be minimal conflict with state or other federal policies or regulations. Conflicts with regulations and policies of the Spokane Tribe of Indians and the Confederated Tribes of the Colville Reservation would exist due to differences in restrictions on the National Park Service versus tribal waters, which are contiguous.

Waters adjacent to the NPS-managed waters of Lake Roosevelt are under tribal jurisdiction and would not be included in the prescriptions implemented for PWC use on NPS-administered waters under this

proposed rule. This could potentially cause some confusion to PWC users because of the difference in regulations within the same body of water. Adverse impacts related to differences in tribal requirements or policies would be negligible to minor. The tribes enforce Washington State boating laws and regulations so differences in management prescriptions for the NPS or tribal water areas would be minimal since NPS regulations are generally consistent with state laws and regulations. There would be no conflict with other federal, state, or local PWC regulations or policies, and adverse impacts would be negligible. The NPS will work with the tribes to try to develop regulations that are consistent among all jurisdictions on the waters of Lake Roosevelt to reduce the confusion to the public. In addition, the proposed rule would have negligible to minor adverse impacts on park operations. Staffing would continue at current levels, though increased enforcement efforts would likely be required to implement additional flat-wake zoning and prohibited PWC use on the Kettle River. Additional educational efforts would also be required to inform PWC users of new regulations.

The Proposed Rule

Under the proposed rule, PWC use would be allowed throughout the recreation area, with certain restrictions. These restrictions are: Crescent Bay Lake, the Kettle River from Hedlund Bridge north to the headwaters (no PWC use), and Upper Hawk Creek from the waterfall near the campground through the area known as the "narrows" (flat-wake speed restriction). This proposed rule on PWC use on Lake Roosevelt would only apply to waters managed by the National Park Service and would not apply to waters that are managed by the Colville Confederated Tribes and Spokane Tribe of Indians.

As was the case prior to the November 2002 closure, Crescent Bay Lake continues to be closed to all motorized uses and Upper Hawk Creek continues to be flat wake for all motorized watercraft. The launch and retrieval of PWC would continue to be permitted only at designated boat launch ramps within Lake Roosevelt National Recreation Area. However, under the proposed rule, launching from Napoleon Bridge Launch would be prohibited because PWC use would not be allowed in the Kettle River. Previously, the NPS restricted PWCs to flat-wake speed within 100′ of launch ramps, marina facilities, campground areas, swim beaches, water skiers, or other persons in the water under Washington State regulations. The proposed rule increases the flat-wake distance in those same areas to 200′. PWC users would be able to land anywhere along the shoreline, except in designated swimming areas. Visitor education programs, such as boater safety education, that are designed to promote safe and environmentally friendly boating practices would continue. The programs would include personal contacts, newspaper articles, posting of information on boat launch bulletin boards and formal educational programs.

In addition to the above restrictions, operation of PWC would only be allowed to occur at flat-wake speeds in the stretch of the Spokane Arm from 100 feet west of the Two Rivers Marina on the downstream end, to 100 feet east of the Fort Spokane launch ramp on the upstream end, above the vehicle bridge.

In the future, PWC use could be discontinued in specific areas managed by National Park Service that experience cultural or natural resource degradation or public safety issues should monitoring of such areas reveal unacceptable impacts.

Finally, other NPS boating regulations and State and other federal watercraft laws and regulations would continue to be enforced, including regulations that address reckless or negligent operation, excessive speed, hazardous wakes or washes, hours of operation, age of driver and distance between vessels.

Economic Summary

The preferred alternative (Alternative B) and another alternative (Alternative A) were analyzed to determine the economic impacts of allowing the use of personal watercraft (PWC) in Lake Roosevelt National Recreation Area (LARO).[1] Alternative C, which would maintain a ban on PWC in LARO, represents the baseline for this analysis. The economic impacts of Alternatives A and B are measured relative to that baseline. Alternative A would reinstate PWC use in LARO as previously managed prior to the ban subject to specific location, flat wake, launch and retrieval, and operating restrictions. Alternative B would also reinstate PWC use, but includes additional location and flat wake restrictions to mitigate watercraft safety and visitor health and safety concerns, and to enhance the overall visitor experience. Additionally, Alternative B would establish a monitoring program to determine any future impacts of allowing PWC use in LARO.

The primary beneficiaries of Alternatives A and B are the visitors who would use PWCs within the recreation area if permitted, PWC users in substitute areas outside LARO where individuals displaced from LARO ride because of the ban, and the businesses that serve PWC users. All visitors using PWCs in LARO prior to the ban are assumed to regain their full economic value for PWC use in LARO under both Alternatives A and B. PWC users who currently ride in substitute areas outside LARO are assumed to gain some economic value if these areas are less crowded than under baseline conditions due to reinstating PWC use in LARO. Finally, suppliers of PWC rentals, sales, and service, as well as local hotels, restaurants, gas stations, and other businesses that serve PWC users, will likely experience an increase in business under Alternatives A and B.

While beneficiaries may gain more economic value under Alternative A than Alternative B due to fewer restrictions, NPS was unable to quantify any differences, and considers the benefits of those two alternatives to be similar. For both Alternatives A and B, PWC users are expected to gain a total present value of benefits between $1,076,400 and $1,311,300 over the next ten years, depending on the discount rate used.[2] Businesses are expected to gain a total present value of benefits between $9,600 and $78,000, depending on the discount rate used. The total present values of these benefits are presented in Table 1, and their amortized values per year are given in Table 2.

[1] This summary briefly describes the results of the economic analysis presented in National Park Service 2003.

[2] Quantified economic impacts were discounted over the ten-year timeframe using both 3 and 7-percent discount rates. A 3-percent discount rate is indicated by the economics literature (*e.g.*, Freeman, 1993) and by two Federal rule-makings (61 FR 453; 61 FR 20584). A 7-percent discount rate is required by Office of Management and Budget Circular A–94.

TABLE 1.—TOTAL PRESENT VALUE OF BENEFITS (THOUSANDS OF DOLLARS) FOR PERSONAL WATERCRAFT USE IN LAKE ROOSEVELT NATIONAL RECREATION AREA, 2003 TO 2012

	PWC users	Businesses	Total
Altemative A:			
Discounted at 3%[a]	$1,311.3	$12.1 to $78.0	$1,323.5 to $1,389.3.
Discounted at 7%[b]	1,076.4	9.6 to 61.6	1,086.0 to 1,138.0.
Altemative B:			
Discounted at 3%[a]	1,311.3	12.1 to 78.0	1,323.5 to 1,389.3.
Discounted at 7%[b]	1,076.4	9.6 to 61.6	1,086.0 to 1,138.0.

[a] The economics literature supports a 3-percent discount rate in the valuation of public goods (*e.g.*, Freeman, 1993). Federal rule-makings also support a 3-percent discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[b] Office of Management and Budget Circular A–94, revised January 2003.

TABLE 2.—AMORTIZED BENEFITS PER YEAR (THOUSANDS OF DOLLARS) FOR PERSONAL WATERCRAFT USE IN LAKE ROOSEVELT NATIONAL RECREATION AREA, 2003 TO 2012[a]

	PWC users	Businesses	Total
Altemative A:			
Discounted at 3%[b]	$153.7	$1.4 to $9.1	$155.2 to $162.9.
Discounted at 7%[c]	153.3	1.4 to 8.8	154.6 to 162.0.
Altemative B:			
Discounted at 3%[b]	153.7	1.4 to 9.1	155.2 to 162.9.
Discounted at 7%[c]	153.3	1.4 to 8.8	154.6 to 162.0.

[a] This is the total present value of benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.
[b] The economics literature supports a 3-percent discount rate in the valuation of public goods (*e.g.*, Freeman, 1993). Federal rule-makings also support a 3-percent discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[c] Office of Management and Budget Circular A–94, revised January 2003.

The costs associated with Alternatives A and B would accrue primarily to LARO visitors who do not use PWCs and whose recreation area experience is negatively affected by the use of PWCs within the recreation area. At LARO, non-PWC uses include boating, canoeing, fishing, and hiking. Impacts to these users may include the aesthetic costs associated with noise and visibility impacts, human health costs, ecosystem degradation costs, and safety and congestion costs. Average annual visitation to LARO was over 1.4 million people from 1998 to 2002. Most of these visitors are believed to come to the park for some form of water-based recreation. However, non-PWC users accounted for over 99 percent of total visitation.

"Nonusers" of the recreation area may also bear some costs under Alternatives A and B. For example, individuals who do not visit the recreation area may experience a reduction in economic value simply from the knowledge that the natural resources of the recreation area may be degraded by PWC use. Part of this loss may stem from a decreased assurance that the quality of the recreation area's resources is being protected for the enjoyment of future generations.

Most of the costs associated with Alternatives A and B are believed to be relatively small. Evaluating these costs in monetary terms was not feasible with currently available data, but they are qualitatively described in the economic analysis. Therefore, the benefits presented in Tables 1 and 2 above overstate the net benefits (benefits minus costs) of the different alternatives. If all costs could be quantified, the indicated net benefits for each alternative would be lower than the benefits indicated in Tables 1 and 2.

The costs associated with aesthetics, ecosystem protection, human health and safety, congestion, and nonuse values would likely be greater for Alternative A and for Alternative B due to the additional restrictions on PWC use in Alternative B. Since the quantified benefits for Alternatives A and B were the same, inclusion of these unquantified costs would reasonably result in Alternative B having the greatest level of net benefits. Therefore, based on this analysis, the selection of Alternative B as the preferred alternative was considered reasonable.

References

Freeman, A. M. III. The Measurement of Environmental and Resource Values: Theory and Methods. Washington, DC: Resources for the Future, 1993.

National Park Service. "Economic Analysis of Management Alternatives for Personal Watercraft in Lake Roosevelt National Recreation Area." Report prepared for the National Park Service by MACTEC Engineering and Consulting, Inc., BBL Sciences, Inc., and RTI International, October 2003.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This determination is based on the report "Economic Analysis of Management Alternatives for Personal Watercraft in Lake Roosevelt National Recreation Area" (MACTEC Engineering and Consulting, Inc., October 2003).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other

forms of monetary supplements are involved.

(4) This rule does raise novel legal or policy issues. This rule is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled report "Economic Analysis of Management Alternatives for Personal Watercraft in Lake Roosevelt National Recreation Area" (MACTEC Engineering and Consulting, Inc., October 2003).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

As a companion document to this NPRM, NPS has issued the *Personal Watercraft Use Environmental Assessment for Lake Roosevelt National Recreation Area.* The Environmental Assessment (EA) was open for public review and comment from April 28, 2003 to May 28, 2003. Copies of the environmental assessment may be downloaded at *http://www.nps.gov/laro* or obtained by calling 509–633–9441 ext. 110 or writing to the Superintendent, Lake Roosevelt National Recreation Area, 1008 Crest Drive, Coulee Dam, WA 99116. Based on comments received from the public during the EA scoping process and through the comment period, a change was made to Alternative B that would close the Kettle River to PWC use above the Hedlund Bridge. The EA does not discuss this modification but impacts from this additional closure have been analyzed by the NPS and will be discussed in the final decision document for this EA.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2 have evaluated potential effects on federally recognized Indian tribes and have determined that there are potential effects.

Lake Roosevelt conducted preliminary consultation with the Spokane Tribe of Indians and the Confederated Tribes of the Colville Reservation in 2000 when the original rulemaking came into effect. Since that time, the park has continued to keep the Tribes informed in writing about various milestones during the PWC process. The Colville Tribes have also commented on the EA which supports this rulemaking and has supported the preferred alternative which is implemented through this rulemaking. The NPS has also consulted with the Tribes on the provisions of the proposed regulation and its possible effects on tribal waters.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example **§ 7.55 Lake Roosevelt National Recreation Area.**) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Drafting Information: The primary authors of this regulation are: Dan Mason, Chief Ranger, and Lynne Brougher, Chief of Interpretation, Lake Roosevelt NRA; Sarah Bransom, Environmental Quality Division; and Kym Hall, Special Assistant, Washington, DC.

Public Participation

Comments on the proposed rule should be sent or hand delivered to The Superintendent, Lake Roosevelt National Recreation Area, 1008 Crest Drive, Coulee Dam, WA 99116. Comments may also be received by e-mail at *laro@den.nps.gov.* If you comment by e-mail, please include "PWC rule" in the subject line and your

name and return address in the body of your Internet message.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Amend § 7.55 by revising the section title and adding new paragraph (c) to read as follows:

§ 7.55 Lake Roosevelt National Recreation Area.

* * * * *

(c) Personal Watercraft (PWC). (1) PWCs are allowed on the waters within Lake Roosevelt National Recreation Area except in the following areas:

(i) Crescent Bay Lake.

(ii) Kettle River above the Hedlund Bridge.

(2) Launch and retrieval of PWC are permitted only at designated launch ramps. Launching of PWC at Napoleon Bridge launch ramp is prohibited.

(3) PWC may land anywhere along the shoreline except in designated swimming areas.

(4) PWC may not be operated at greater than flat-wake speeds in the following locations:

(i) Upper Hawk Creek from the waterfall near the campground through the area known as the "narrows" to the confluence of the lake, marked by "flat wake" buoy(s).

(ii) Within 200 feet of launch ramps, marina facilities, campground areas, water skiers, beaches occupied by swimmers or other persons in the water.

(iii) The stretch of the Spokane Arm from 100 feet west of the Two Rivers Marina on the downstream end, to 100 feet east of the Fort Spokane launch ramp on the upstream end, above the vehicle bridge.

(5) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: January 20, 2004.

Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 04–2556 Filed 2–5–04; 8:45 am]

BILLING CODE 4310–VL–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 040127028–4028–01; I.D 012104B]

RIN 0648–AR69

Sea Turtle Conservation; Restrictions to Fishing Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to prohibit the use of all pound net leaders from May 6 to July 15 each year in the Virginia waters of the mainstem Chesapeake Bay, south of 37° 19.0′ N. lat. and west of 76° 13.0′ W. long., and all waters south of 37° 13.0′ N. lat. to the Chesapeake Bay Bridge Tunnel at the mouth of the Chesapeake Bay, and the James and York Rivers downstream of the first bridge in each tributary. Additionally, NMFS proposes to prohibit the use of all leaders with stretched mesh greater than or equal to 8 inches (20.3 cm) and leaders with stringers from May 6 to July 15 each year in the Virginia waters of the Chesapeake Bay outside the aforementioned area, extending to the Maryland-Virginia State line and the Rappahannock River downstream of the first bridge, and from the Chesapeake Bay Bridge Tunnel to the COLREGS line at the mouth of the Chesapeake Bay. This action, taken under the Endangered Species Act of 1973 (ESA), is necessary to conserve sea turtles listed as threatened or endangered.

DATES: Comments on this action are requested, and must be received at the appropriate address or fax number (*see* **ADDRESSES**) by no later than 5 p.m., eastern daylight time, on March 8, 2004.

ADDRESSES: Written comments on this action or requests for copies of the literature cited, the draft Environmental Assessment (EA), or Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments and requests for supporting documents may also be sent via fax to 978–281–9394. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Carrie Upite (ph. 978–281–9328 x6525, fax 978–281–9394), or Barbara Schroeder (ph. 301–713–1401, fax 301–713–0376).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. Under the ESA and its implementing regulations, taking listed sea turtles—even incidentally—is prohibited, with exceptions identified in 50 CFR 223.206 for threatened sea turtles. The incidental take of endangered species may only legally be authorized by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA.

On June 17, 2002, based upon the best available information on sea turtle and pound net interactions at the time, NMFS issued an interim final rule that prohibited the use of all pound net leaders measuring 12 inches (30.5 cm) and greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay and portions of the Virginia tributaries from May 8 to June 30 each year (67 FR 41196). Included in this interim final rule was a year-round requirement for fishermen to report all interactions with sea turtles in their

pound net gear to NMFS within 24 hours of returning from a trip, and a year-round requirement for pound net fishing operations to be observed by a NMFS-approved observer if requested by the Northeast Regional Administrator. The interim final rule also established a framework mechanism by which NMFS may make changes to the restrictions and/or their effective dates on an expedited basis in order to respond to new information and protect sea turtles. Under this framework mechanism, if NMFS believes that sea turtles may still be vulnerable to entanglement in pound net leaders after June 30 of any given year, the Assistant Administrator, NOAA, (AA) may extend the effective dates of the restrictions established by the regulations. Additionally, if monitoring of pound net leaders during the time frame of the gear restriction, May 8 through June 30 of each year, reveals that one sea turtle is entangled alive in a pound net leader less than 12 inches (30.5 cm) stretched mesh or that one sea turtle is entangled dead and NMFS determines that the entanglement contributed to its death, then NMFS may determine that additional restrictions are necessary to conserve sea turtles and prevent entanglements. As a result of sea turtle entanglements observed during the spring of 2003, NMFS issued a temporary final rule restricting all pound net leaders throughout the Virginia Chesapeake Bay and portions of the tributaries from July 16 to July 30, 2003, pursuant to the framework mechanism of the 2002 interim final rule (68 FR 41942, July 16, 2003).

Sea Turtle and Pound Net Interactions

Sea turtles have been documented entangled in pound net leaders. Data collected in 1983 and 1984 found turtle entanglement in pound nets with small mesh leaders (defined as 8 to 12 inch (20.3 to 30.5 cm) stretched mesh) to be insignificant, but in 173 of the pound nets examined with large mesh leaders (defined as >12 to 16 inch (>30.5 to 40.6 cm) stretched mesh), 30 turtles were found entangled (0.2 turtles per net; Bellmund *et al.*, 1987). This study also found that in 38 nets examined with stringer mesh, 27 turtles were documented entangled (0.7 turtles per net). The sampling area was concentrated in the western Chesapeake Bay, with some sampling occurring in other portions of the Virginia Chesapeake Bay. Surveys in 1979 and 1980 also found that most of the pound net leaders that captured sea turtles consisted of large mesh (12 to 16 inches (30.5 to 40.6 cm)) and were found in the lower Chesapeake Bay (Lutcavage 1981).

In recent years, pound nets have been observed, and sea turtles have been documented in the leaders. During the spring of 2001, with limited monitoring effort, a NMFS observer reported finding five moderately to severely decomposed loggerhead turtles against four different large mesh pound net leaders (approximately 13 inch (33 cm) mesh) along the Eastern shore of Virginia in early June. Given the decomposition state and lack of multiple wrapped, entangling line around the turtles, these turtles were determined to be not entangled in the leaders, and the cause of death was uncertain. Virginia Marine Resources Commission (VMRC) law enforcement agents also documented one live and three dead sea turtles in pound net leaders along the Eastern shore during the spring of 2001. The live turtle was entangled in a leader with greater than 12 inches (30.5 cm) stretched mesh, but the leader mesh size of the other entanglements was not recorded. Additionally, during June of 2000, VMRC law enforcement agents reported disentangling two live sea turtles from two Eastern shore leaders with greater than 12 inches (30.5 cm) stretched mesh.

To better understand the interactions between sea turtles and pound net gear, NMFS conducted pound net monitoring during the spring of 2002 and 2003. In 2002, NMFS monitored the active pound nets (n=70) throughout the Virginia Chesapeake Bay from April 25 to June 1. As the 2002 interim final rule was not yet in place, approximately 8 of the leaders surveyed had stretched mesh greater than or equal to 12 inches (30.5 cm) or leaders with stringers. Eleven sea turtles were found in pound net gear, but not all of the mortalities could be directly attributed to interactions with pound nets. Four sea turtles were found entangled in leaders, including two dead Kemp's ridley and two dead loggerhead sea turtles. One of the Kemp's ridleys was found in a leader with 8 inch (20.3 cm) stretched mesh, one loggerhead was found in a leader with stringers, and the other two animals were found in leaders with 14 inch (35.6 cm) stretched mesh. Based upon necropsy reports, constriction wounds, and the magnitude of entanglement, entrapment in pound net leaders was determined to be the cause of death of these animals. Two additional loggerhead sea turtles were found alive in pound net leaders, impinged on the leaders with their head and front flippers through the mesh. These two animals were observed as not being able to swim off of the leaders under their own ability. One moderately decomposed loggerhead was found in the top line of a leader, but given the lack of tight multiple wraps of line around the turtle, it was inconclusive as to whether it was entangled before death or whether it washed into the net after having died elsewhere. Four moderately to severely decomposed loggerheads were found in leaders, but due to their decomposition state and lack of entanglement in the mesh, it appeared that the animals floated into the nets. These four sea turtles were not considered as entangled in or impinged on the pound net leaders.

From April 21 to June 11, 2003, NMFS monitored the active pound net leaders (n=56) with stretched mesh measuring less than 12 inches (30.5 cm). This monitoring effort resulted in the documentation of 17 sea turtles found in pound net leaders. Of the 17 sea turtles, five sea turtles were entangled in pound net leaders, of which two were loggerheads (one dead) and three were Kemp's ridleys (two dead). There is sufficient information to conclude that the death of these turtles was attributable to entanglement in the pound net leaders given the degree of entanglement and multiple wrapping of line around their flippers, their decomposition state (fresh dead to moderately decomposed), and their buoyancy (negatively buoyant, which typically suggests recent mortality). Additionally, 12 sea turtles were found held against, or impinged on, pound net leaders by the current. Of these 12 impingements, 10 were loggerhead sea turtles (one dead), one was an alive Kemp's ridley sea turtle, and one alive sea turtle's species identification was unable to be determined. Two of these live animals had their head and/or flipper through the leader mesh, but when observed, the line was not wrapped multiple times around the turtle. As the impinged turtles were not observed being able to move vertically on the net, if a turtle could not breathe from the position where it was impinged, it would have a low likelihood of survival if it remained on the net for longer than approximately an hour. Of the 11 live impingements, approximately 7 were found underwater, unable to reach the surface to breathe, with an average of 3 hours until slack tide. Eleven of the 17 incidents involved leaders measuring 11.5 inches (29.2 cm) stretched mesh, while six of the sea turtles were entangled in or impinged on 8 inch (20.3 cm) stretched mesh leaders. In 2002 and 2003, most of the observed sea turtles were found in nets along the

Eastern shore of Virginia, but three turtles were found in leaders in the Western Chesapeake Bay.

Sea turtle entanglements in pound net leaders are difficult to detect. The sea turtles previously observed in leaders were found at depths ranging from the surface to approximately 6 feet (1.8 m) under the surface. The ability to observe a turtle below the surface depends on a number of variables, including water clarity, sea state, and weather conditions. Generally, turtles entangled more than a few feet below the surface cannot be observed due to the poor water clarity in the Chesapeake Bay. In 2001 and 2002, side scan sonar was used to attempt to detect sub-surface sea turtle entanglements; no verified sea turtle acoustical signatures were observed during these surveys (Mansfield *et al.*, 2002a; Mansfield *et al.*, 2002b). However, the effectiveness of side scan sonar surveys are limited by weather and sea conditions (*e.g.*, suspended sediments are reflected by the sonar and monitoring is only successful in calm seas), and the acoustical signature may vary with the sea turtle's orientation and location in the net, size, and decomposition state (Mansfield *et al.* 2002a; Mansfield *et al.* 2002b). Sonar surveys have potential in detecting sub-surface turtle entanglements and impingements, but given the caveats, the results obtained to date must be treated cautiously. While most of the previously observed sea turtles were found near the surface, it remains unclear whether the visual surface monitoring biased the location of the take results. Sea turtles may be found throughout the water column given their preferences for water temperature (*e.g.*, generally greater than 11° C) and foraging (*e.g.*, loggerheads and Kemp's ridleys in Virginia are primarily benthic foragers). Mansfield and Musick (2003) found that 7 sea turtles (6 loggerheads and 1 Kemp's ridley) tracked in the Virginia Chesapeake Bay from May 22 to July 17, 2002, dove to maximum depths ranging from approximately 13.1 ft (4 m) to 41 ft (12.5 m). While the percentage of time sea turtles spend at the surface compared to at depth is still being clarified, sea turtles may be found throughout the water column. As pound net leader characteristics are generally consistent from top to bottom, it is probable that more sea turtles are in pound net leaders than are observed or reported and the previous monitoring efforts represent a minimum record of sea turtle entanglement and impingement.

The 2002 and 2003 monitoring results documenting the entanglement of sea turtles in leaders with less than 12 inches (30.5 cm) stretched mesh represents new information not previously considered in prior assessments of the Virginia pound net fishery, and entanglements in and impingements on these leaders appear to be more of a significant problem than originally believed. As such, additional restrictions are warranted to prevent sea turtle entanglement in and impingement on pound net gear.

Spring Sea Turtle Stranding Event

High strandings of threatened and endangered sea turtles are documented on Virginia beaches each spring. The magnitude of this stranding event has increased in recent years. During May and June, total reported Virginia sea turtle strandings were 84 in 1995, 85 in 1996, 164 in 1997, 183 in 1998, 129 in 1999, 161 in 2000, 256 in 2001, and 180 in 2002. In 2003, preliminary data indicate that 312 dead sea turtles stranded on Virginia beaches during May and June, with most of these occurring during the latter half of June. Strandings have also been elevated in July, generally the first half of the month. For instance, in 2003, the stranding peak occurred during the last two weeks of June, but strandings remained consistent through the second week of July, with a preliminary total of 48 turtles stranding from July 1 to 15. Furthermore, from 1996 to 2003, strandings were generally elevated during the first half of July, with an average of 23 strandings documented from July 1 to 15. In the latter half of July, strandings typically decrease; from 1996 to 2003, an average of 11 strandings were documented from July 16 to 31.

Most of the stranded sea turtles in Virginia have been threatened loggerheads, but endangered Kemp's ridley, green and leatherback sea turtles have also stranded. Out of 1,559 total strandings in May and June from 1995 to 2003, 1,372 loggerheads, 108 Kemp's ridleys, 28 leatherbacks, 1 green, and 50 unidentified turtles were found in Virginia. The majority of stranded turtles have been of the juvenile/immature life stage. Most of the stranded turtles reported in Virginia during the spring have been moderately to severely decomposed. For instance, in the spring of 2003, approximately 85 percent of the strandings were either moderately to severely decomposed, compared to approximately 6 percent that were fresh dead. The ability to conduct necropsies is compromised by the condition of the stranded animals, and severely decomposed turtles are not usually necropsied. The majority of the stranded turtles that were examined by necropsy in the spring of previous years had relatively good fat stores and full stomachs/digestive tracts, suggesting that the animals were in good health prior to their death.

From mid-May to mid-July 2003, approximately 47 percent of the stranded animals were found along the Chesapeake Bay side of the Eastern shore of Virginia, 23 percent were found in the Virginia Beach ocean area, 15 percent in the Western Bay, 8 percent along the oceanside of the Eastern shore, and 7 percent in the southern Chesapeake Bay areas. While the distribution of sea turtle strandings in Virginia varies slightly from year to year, there has been a high concentration of stranded sea turtles found along the Eastern shore in recent years. It is possible that some Virginia Chesapeake Bay turtle strandings are swept into the Chesapeake Bay from elsewhere, as the water patterns and currents entering the Chesapeake Bay could concentrate sea turtle strandings around the mouth with certain wind conditions (Valle-Levinson *et al.*, 2001). Similarly, southwesterly winds result in surface water outflows throughout the entrance to the Chesapeake Bay, which could result in sea turtles being carried out of the Chesapeake Bay. However, it is likely that in the Virginia Chesapeake Bay, most mortalities have occurred relatively close to the stranding location (Lutcavage 1981). A NMFS observer tagged 6 floating dead sea turtles during the spring of 2003, and 2 sea turtles were recovered the next day - one stranded approximately 500 yards (457 m) away on the Eastern shore and another was found 6–7 nautical miles (11.1–13 km) south of the Western Bay tagging location.

NMFS has evaluated the potential sea turtle mortality sources in Virginia waters, and will continue to do so in the future. While some turtles with traumatic carapace injuries, propeller-like wounds or imbedded fish hooks have been documented each year, no cause of mortality is obvious for the majority of turtles that strand. Determining the cause of death in stranded sea turtles is difficult, given the level of decomposition of most stranded turtles and the lack of evidence, due in part to sea turtles' anatomy (*e.g.*, hard carapace, scaly skin). However, the circumstances surrounding the spring strandings are consistent with fishery interactions as a likely cause of some perhaps a significant number of sea turtles deaths and, therefore, strandings. These circumstances include relatively healthy turtles prior to the time of their death,

a large number of strandings in a short time period, no external wounds on the majority of the turtles, no common characteristic among stranded turtles that would suggest disease as the main cause of death, and turtles with finfish in their stomachs (which has been believed to indicate interactions with fishing gear (Bellmund *et al.*, 1987) or bycatch discarded from vessels (Shoop and Ruckdeschel, 1982)).

While a concentration of strandings has been consistently found in the vicinity of pound nets, and a number of dead floating sea turtles were documented around pound nets in recent years, a cause and effect relationship between pound net interactions and high spring strandings cannot be statistically derived based on the available data. However, NMFS has documented that fishing with pound net leaders results in lethal and non-lethal take of sea turtles. NMFS concludes that this constitutes sufficient evidence to form the basis for these proposed restrictions on pound net leaders.

Impact of High Mortality on Sea Turtle Populations

Sea turtles have been documented entangled in and impinged on pound net leaders, and the purpose of this proposed action is to prevent sea turtle entanglements in and impingements on Virginia pound net gear. The documented interactions between sea turtles and pound net leaders, as well as the annual Virginia spring strandings, are of concern for the following reasons: (1) All of the entangled, impinged and stranded animals are listed as either endangered or threatened under the ESA which means these species are in danger of extinction or likely to become endangered; (2) the level of strandings in Virginia has been elevated the last seven years, and there is no reason to believe that high spring strandings will abate in future years without regulatory action; (3) sea turtles have been observed entangled in leader mesh sizes smaller than what is currently restricted; (4) sea turtles have been observed impinged on leaders by the current, a phenomenon not previously believed to occur with such frequency, and impingements are likely to continue to occur on small mesh leaders in areas where impingements have been documented; (5) the greatest percentage of Virginia spring strandings in recent years has been along the southern tip of the Eastern shore, where a large number of pound nets are located; (6) approximately 50 percent of the Chesapeake Bay loggerhead foraging population is composed of the northern subpopulation, a subpopulation that may be declining; and (7) most of the stranded turtles have been juveniles, a life stage found to be critical to the long term survival of the species.

Most loggerheads in U.S. waters come from one of five genetically distinct nesting subpopulations. The largest loggerhead subpopulation occurs from 29° N. lat. on the east coast of Florida to Sarasota on the west coast and shows recent increases in numbers of nesting females based upon an analysis of annual surveys of all nesting beaches. However, a more recent analysis limited to nesting data from the Index Nesting Beach Survey program from 1989 to 2002, a period encompassing index surveys that are more consistent and more accurate than surveys in previous years, has shown no detectable trend (B. Witherington, Florida Fish and Wildlife Conservation Commission, pers. comm., 2002). Thus, it is unclear whether the increase in documented sea turtle mortalities in Virginia could partly be a function of the status of the South Florida subpopulation of loggerheads, which make up approximately 50 percent of the loggerheads found in the Chesapeake Bay. The northern subpopulation that nests from northeast Florida through North Carolina is much smaller, and nesting numbers are stable or declining. Genetic studies indicate that approximately one-half of the juvenile loggerheads inhabiting Chesapeake Bay during the spring and summer are from the smaller, northern subpopulation (TEWG, 2000; Bass *et al.*, 1998; Norrgard, 1995). Approximately 3,800 nesting females are estimated for the northern subpopulation of loggerhead sea turtles (TEWG, 2000). The impact of the high level of mortality experienced by loggerhead turtles each spring off Virginia on the population's ability to recover is of significant concern. The northern subpopulation produces 65 percent males, while the South Florida subpopulation is estimated to produce 20 percent males (NMFS SEFSC, 2001). As males do not appear to show the same degree of site fidelity as females, the high proportion of males produced in the northern subpopulation may be an important source of males for all loggerheads inhabiting the Atlantic. The loss of the male contribution from the northern subpopulation may restrict gene flow and result in a loss of genetic diversity to the loggerhead population as a whole. The loss of females from the northern subpopulation may preclude future reproduction, reducing the likelihood of both future survival and recovery of the northern subpopulation of loggerheads. Given the vulnerability of these subpopulations to chronic impacts from human-related activities, the high level of spring sea turtle mortality in Virginia must be reduced to help ensure that these subpopulations of loggerheads will recover.

Most of the turtles stranding in Virginia waters during the spring are of the juvenile/immature life stages. The specific age at maturity for most sea turtles is unknown; the age of maturity for loggerheads occurs from approximately 21–35 years (TEWG, 2000). Studies have concluded that sea turtles must have high annual survival as juveniles and adults to ensure that sufficient numbers of animals survive to reproductive maturity to maintain stable populations (Crouse *et al.*, 1987; Crowder *et al.*, 1994; Crouse, 1999). Given their long maturation period, relatively small decreases in annual survival rates of both juvenile and adult loggerhead sea turtles may destabilize the population, thereby potentially reducing the likelihood of survival and recovery of the population. As such, the historical high level of mortality in Virginia plus the increase in loggerhead mortality documented during the last several years may negatively affect the recovery of the loggerhead population.

Restrictions on Pound Net Leaders

To conserve sea turtles, the AA proposes to prohibit the use of all pound net leaders from May 6 to July 15 each year in the Virginia waters of the mainstem Chesapeake Bay, south of 37° 19.0′ N. lat. and west of 76° 13.0′ W. long., and all waters south of 37° 13.0′ N. lat. to the Chesapeake Bay Bridge Tunnel (extending from approximately 37° 05′ N. lat., 75° 59′ W. long. to 36° 55′ N. lat., 76° 08′ W. long.) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36° 59.55′ N. lat., 76° 18.64′ W. long.) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55′ N. lat, 76° 30.40′ W. long.). Additionally, the AA proposes to prohibit the use of all leaders with stretched mesh greater than or equal to 8 inches (20.3 cm) and leaders with stringers from May 6 to July 15 each year in the Virginia waters of the Chesapeake Bay outside the aforementioned closed area, extending to the Maryland-Virginia State line (approximately 37° 55′ N. lat., 75° 55′ W. long.) and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44′ N. lat, 76° 25.40′ W. long.), and from the Chesapeake Bay Bridge Tunnel

to the COLREGS line at the mouth of the Chesapeake Bay.

This prohibition of pound net leaders would be effective from 12:01 a.m. local time on May 6 through 11:59 p.m. local time on July 15 each year. For the duration of this proposed gear restriction, fishermen would be required to stop fishing with pound net leaders altogether or pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh and pound net leaders with stringers, depending upon the location of their pound net site as indicated above.

NMFS has sufficient evidence to conclude that there is a localized interaction between sea turtles and pound nets along the Eastern shore of Virginia and in the Western Chesapeake Bay. Sea turtles have been observed in pound net gear along the Eastern shore in recent years. Sea turtles have also been found impinged on and entangled in leaders in the Western Bay, during recent monitoring studies as well as surveys in the 1980s. Entanglements in and impingements on pound net leaders have been documented in leaders with as small as 8 inch (20.3 cm) stretched mesh and in leaders with stringers. Impingements occur when the sea turtles are held against the net by the current, which could happen with any mesh size (*i.e.*, on leaders smaller than 8 inches (20.3 cm) stretched mesh) in areas where impingements were previously documented (*e.g.*, the southern portion of the Eastern shore, where currents appear to be strong). At this time, NMFS cannot determine the current strength that results in impingements, but available data show that impingements have only occurred in certain areas, locations where observer reports and anecdotal information suggest currents are "strong". During 2003 monitoring efforts, there were few active pound nets found in the southern Chesapeake Bay outside the Eastern shore and Mobjack Bay (in the Western Chesapeake Bay) areas. The area where leaders would be prohibited was defined to exclude those pound nets in locations where sea turtles have never been found entangled or impinged, despite monitoring efforts. To prevent entanglements and impingements (leading to the potential subsequent drowning of sea turtles), NMFS proposes to prohibit all pound net leaders in a portion of the southern Chesapeake Bay.

While there have not been any documented entanglements or impingements outside the southern Chesapeake Bay area where all pound net leaders would be prohibited, NMFS is proposing to restrict leader mesh size in the remainder of the Virginia Chesapeake Bay to less than 8 inches (20.3 cm) stretched mesh and prohibit the use of stringers, because the best available information shows that sea turtles have been entangled in pound net leaders with stretched mesh 8 inches (20.3 cm) and greater and in leaders with stringers. Given that gillnets with less than 8 inches (20.3 cm) stretched mesh have been found to entangle sea turtles (Gearhart, 2002), there is the possibility that entanglements in leader mesh smaller than 8 inches (20.3 cm) stretched mesh could occur. However, given the differences between gillnet gear and pound net leaders (*e.g.*, monofilament versus multifilament material; drift, set, and runaround versus fixed stationary gear; gilling vs. herding fishing method), the lack of reported entanglements in pound net leaders with stretched mesh less than 8 inches (20.3 cm), and the lack of reported impingements in the area in which leader mesh size would be restricted, NMFS believes that allowing the use of leaders but restricting the stretched mesh size to less than 8 inches (20.3 cm) is protective of sea turtles. NMFS does not expect sea turtle impingements on pound net leaders to occur outside the leader prohibited area given the lack of observed impingements on pound net leaders, which appears to be related to geographical location and current strength. No sea turtles have been found entangled in or impinged on the pound or heart of pound net gear to date, and as such, the use of those components of the pound net gear is not restricted.

From 1994 to 2003, the average date of the first reported stranding in Virginia was May 13. However, sea turtle mortality would have occurred before the animals stranded on Virginia beaches. In order for the proposed pound net restrictions to reduce sea turtle interactions with pound net leaders, the proposed measures should go into effect at least one week prior to the stranding commencement date, or on May 6 each year. Implementing restrictions on this date would ensure protective measures would be in place at the time when sea turtles are expected to be in the Chesapeake Bay and are becoming vulnerable to mortality sources. Note that this is two days earlier than the date of the restrictions enacted in the 2002 interim final rule, as the date was modified based upon updated stranding information. Additionally, water temperature data support implementation of the proposed measures on May 6. Mansfield *et al.* (2001) and Mansfield and Musick (2003) state that analyses by the Virginia Institute of Marine Science have estimated that sea turtles migrate into the Chesapeake Bay when water temperatures warm to approximately 16 to 18° C. However, sea turtles do frequent waters as cool as 11° C (Epperly *et al.*, 1995). From 1999 to 2003, the average water temperature on May 6 at the NOAA National Ocean Service Kiptopeke, Virginia station was 15.7° C, with average water temperatures increasing to 16.3° C on May 7 and 17.1° C on May 8. An additional analysis conducted by the NMFS Southeast Fisheries Science Center found that in week 18 (April 30 to May 6) and week 19 (May 7 to May 13), approximately 85 percent and 90 percent, respectively, of the area encompassing the mouth of the Chesapeake Bay (from the COLREGS line to the 20 m (65.6 ft) depth contour) contained sea surface temperatures of 11° C and warmer (NMFS, unpub. data, 2003). This indicates that water temperatures around the mouth of the Chesapeake Bay are within sea turtles' preferred temperature range in early May and, therefore, supports the effective date of the proposed regulations.

A previous study in 1983 and 1984 found that sea turtle entanglements in pound net gear increased slowly until early June, then increased sharply and reached a plateau by late June, with few entanglements occurring after June (Bellmund *et al.*, 1987). Since the early 1980s, there has not been a directed pound net monitoring effort from mid-June to July, but monitoring for sea turtle strandings has continued during this time frame. As mentioned, typically the peak of Virginia strandings has been from mid-May to mid-June. However, strandings data show that the peak can occur earlier and later. For instance, in 2003, the stranding peak occurred during the last two weeks of June and strandings remained consistent through the second week of July (*e.g.*, 48 sea turtles stranded from July 1–15, 2003). The 2003 stranding peak was 10–15 days later than in 2001 and 2002 (Swingle and Barco, 2003). Given that sea turtle presence in the Chesapeake Bay is dependent upon water temperature, which makes the stranding peak somewhat variable, it is important to ensure sea turtles are protected during the period of apparent vulnerability (as indicated by elevated strandings). While there is some concern that entanglements could continue until the end of July or throughout the sea turtle residency

period in the Chesapeake Bay, based upon the available data on sea turtle entanglements, impingements, and stranding patterns, the greatest potential for sea turtles to interact with pound net leaders would occur during May and June, and extend into the first half of July.

The time frame of the 2002 interim final rule extended until June 30. This end date was based on the previous Bellmund *et al.* (1987) study and the historical stranding patterns, showing that documented sea turtle entanglements and strandings, respectively, taper off at the end of June. The 2002 interim final rule also contained a framework mechanism that enabled NMFS to extend the regulations for up to 30 days, but that measure was not included in this proposed action due to difficulties experienced with enacting regulations on a real time basis. Given the variability in the stranding peak, the elimination of the framework mechanism, and the need to be protective of these listed species, the proposed measures would extend to July 15. Implementation of the proposed measures during this time period is expected to prevent sea turtle entanglement in and impingement on pound net leaders in the spring. Note that NMFS is seeking public comments not only on the measures included in this proposed rule (*e.g.*, the closure to the use of all pound net leaders, its geographical extent, the restrictions on leader mesh size and stringers, and their geographical extent), but also on the suitability of the time frame of the proposed measures. NMFS will consider comments on those topics as well as new developments in the scientific information base during the preparation of the final rule for this action.

NMFS plans to continue analyzing the potential natural and anthropogenic mortality sources in Virginia inshore, nearshore, and offshore waters. As part of this larger initiative, NMFS intends to continue to closely monitor sea turtle stranding levels and other fisheries active in the Chesapeake Bay and nearshore and offshore Virginia waters. Further, NMFS is beginning to implement a coordinated research program with pound net industry participants and other interested parties to develop and test pound net leader modifications with the goal of eliminating or reducing sea turtle interactions while retaining an acceptable level of fish catch. Additionally, in the near future, NMFS plans to holistically evaluate the impacts of pound nets (as well as other fishing gear types) on sea turtles throughout the Atlantic and Gulf of Mexico, as part of the Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries (NMFS 2001).

The year-round reporting and monitoring requirements for this fishery established by the 2002 interim final rule remain in effect. For instance, all Virginia pound net fishermen are still required to report all sea turtle interactions (*e.g.*, dead or alive; entangled, impinged, or floated into their net) in any part of their pound net gear (*e.g.*, pound, heart, or leader) to NMFS within 24 hours of returning from the trip in which the take was documented. To date, NMFS has not received any reports from fishermen of sea turtles in their pound net leaders, but NMFS observers have documented these interactions. In 2003, several live sea turtle captures in pounds were reported to NMFS. Note that this action would change the telephone number to which to report sea turtle interactions from the telephone number previously included in the 2002 interim final rule.

NMFS is also proposing to modify the titles of adjacent sections of regulatory text for sea turtles and fishery interactions, in order to make the appropriate sections of regulatory text more easily identifiable to readers.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS has prepared an initial regulatory flexibility analysis that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the SUMMARY section. A summary of the analysis follows:

The fishery affected by this proposed rule is the Virginia pound net fishery in the Chesapeake Bay. The proposed action prohibits all pound net leaders in a portion of the southern Chesapeake Bay, and prohibits leaders with stretched mesh greater than or equal to 8 inches (20.3 cm) and leaders with stringers in the remainder of the Virginia Chesapeake Bay, from May 6 to July 15 each year. Non-preferred alternative 1 is the same as the proposed action, but the time period of the restrictions is from May 6 to June 30. Non-preferred alternative 2 prohibits pound net leaders with 8 inches (20.3 cm) and greater stretched mesh, as well as leaders with stringers, in the Virginia Chesapeake Bay from May 6 to July 15. Non-preferred alternative 3 is the same as the proposed action, but the pound and heart, in addition to the leader, must also be removed in a portion of the southern Chesapeake Bay. Non-preferred alternative 4 prohibits all pound net leaders from May 6 to July 15 in the Virginia Chesapeake Bay. Finally, in addition to the mesh size restrictions in a portion of the Virginia Chesapeake Bay, non-preferred alternative 5 modifies the pound net leader configuration in a portion of the southern Chesapeake Bay (i.e., the area where all leaders are proposed to be prohibited in the proposed action) so that the mesh height is restricted to one-third the depth of the water, the mesh must be less than 8 inches (20.3 cm) and held with ropes 3/8 inches (0.95 cm) or greater in diameter strung vertically a minimum of every 2 feet (61 cm) and attached to a top line.

According to the 2002 VMRC data, there are 31 harvesters actively fishing pound nets from May 6 to July 15, with 10 harvesters located in the lower portion of the Virginia Chesapeake Bay and 21 harvesters located in the upper portion of the Virginia Chesapeake Bay. These 31 harvesters fish approximately 40 pound nets in the upper portion of the Virginia Chesapeake Bay (=21 harvesters x 1.9 pound nets/harvester) and 30 pound nets in the lower portion of the Virginia Chesapeake Bay (=10 harvesters x 3.0 pound nets/harvester). Based on 2000 to 2002 data, annual landings per harvester were 280,996 pounds (127,457 kg) in the upper portion of the Virginia Chesapeake Bay and 257,491 pounds (116,795 kg) in the lower portion of the Virginia Chesapeake Bay. Annual revenues per harvester were $64,483 and $105,298 in the upper and lower region, respectively. From May 6 to July 15, landings per harvester were 96,946 pounds (43,973 kg) in the upper region and 95,380 pounds (43,263 kg) in the lower region. Estimated revenues per harvester were $18,102 and $40,474 in the upper and lower region, respectively.

Of the 31 harvesters, 45 percent of the harvesters (=[4 located in the upper region +10 located in the lower region]/ 31 total harvesters) fishing from May 6 to July 15 would be affected by this proposed action. Approximately 34 pound nets in total would be affected by this proposed action, with 4 in the upper portion of the Virginia Chesapeake Bay and 30 in the lower portion of the Virginia Chesapeake Bay.

In the upper portion of the Virginia Chesapeake Bay, two potential responses to the leader mesh size restrictions would be either choosing to not fish or switching to a smaller leader

mesh size during the restricted period. If a harvester chooses not to fish, their revenues decrease by 17.1 percent, since they incur revenue losses and the cost of removing their gear. If a harvester switches to a smaller mesh leader, his or her revenues would be reduced by 8.4 percent. For purposes of this analysis, we assumed the harvester will modify their gear since they want to minimize their economic loss. Therefore, in the upper bay region, annual revenues may be reduced by 8.4 percent per harvester under the proposed action. In the upper bay region, five of the six alternatives, not counting the "no action" alternative, are the same. The proposed action and non-preferred alternatives 1, 2, 3, and 5 require the leader mesh to be less than 8 inches (20.3 cm). As such, the impacts of those non-preferred alternatives would be the same as those for the proposed action in the upper bay area; annual revenues would be reduced by a low of 8.4 percent per harvester and 4 harvesters would be affected. Under non-preferred alternative 4, all leaders must be removed from the Virginia Chesapeake Bay. This alternative impacts all 21 harvesters in the upper region, and annual revenues per harvester would be reduced by 33.5 percent.

In the lower portion of the Virginia Chesapeake Bay where all leaders are prohibited under the proposed action, management actions vary between alternatives. Under all of the alternatives, all 10 harvesters would be impacted. With the proposed action, annual revenues per harvester would be reduced by a high of 43.2 percent. The proposed action and non-preferred alternative 4 are the same, and annual revenues per harvester would be reduced by 43.2 percent. The economic impact under non-preferred alternative 1 would be less compared to the proposed action (34.5 percent reduction in annual revenues versus 43.2 percent), because the restricted time period is shorter. The impact under the non-preferred alternative 3 would be greater than the proposed action (50.3 percent reduction in annual revenues versus 43.2 percent), because additional labor costs are incurred to remove the heart and pound in addition to the leader. Reductions in annual revenues per harvester would be less under non-preferred alternatives 2 and 5 in comparison to the proposed action, since these non-preferred alternatives allow a harvester to modify their gear and continue to fish. In the lower bay area, the non-preferred alternative 2 would reduce annual revenues per harvester by 8.6 percent to 12.1 percent, depending on how many nets they set. Under non-preferred alternative 5, annual revenues per harvester would be reduced by 12.1 percent. Taking no action would not have economic consequences, at least in the short term.

Annual industry revenues are $2.6 million for the pound net fishery. Under the proposed action, industry revenues would be reduced by 18.3 percent (=$0.476M/$2.6M). Under non-preferred alternatives 1, 2, 3, and 5, industry revenues would be reduced by 14.8 percent, 4.9 percent, 21.2 percent, and 5.8 percent, respectively. With the preceding five alternatives, 14 of 31 harvesters would be affected by the management actions. Under non-preferred alternative 4, all harvesters would be affected and forgone industry revenues would be reduced by 34.9 percent. Again, these numbers assume fishermen will switch to a smaller mesh leader and continue to fish in those areas with leader mesh size restrictions, instead of removing their leaders entirely.

This action does not proposed new reporting or record keeping requirements.

This proposed rule does not duplicate, overlap or conflict with other Federal rules.

Authority: 16 U.S.C. 1531, *et seq.*

February 2, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

List of Subjects in 50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species. Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. In § 223.205, paragraph (b)(15) is revised to read as follows:

§ 223.205 Sea turtles.

* * * * *

(b) * * *

(15) Fail to comply with the restrictions set forth in § 223.206(d)(9) regarding pound net leaders; or

* * * * *

2. In § 223.206, paragraph (d) (2)(iv) is removed; (d) introductory text and (d)(2) paragraph heading are revised; and paragraph (d)(9) is added to read as follows:

§ 223.206 Exemptions to prohibitions relating to sea turtles.

* * * * *

(d) Exception for incidental taking. The prohibitions against taking in § 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed towards such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(9) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

* * * * *

(2) Gear requirements for trawlers-* * *

* * * * *

(d) * * *

(9) Restrictions applicable to pound nets in Virginia-(i) Area closed to use of pound net leaders. During the time period of May 6 through July 15 each year, any pound net leader in the Virginia waters of the mainstem Chesapeake Bay, south of 37° 19.0′ N. lat. and west of 76° 13.0′ W. long., and all waters south of 37° 13.0′ N. lat. to the Chesapeake Bay Bridge Tunnel (extending from approximately 37° 05′ N. lat., 75° 59′ W. long. to 36° 55′ N. lat., 76° 08′ W. long.) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36° 59.55′ N. lat., 76° 18.64′ W. long.) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55′ N. lat, 76° 30.40′ W. long.) must be removed from the water so that no part of the leader contacts the water. All pound net leaders must be removed from the waters described in this subparagraph prior to May 6 and may not be reset until July 16.

(ii) Area with pound net leader mesh size restrictions. During the time period of May 6 to July 15 each year, any pound net leader in the Virginia waters of the Chesapeake Bay outside the area described in (i), extending to the Maryland-Virginia State line (approximately 37° 55′ N. lat., 75° 55′ W. long.) and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44′ N. lat, 76° 25.40′ W. long.), and from the Chesapeake Bay Bridge Tunnel (extending from approximately 37° 05′ N. lat., 75° 59′ W. long. to 36° 55′ N. lat., 76° 08′ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay, must have only mesh size less than 8

inches (20.3 cm) stretched mesh and may not employ stringers. Any pound net leader with stretched mesh measuring 8 inches (20.3 cm) or greater or any pound net leader with stringers must be removed from the waters described in this subparagraph prior to May 6 and may not be reset until July 16.

(iii) *Reporting requirement.* At any time during the year, if a turtle is taken live and uninjured in a pound net operation, in the pound or in the leader, the operator of vessel must report the incident to the NMFS Northeast Regional Office, (978) 281–9328 or fax (978) 281–9394, within 24 hours of returning from the trip in which the incidental take was discovered.

(iv) *Monitoring.* Owners or operators of pound net fishing operations must allow access to the pound net gear so it may be observed by a NMFS-approved observer if requested by the Northeast Regional Administrator. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws. Information collected by observers may be used for law enforcement purposes.

[FR Doc. 04–2633 Filed 2–5–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 25
Friday, February 6, 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

Diamond Lake Restoration Project, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On April 25, 2003, the USDA Forest Service, published a notice of intent in the **Federal Register** (68 FR 20367) and a revised notice of intent (68 FR 65240) to prepare an environmental impact statement (EIS) for the Diamond Lake Restoration Project. The original and revised notice of intent (NOI) did not identify the need for a non-significant Forest Plan Amendment (Amendment #5) for the proposed action. The Forest Service is revising the NOI to add a non-significant Forest Plan Amendment to the Proposed Action (Alternative 2) to allow the use of rotenone (a fish toxicant) within Diamond Lake and Short and Silent Creeks, which would not normally occur under Standard and Guideline Water Quality/Riparian Areas #8 (LRMP IV–60) and Prescription C2–IV Fish Habitat Class I and II Streams, Lakes, and Ponds (LRMP IV 176–178). The non-significant Forest Plan Amendment (Amendment #5) would apply to this project only; upon completion of the Diamond Lake Restoration Project, Standard and Guideline Water Quality/ Riparian Areas #8 and Prescription C2–IV would again apply to Diamond Lake and Short and Silent Creeks.

FOR FURTHER INFORMATION CONTACT: Sherri L. Chambers, Team Leader, North Umpqua Range District, 18782 North Umpqua Highway, Glide, Oregon 97443, or (541) 496–3532.

Dated: February 2, 2004.

James A. Caplan,

Forest Supervisor.

[FR Doc. 04–2563 Filed 2–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Timeframe for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2004

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This Notice announces the timeframe to submit applications for section 514 Farm Labor Housing loan funds and section 516 Farm Labor Housing grant funds for new construction and acquisition and rehabilitation of off-farm units for farmworker households. Applications may also include requests for section 521 rental assistance (RA) and operating assistance for migrant units. This document describes the method used to distribute funds, the application process, and submission requirements. RHS is publishing this Notice prior to passage of a final appropriations act to give applicants the maximum amount of time possible to complete their applications, and to provide the Agency sufficient time to process the selected applications within the current fiscal year. Applications for Fiscal Year (FY) 2004 will only be accepted through the date and time listed in this Notice. A Notice of Funding Availability announcing the level of funding for the program will be published upon passage of a final appropriations act in accordance with 42 U.S.C. 1490p and 7 CFR 1944.170. Because the Agency's appropriations act has not been passed, the Agency cannot make funding commitments. Expenses incurred in developing applications will be at the applicant's risk.

DATES: The closing deadline for receipt of all applications in response to this Notice is 5 p.m., local time for each Rural Development State Office on May 6, 2004. The application deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State Office serving the place in which they desire to submit an application for off-farm labor housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office
Suite 601, Sterling Center, 4121 Carmichael Road , Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris.

Alaska State Office
800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD 907–761–8905, Deborah Davis.

Arizona State Office
Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8706, TDD (602) 280–8770, Johnna Vargas.

Arkansas State Office
700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Clinton King.

California State Office
430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5819, TDD (530) 792–5848, Jeff Deis.

Colorado State Office
655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2923, TDD (800) 659–2656, Mary Summerfield.

Connecticut
Served by Massachusetts State Office.

Delaware & Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker.

Florida & Virgin Islands State Office
4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz.

Georgia State Office
Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706)

546–2164, TDD (706) 546–2034, Wayne Rogers.
Guam
Served by Hawaii State Office.
Hawaii, Guam, & Western Pacific Territories State Office
Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309, TDD (808) 933–8321, Thao Khamoui.
Idaho State Office
Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5628, TDD (208) 378–5644, LaDonn McElligott.
Illinois State Office
2118 W. Park Ct. Suite A, Champaign, IL 6821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.
Indiana State Office
5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young.
Iowa State Office
873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4666, TDD (515) 284–4858, Julie Sleeper.
Kansas State Office
1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, TDD (785) 271–2767, Virginia M. Hammersmith.
Kentucky State Office
771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7300, TDD (606) 224–7422, Paul Higgins.
Louisiana State Office
3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.
Maine State Office
444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale Holmes.
Maryland
Served by Delaware State Office.
Massachusetts, Connecticut, & Rhode Island State Office
451 West Street, Amherst, MA 01002, (413) 253–4315, TDD (413) 253–4590, Paul Geoffroy.
Michigan State Office
3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip Wolak.
Minnesota State Office
410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7804, TDD (651) 602–7830, Joyce Vondal.
Mississippi State Office
Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray.
Missouri State Office
1201 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9305, TDD (573) 876–9480, Colleen James.
Montana State Office
Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2518, TDD (406) 585–2562, Craig Hildreth.
Nebraska State Office
Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Phil Willnerd.
Nevada State Office
1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 13), TDD (775) 885–0633, William L. Brewer.
New Hampshire State Office
Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler.
New Jersey State Office
5th Floor North Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7784, George Hyatt, Jr.
New Mexico State Office
6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez.
New York State Office
The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless.
North Carolina State Office
4405 Bland Road, Suite 2120, Raleigh, NC 27609, (919) 873–2066, TDD (919) 873–2003, Terry Strole.
North Dakota State Office
Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake.
Ohio State Office
Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2418, TDD (614) 255–2554, Melodie Taylor.
Oklahoma State Office
100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Ivan Graves.
Oregon State Office
101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503) 414–3387, Margo Donelin.
Pennsylvania State Office
One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2282, TDD (717) 237–2261, Martha E. Hanson.
Puerto Rico State Office
IBM Building, Suite 601, Munoz Rivera Ave. #654, San Juan, PR 00918, (787) 766–5095 (ext. 254), TDD 1–800–274–1572, Lourdes Colon.
Rhode Island
Served by Massachusetts State Office.
South Carolina State Office
Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.
South Dakota State Office
Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber.
Tennessee State Office
Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, G. Benson Lasater.
Texas State Office
Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9755, TDD (254) 742–9712, Eugene G. Pavlat.
Utah State Office
Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4323, TDD (801) 524–3309, Dave Brown.
Vermont State Office
City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier.
Virgin Islands
Served by Florida State Office.
Virginia State Office
Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1547, TDD (804) 287–1753, Eileen Nowlin.
Washington State Office
1835 Black Lake Blvd., Olympia, WA 98512, (360) 704–7731, TDD (360) 704–7760, Robert Lund.
Western Pacific Territories
Served by Hawaii State Office.
West Virginia State Office
Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4889, TDD (304) 284–4836, Craig St. Clair.
Wisconsin State Office
4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7608 (ext. 7145), TDD (715) 345–7614, Sherry Engel.
Wyoming State Office
100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Douglas MacDowell, Senior Loan Specialist, of the Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC, 20250, telephone (202) 720–1627 (voice) (this is not a toll free number) or (800) 877–8339 (TDD–Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Farm Labor Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Definitions

Farm Labor. Farm labor includes services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agriculture or

aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to process any agricultural or aquacultural commodity.

Migrant Agricultural Laborers. Agricultural laborers and family dependents who establish a temporary residence while performing agriculture work at one or more locations away from the place they call home or home base. (This does not include day-haul agricultural workers whose travels are limited to work areas within one day of their work locations.)

Off-Farm Labor Housing. Housing for farm laborers regardless of the farm where they work.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

The Farm Labor Housing program is authorized by the Housing Act of 1949: Section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Tenant subsidies (rental assistance (RA)) are available through section 521 (42 U.S.C. 1490a). Sections 514 and 516 provide RHS the authority to make loans and grants for financing off-farm housing to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes, agencies or political subdivisions of State or local government, public agencies (such as local housing authorities) and with section 514 loans to nonprofit limited partnerships in which the general partner is a nonprofit entity.

B. Distribution Methodology

Because RHS has the ability to adjust loan and grant levels, final loan and grant levels will fluctuate. The actual funds available for fiscal year (FY) 2004 for off-farm housing will be published at a later date in a subsequent Notice.

C. Section 514 and Section 516 Funds

Section 514 loan funds and section 516 grant funds will be distributed to States based on a national competition, as follows:

1. States will accept, review, and score requests in accordance with 7 CFR part 1944, subpart D. The scoring factors are:

(a) The presence and extent of leveraged assistance, including donated land, for the units that will serve program-eligible tenants, calculated as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Leveraged assistance includes, but is not limited to, funds for hard construction costs, section 8 or other non-RHS tenant subsidies, and state or federal funds. A minimum of ten percent leveraged assistance is required to earn points; however, if the total percentage of leveraged assistance is less than ten percent and the proposal includes donated land, two points will be awarded for the donated land. Points will be awarded in accordance with the following table. (0 to 20 points)

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0
Donated land in proposals with less than ten percent total leveraged assistance	2

(b) Seasonal, temporary, migrant housing. (5 points for up to and including 50 percent of the units; 10 points for 51 percent or more.)

(c) The selection criteria contained in 7 CFR part 1944, Subpart D includes one optional criteria set by the National Office. The National office initiative will be used in the selection criteria as follows: Up to 10 Points will be awarded based on the presence of and extent to which a tenant services plan exists that clearly outlines services that will be provided to the residents of the proposed project. These services may include but are not limited to: transportation related services, on-site English as a Second Language (ESL) classes, move-in funds, emergency assistance funds, homeownership counseling, food pantries, after school tutoring, and computer learning centers. Two points will be awarded for each resident service included in the tenant services plan up to a maximum of 10 points. Plans must detail how the services are to be administered, who will administer them, and where they will be administered. All tenant service plans must include letters of intent that clearly state the service that will be provided at the project for the benefit of the residents from any party administering each service, including the applicant. (0 to 10 points)

2. States will conduct preliminary eligibility review, score applications, and forward to the National Office.

3. The National Office will rank all requests nationwide and distribute funds from any FY 2004 appropriation to States in rank order, within funding and RA limits. A lottery will be used for applications with tied point scores when they all cannot be funded. If insufficient funds or RA remain for the next ranked proposal, that applicant will be given a chance to modify their application to bring it within remaining funding levels. This will be repeated for each next ranked eligible proposal until an award can be made or the list is exhausted.

II. Funding Limits

A. Individual requests may not exceed $3 million (total loan and grant).

B. No State may receive more than 30 percent of the total available funds unless an exception is granted from the Administrator.

C. Rental Assistance will be held in the National Office for use with section 514 loans and section 516 grants and will be awarded based on each project's financial structure and need.

III. Application Process

All applications for sections 514 and 516 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of 7 CFR part 1944, subpart D, and Section IV of this Notice. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5 pm, local time, on May 6, 2004 unless date and time is extended by another Notice published in the **Federal Register**.

IV. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart D, as well as comply with the provisions of this Notice. Each application must also include an estimate of development cost utilizing Form RD 1924–13, "Estimate and Certificate of Actual Cost", and a proposed operating budget utilizing Form RD 1930–7, "Multiple Family Housing Project Budget." Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State Office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. All applicants who apply for grant funds must also provide, as part of their application, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal

grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711. Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on June 27, 2003 (Vol. 68, No. 124, pages 38402–38405).

C. Applicants are advised to contact the Rural Development State Office serving the place in which they desire to submit an application for application information.

Dated: February 2, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–2592 Filed 2–5–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Timeframe to Submit Applications for the Section 515 Rural Rental Housing Program for Fiscal Year 2004

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the timeframe for submitting applications for the section 515 Rural Rental Housing Program for Fiscal Year (FY) 2004. The Rural Housing Service (RHS) is publishing this Notice prior to passage of a final appropriations act to give applicants the maximum amount of time possible to complete their applications, to provide the Agency sufficient time to process the selected applications within the current fiscal year, and in order to comply with 7 CFR 1944.231. Because the Agency's appropriations act has not been passed, applicants are cautioned that the Agency cannot make commitments based on the anticipated funding. Expenses incurred in developing applications will be at the applicant's risk.

Additional Application Information

Applications may be submitted for section 515 Rural Rental Housing (RRH) new construction loan funds and section 521 Rental Assistance (RA). Section 515 funds include the nonprofit set-aside for eligible nonprofit entities and the set-aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act). Section VI of this Notice gives additional information regarding the set-asides.

DATES: The closing deadline for receipt of all applications, including those for the set-asides, in response to this Notice is 5 p.m., local time for each Rural Development State Office on April 6, 2004. The application deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State Office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office
Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris.

Alaska State Office
800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Deborah Davis.

Arizona State Office
Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8765, TDD (602) 280–8706, Johnna Vargas.

Arkansas State Office
700 W. Capitol Ave., Room 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3063, Cathy Jones.

California State Office
430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5830, TDD (530) 792–5848, Jeff Deiss.

Colorado State Office
655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2923, TDD (800) 659–2656, Mary Summerfield.

Connecticut
Served by Massachusetts State Office.

Delaware and Maryland State Office
4607 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker.

Florida & Virgin Islands State Office
4440 NW 25th Place, Gainesville, FL 32606–6563, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz.

Georgia State Office
Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers.

Guam
Served by Hawaii State Office.

Hawaii State Office
(Services all Hawaii, American Samoa and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309, TDD (808) 933–8321, Thao Khamoui.

Idaho State Office
Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5628, TDD (208) 378–5644, LaDonn McElligott.

Illinois State Office
2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.

Indiana State Office
5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young.

Iowa State Office
210 Walnut Street Room 873, Des Moines, IA 50309, (515) 284–4666, TDD (515) 284–4858, Julie Sleeper.

Kansas State Office
1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, TDD (785) 271–2767, Virginia M. Hammersmith.

Kentucky State Office
771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Paul Higgins.

Louisiana State Office
3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.

Maine State Office
967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes.

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Minnesota State Office
375 Jackson Street Building, Suite 410, St. Paul, MN 55101–1853, (651) 602–7804, TDD (651) 602–7830, Joyce Vondal.

Mississippi State Office
Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office
601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9480, Colleen James.

Montana State Office
Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2551, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office

Federal Building, Room 152, 100 Centennial Mall N., Lincoln, NE 68508, (402) 437–5594, TDD (402) 437–5093, Phil Willnerd.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 25), TDD (775) 885–0633, Angilla Denton.

New Hampshire State Office
Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler.

New Jersey State Office
5th Floor North Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7784, George Hyatt, Jr.

New Mexico State Office
6200 Jefferson St., NE., Room 255, Albuquerque, NM 87109, (505) 761–4944. TDD (505) 761–4938, Carmen N. Lopez.

New York State Office
The Galleries of Syracuse, 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless.

North Carolina State Office
4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2066, TDD (919) 873–2003, Bill Hobbs.

North Dakota State Office
Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake.

Ohio State Office
Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2418, TDD (614) 255–2554, Melodie Taylor-Ward.

Oklahoma State Office
100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Phillip F. Reimers.

Oregon State Office
101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503) 414–3387, Bill Daniel.

Pennsylvania State Office
One Credit Union Place, Suite 330. Harrisburg, PA 17110–2996, (717) 237–2282, TDD (717) 237–2261, Martha E. Hanson.

Puerto Rico State Office
IBM Plaza, Suite 601, Munoz Rivera Avenue #654, Hato Rey, PR 00918, (787) 766–5095 (ext. 249), TDD (787) 766–5332, Lourdes Colon.

Rhode Island,
Served by Massachusetts State Office.

South Carolina State Office
Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.

South Dakota State Office
Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1135, TDD (605) 352–1147, Roger Hazuka.

Tennessee State Office
Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, G. Benson Lasater.

Texas State Office
Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9765, TDD (254) 742–9712, Michael W. Meehan.

Utah State Office
Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4323, TDD (801) 524–3309, Dave Brown.

Vermont State Office
City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier.

Virgin Islands
Served by Florida State Office.

Virginia State Office
Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.

Washington State Office
1835 Black Lake Blvd. Suite B, Olympia, WA 98512, (360) 704–7731, TDD (360) 704–7760, Robert L. Lund.

Western Pacific Territories
Served by Hawaii State Office.

West Virginia State Office
Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4889, TDD (304) 284–4836, Craig St. Clair.

Wisconsin State Office
4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7608 (ext. 151), TDD (715) 345–7614, Sherry Engel.

Wyoming State Office
100 East B, Federal Building, Room 1005, P.O. Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Jack Hyde.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Barbara Chism, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC, 20250–0781, telephone (202) 690–1436 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS with the authority to make loans to any individual, corporation, association, trust, Indian tribe, public or private nonprofit organization, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental assistance (RA) is a tenant subsidy for very-low and low-income families residing in rural rental housing facilities with RHS financing and may be requested with applications for such facilities.

B. Distribution Methodology

Nine percent of any appropriation will be set aside for eligible nonprofit entities and five percent will be set aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act). Additional information regarding distribution of funds will be provided when the appropriations act is passed.

C. Section 515 New Construction Funds

For fiscal year 2004, the Administrator has determined that it is not practical to allocate funds to States because of funding limitations; therefore, section 515 new construction funds will be distributed to States based on a National competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR part 1944, subpart E. The scoring factors are:

(a) The presence and extent of leveraged assistance for the units that will serve RHS income-eligible tenants at basic rents comparable to those if RHS provided full financing, computed as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. The required applicant contribution is not considered leveraged assistance. Leveraged assistance includes loans and grants from other sources, contributions from the applicant above the required contribution indicated by the Sources and Uses Comprehensive Evaluation (available from the Rural Development State Office) and tax abatements or other savings in operating costs provided that, at the end of the abatement period when the benefit is no longer available, the basic rents are comparable to or lower than the basic rents if RHS provided full financing. Loan proposals that include secondary funds from other sources that have been requested but have not yet been committed will be processed as follows: the proposal will be scored based on the requested funds, provided (1) the applicant includes evidence of a

filed application for the funds; and (2) the funding date of the requested funds will permit processing of the loan request in the current funding cycle, or, if the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. Points will be awarded in accordance with the following table. (0 to 20 points)

Percentage of leveraging	Points
75 or more	20
70–74	19
65–69	18
60–64	17
55–59	16
50–54	15
45–49	14
40–44	13
35–39	12
30–34	11
25–29	10
20–24	9
15–19	8
10–14	7
5–9	6
0–4	0

(b) The units to be developed are in a colonia, tribal land, Empowerment Zone (EZ), Enterprise Community (EC), or Rural Economic Area Partnership (REAP) community, or in a place identified in the State Consolidated Plan or State Needs Assessment as a high need community for multifamily housing. (20 points)

(c) In states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State resources (State funds, State RA, HOME funds, Community Development Block Grant (CDBG) funds, or Low-Income Housing Tax Credits) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding such State resources, 20 points will be provided to loan requests that include such State resources in an amount equal to at least 5 percent of the total development cost. Native American Housing and Self Determination Act (NAHASDA) funds may be considered a State Resource if the Tribal Plan for NAHASDA funds contains provisions for partnering with RHS for multifamily housing. (National Office initiative)

(d) The loan request includes donated land meeting the provisions of 7 CFR 1944.215(r)(4). (5 points)

2. The National Office will rank all requests nationwide and distribute funds from any FY 2004 appropriation to States in rank order, within funding and RA limits. A lottery will be used for applications with tied point scores when they all cannot be funded. If insufficient funds or RA remain for the next ranked proposal, then that applicant will be given a chance to modify their application to bring it within remaining funding levels. This will be repeated for each next ranked eligible proposal until an award can be made or the list is exhausted.

D. Applications That Do Not Require New Construction Rental Assistance

The Agency is inviting applications to develop units in markets that do not require RA. The market study for non-RA proposals must clearly demonstrate a need and demand for the units by prospective tenants at income levels that can support the proposed rents without tenant subsidies. The proposed units must offer amenities that are typical for the market area at rents that are comparable to conventional rents in the market for similar units.

E. Set-Asides

Loan requests will be accepted for the following set-asides:

1. Nonprofit set-aside. Nine percent of any appropriation act funding for the section 515 program will be set aside for nonprofit applicants. All loan proposals must be in designated places in accordance with 7 CFR part 1944, subpart E. A State or jurisdiction may receive one proposal from this set-aside, which cannot exceed $1 million. A State could get additional funds from this set-aside if any funds remain after funding one proposal from each participating State. If there are insufficient funds to fund one loan request from each participating State, selection will be made by point score. If there are any funds remaining, they will revert to the National Office reserve. Funds from this set-aside will be available only to nonprofit entities, which may include a partnership that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. To be eligible for this set-aside, the nonprofit entity must be an organization that:

(a) Will own an interest in the project to be financed and will materially participate in the development and the operations of the project;

(b) Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986;

(c) Has among its purposes the planning, development, or management of low-income housing or community development projects; and

(d) Is not affiliated with or controlled by a for-profit organization.

[As a point of clarification, the partnership may have only one general partner, which must meet the above requirements. A partnership with more than one general partner is not eligible for this set-aside.]

2. Underserved counties and colonias set-aside. Five percent of any appropriation act funding for the Section 515 program will be set aside for the 100 most needy underserved counties or colonias as defined in section 509(f) of the Housing Act of 1949.

II. Funding Limits

A. Individual loan requests may not exceed $1 million. This applies to regular section 515 funds and set-aside funds. The Administrator may make an exception to this limit in cases where a State's average total development costs exceed the National average by 50 percent or more.

B. States may receive a maximum combined total of $2.5 million from regular section 515 funds and set-aside funds.

III. Rental Assistance (RA)

RA will be held in the National Office for use with section 515 Rural Rental Housing loans. RA may be requested by applicants, except for non-RA requests in accordance with Section I.D of this notice.

IV. Application Process

All applications for section 515 new construction funds must be filed with the appropriate Rural Development State Office and must meet the requirements of 7 CFR part 1944, subpart E and Section V of this Notice. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register.**

V. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart E as well as comply with the provisions of this Notice. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State Office will base its determination of completeness of the application and the eligibility of each

applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State Office serving the place in which they desire to submit an application for the following:

1. Application information; and

2. List of designated places for which applications for new section 515 facilities may be submitted.

VI. Areas of Special Emphasis or Consideration

The selection criteria contained in 7 CFR part 1944, subpart E include two optional criteria, one set by the National Office and one by the State Office. This fiscal year, the National Office initiative will be used in the selection criteria as follows: In states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State resources (State funds, State RA, HOME funds, CDBG funds, or Low Income Housing Tax Credits (LIHTC)) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding these State Resources, 20 points will be provided to loan requests that include such State resources in an amount equal to at least 5 percent of the total development cost. Native American Housing and Self Determination Act (NAHASDA) funds may be considered a State Resource if the Tribal Plan for NAHASDA funds contains provisions for partnering with RHS for multifamily housing. No State selection criteria will be used this fiscal year.

Dated: February 2, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–2594 Filed 2–5–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Timeframe for Section 533 Housing Preservation Grants for Fiscal Year 2004

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. RHS is publishing this Notice prior to passage of a final appropriations act to give applicants the maximum amount of time possible to complete their applications, and to provide the Agency sufficient time to select and process the selected applications within the current fiscal year. Although a Notice of Funding Availability (NOFA) outlining the level of funding for the program will be published after enactment of a final appropriation act, no additional time for submitting applications will be included in the NOFA. Applications must be submitted within the timeframe set forth in this Notice. Because the Agency's appropriations act has not been passed, applicants are cautioned that the Agency cannot make commitments based on the anticipated funding. Expenses incurred in developing applications will be at the applicant's risk.

The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations, and other eligible entities grant funds to assist very low- and low-income homeowners to repair and rehabilitate their homes in rural areas, and to assist rental property owners and cooperative housing complexes to repair and rehabilitate their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which require the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

Discussion of Anticipated Funding for Fiscal Year (FY) 2004

The FY 2003 funding level for the section 533 program was $9,935,000. To the extent an appropriation act provides funding for HPG grants in FY 2004, the actual funds available for FY 2004 will be published at a later date in a subsequent Notice.

DATES: The closing deadline for receipt of all applications in response to this Notice is 5 p.m., local time for each Rural Development State Office on May 6, 2004. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State Office serving the place in which they desire to submit an application to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

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Alaska State Office
800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Deborah Davis.

Arizona State Office
Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8765, TDD (602) 280–8706, Johnna Vargas.

Arkansas State Office
700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3258, TDD (501) 301–3063, Clinton King.

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430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5830, TDD (530) 792–5848, Jeff Deiss.

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Connecticut
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Hawaii State Office
(Services all Hawaii, American Samoa and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309, TDD (808) 933–8321, Thao Khamoui.

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Illinois State Office
2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.

Indiana State Office
5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young.
Iowa State Office
210 Walnut Street Room 873, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Julie Sleeper.
Kansas State Office
1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, TDD (785) 271–2767, Virginia M. Hammersmith.
Kentucky State Office
771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Beth Moore.
Louisiana State Office
3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.
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Massachusetts, Connecticut, & Rhode Island State Office
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Michigan State Office
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Mississippi State Office
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Missouri State Office
601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9303, TDD (573) 876–9480, Betty Eftink.
Montana State Office
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Nebraska State Office
Federal Building, room 152, 100 Centennial Mall N., Lincoln, NE 68508, (402) 437–5035, TDD (402) 437–5093, Sharon Kluck.
Nevada State Office
1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 25), TDD (775) 885–0633, Angilla Denton.
New Hampshire State Office
Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler.
New Jersey State Office
5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7784, George Hyatt, Jr..
New Mexico State Office
6200 Jefferson St., NE., Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez.
New York State Office
The Galleries of Syracuse, 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477–6404, TDD (315) 477–6447, Tia Baker.
North Carolina State Office
4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2066, TDD (919) 873–2003, William A. Hobbs.
North Dakota State Office
Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2046, TDD (701) 530–2113, Barry Borstad.
Ohio State Office
Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2418, TDD (614) 255–2554, Melodie Taylor-Ward.
Oklahoma State Office
100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Ivan Graves.
Oregon State Office
101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503)414–3387, Bill Daniel.
Pennsylvania State Office
One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2282, TDD (717) 237–2261, Marth E. Hanson.
Puerto Rico State Office
IBM Building, Suite 601, Munoz Rivera Ave. #654, San Juan, PR 00918, (787) 766–5095 (ext. 249), TDD (787) 766–5332, Lourdes Colon.
Rhode Island
Served by Massachusetts State Office.
South Carolina State Office
Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.
South Dakota State Office
Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1135, TDD (605) 352–1147, Roger Hazuka.
Tennessee State Office
Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Larry Kennedy.
Texas State Office
Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9758, TDD (254) 742–9712, Julie Hayes.
Utah State Office
Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4323, TDD (801) 524–3309, Dave Brown.
Vermont State Office
City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier.
Virgin Islands
Served by Florida State Office.
Virginia State Office
Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.
Washington State Office
1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7731, TDD (360) 704–7742, Robert L. Lund.
Western Pacific Territories
Served by Hawaii State Office.
West Virginia State Office
Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4889, TDD (304) 284–4836, Craig St. Clair.
Wisconsin State Office
4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7608 (ext.151), TDD (715) 345–7614, Sherry Engel.
Wyoming State Office
100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Jack Hyde.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Tammy S. Daniels, Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC, 20250–0781, telephone (202) 720–0021 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.433, Rural Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V). Applicants are referred to 7 CFR 1944.674 and 1944.676(f) and (g) for specific guidance on these requirements relative to the HPG program.

Application Requirements

7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the Rural Development State Office to receive further information, the State allocation of funds if and when a final appropriation act is enacted providing funding for the HPG Program, and copies of the preapplication package. Eligible entities for these competitively awarded grants include state and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

Federally recognized Indian Tribes are exempt from the requirement found in 7 CFR 1944.674 that the applicant announce the availability of its

statement of activities for review in a newspaper, provided a notice is sent to all tribal members in the area or some other acceptable manner of notification is used, and provided that this is accomplished within the timeframes that are specified in 7 CFR 1944.674.

As part of the application, all applicants must also provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711. Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on June 27, 2003 (Vol. 68, No. 124, pages 38402–38405).

To comply with the President's Management Agenda, the Department of Agriculture is participating as a partner in the new government-wide Grants.gov site in FY 2004. Housing Preservation Grants (Catalog of Federal Domestic Assistance # 10.433) is one of the programs included at this website. If you are an applicant under the Housing Preservation Grant Program, you may submit your application to the Agency in either electronic or paper format. Please be mindful that the application deadline for electronic format differs from the deadline for paper format. The electronic format deadline will be based on Washington DC time. The paper format deadline is local time for each Rural Development State Office.

Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the *Grants.gov* site. *You may not e-mail an electronic copy of a grant application to RHS;* however, the Agency encourages your participation in *Grants.gov.*

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site as well as the hours of operation. RHS strongly recommends that you do not wait until the application deadline date to begin the application process through *Grants.gov.* To use *Grants.gov,* applicants must have a DUNS number.
- You may submit all documents electronically through the website, including all information typically included on the application for Rural Housing Preservation Grants, and all necessary assurances and certifications.
- Your application must comply with any page limit requirements described in this Notice.
- After you electronically submit your application through the website, you will receive an automatic acknowledgement from Grants.gov that contains a *Grants.gov* tracking number.
- RHS may request that you provide original signatures on forms at a later date.
- If you experience technical difficulties on the closing date and are unable to meet the 5 p.m. (Washington, DC time) deadline, print out your application and submit it to your State Office. If you must submit the application to your State Office, you must meet the closing date and local time deadline.

You may access the electronic grant application for Housing Preservation Grants at: *http://www.grants.gov.*

Please note that you must locate the downloadable application package for this program by the CFDA Number or FedGrants Funding Opportunity Number, which can be found at *http://www.fedgrants.gov.*

Funding Information

The funding instrument for the HPG Program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. If and when a final appropriation act is enacted providing funding for the HPG Program, you should contact the Rural Development State Office to determine the allocation and the State maximum grant level, if any. From funds available for the HPG Program, there will be monies set aside for grants located in Empowerment Zones, Enterprise Communities, and Rural Economic Area Partnership Zones and other funds will be distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L.

Dated: February 2, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–2593 Filed 2–5–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice for Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) for Fiscal Year 2004

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This is a request for proposals for guaranteed loans under the section 538 Guaranteed Rural Rental Housing Program (GRRHP) pursuant to 7 CFR 3565.4 for Fiscal Year (FY) 2004 subject to the availability of funding. FY 2003 funding for the section 538 program was $99.350 million. This notice is being issued prior to passage of a final appropriations bill to allow applicants sufficient time to leverage financing and submit proposals in the form of "RESPONSES", and give the Agency maximum time to process applications within the current fiscal year. A Notice of Funding Availability will be published announcing the funding level for the GRRHP for FY 2004 once an appropriation act has been enacted. The commitment of program dollars will be made to applicants of selected responses that have fulfilled the necessary requirements for obligation, to the extent an appropriation act provides funding for GRRHP for FY 2004. Expenses incurred in developing applications will be at the applicant's risk. The following paragraphs outline the timeframes, eligibility requirements, lender responsibilities, and the overall response and application processes.

The GRRHP operates under 7 CFR part 3565. The GRRHP Origination and Servicing Handbook (HB–1–3565) is available to provide lenders and the general public with guidance on program administration. HB–1–3565, which contains a copy of 7 CFR part 3565 in Appendix 1, can be found at the Rural Development Instructions Web site at *http://rdinit.usda.gov/regs.*

Eligible lenders are invited to submit responses for the development of affordable rental housing to serve rural America. The Rural Housing Service (RHS) will review responses submitted by eligible lenders, on the lender's letterhead, and signed by both the prospective borrower and lender. Although a complete application is not required in response to this notice, eligible lenders may submit a complete application concurrently with the response. The submission of a complete application will not affect the scoring process.

DATES: Program dollars will be allocated through a continuous selection process to the extent and when an appropriation act provides funding for GRRHP for FY 2004. The RHS will review all responses on an on-going basis through May 14, 2004. Those responses that are selected that subsequently submit complete applications and meet all Federal environmental requirements will receive commitments to the extent an appropriation act provides funding for

GRRHP for FY 2004 until all funds are expended. If any FY 2004 funds have not been exhausted by May 14, 2004, the Agency will continue receiving and reviewing responses until all funds are expended. A notice will be published in the **Federal Register** when all funds are committed for FY 2004.

Eligible lenders intending to mail a response or application must provide sufficient time to permit delivery to the submission address on or before the closing deadline date. Acceptance by a U.S. Post Office or private mailer does not constitute delivery. Postage due responses and applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Arlene Nunes, Senior Loan Specialist, Guaranteed Loans, Multi-Family Housing Processing Division, U.S. Department of Agriculture, South Agriculture Building, Room 1271, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. E-mail: *arlene.nunes@usda.gov*. Telephone: (202) 401–2307. This number is not toll-free. Hearing or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Eligiblity of Prior Year Selected NOFA Responses: NOFA responses selected in prior years, but not yet funded, are eligible for FY 2004 program dollars subject to the availability of funds. Prior year NOFA responses selected by RHS for submission of a complete application may submit an application for competition for FY 2004 funding without completing a FY 2004 response. All qualified applications will be funded on a first come basis until all program funds are exhausted. RHS will commit and obligate funds only to lenders that submit a complete application, including all Federal environmental documents required by 7 CFR part 1940, subpart G, Form RD 3565–1, and the $2,500 application fee.

General Program Information

Program Purpose: The section 538 Guaranteed Rural Rental Housing Program is designed to increase the supply of affordable multi-family housing through partnerships between the RHS and major lending sources, as well as state and local housing finance agencies and bond issuers.

Responses Must be Submitted By: The Agency will only accept responses from GRRHP eligible or approved lenders as described in 7 CFR 3565.102 and 3565.103 respectively.

Qualifying Properties: Qualifying properties include new construction for multi-family housing units or acquisition of existing structures with minimum per unit rehabilitation expenditure requirements in accordance with 7 CFR 3565.252. The portion of guaranteed funds for acquisition with rehabilitation is limited to 25 percent of the program authority.

Eligible Financing Sources: Any form of Federal, State, and conventional sources of financing can be used in conjunction with the loan guarantee, including Home Investment Partnership Program (HOME) grant funds, tax exempt bonds, and low income housing tax credits.

Maximum Guarantee: The maximum guarantee for a permanent loan will be 90 percent of the unpaid balance and interest on the loan. The maximum guarantee on a construction loan will be 90 percent of the work in place, which have credit enhancements, or up to 90 percent of the amount actually advanced by the lender, whichever is less.

Reimbursement of Losses: Any losses will be split on a pro-rata basis between the lender and the RHS from the first dollar lost.

Interest Rate: RHS will accept the best rate negotiated between the lender and prospective borrower. The lender is not required to provide the interest rate in the response unless interest credit assistance is requested for the project. Priority points will be given for interest rates less than 250 basis points above the monthly Applicable Federal Rate (AFR), on the day of closing, when interest credit assistance is requested. In all cases, interest rates must be fixed over the term of the loan.

Interest Credit: RHS will award interest credit to at least 20 percent of the loans made under the program. If 20 percent of the loans have not received interest credit by May 14, 2004, then RHS will award interest credit to those loans that initially requested interest credit and have the highest interest credit priority score until at least 20% of the loans have received interest credit. Requests for interest credit must be made in the response. Lenders are not permitted to make requests for interest credit after the selection process has taken place.

Due to limited funding and in order to distribute interest credit assistance as broadly as possible, the Agency has decided to limit the interest credit to $1.5 million per project. For example, if an eligible request were made for interest credit on a loan of $2.5 million, up to $1.5 million of the loan would receive interest credit. Interest credit is not available for construction loans. Interest credit is only available for permanent loans. Lenders with projects that are viable with or without interest credit are encouraged to submit a response reflecting financial and market feasibility under both funding options. Responses requesting consideration under both options will not affect interest credit selection. However, once the interest credit funds are exhausted, only those responses requesting consideration under both funding options or the Non-Interest Credit option will be further considered.

Due to limited interest credit funds and the responsibility of RHS to target and give priority to rural areas most in need, responses requesting interest credit must score a minimum of 65 points under the criteria established in this notice. In the event of ties, selection between responses will be by lot.

Surcharges for Guarantee of Construction Advances: There is no surcharge for the guarantee of construction advances for FY 2004.

Program Fees for FY 2004: The following information stipulates the program fees.

(1) There is an initial guarantee fee of 1 percent of the total guarantee amount, which will be due when the loan guarantee is issued. In the case of a combination construction and permanent loan guarantee, the 1 percent initial fee will be paid when the construction loan note guarantee is issued. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(2) There is an annual renewal fee of 0.5 percent of the outstanding principal and interest of the loan. This fee will be collected annually on January 1st of each calendar year.

(3) There is no fee for site assessment and market analysis or preliminary feasibility in FY 2004.

(4) There is a non-refundable application fee of $2,500 when the application is submitted.

(5) There is a flat fee of $500 when a lender requests RHS to extend the term of a guarantee commitment.

(6) There is a flat fee of $500 when a lender requests RHS to extend a guarantee commitment after the period of the commitment lapses.

(7) There is a flat fee of $1,250 when a lender requests RHS to approve the transfer of property and assumption of the loan to an eligible prospective borrower.

(8) There is no lender application fee for lender approval in FY 2004.

Eligible Lenders: An eligible lender for the section 538 GRRHP as required by 7 CFR 3565.102 must be a licensed business entity or Housing Finance Agency (HFA) in good standing in the

state or states where it conducts business. Lender eligibility requirements are contained in 7 CFR 3565.102. Below is a list of some of the eligible lender criteria under 7 CFR 3565.102:

(1) Licensed business entity that meets the qualifications and has the approval of the Secretary of Housing and Urban Development (HUD) to make multi-family housing loans that are insured under the National Housing Act. A complete list of HUD approved lenders can be found on the HUD Web site at *http://www.hud.gov.*

(2) A licensed business entity that meets the qualifications and has the approval of the Freddie Mac or Fannie Mae corporations to make multi-family housing loans that are sold to the same corporations. A complete list of Freddie Mac approved lenders can be found on the Freddie Mac Web site at *http://www.freddiemac.com.* Fannie Mae approved lenders are found at *http://www.fanniemae.com.*

(3) A state or local HFA with a top-tier rating from Moody's or Standard & Poors, or member of the Federal Home Loan Bank system, and the demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner.

(4) Be a GRRHP approved lender, defined as an entity with an executed multi-family housing Lender's Agreement with RHS.

(5) Lenders that can demonstrate the capacity to underwrite, originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner. In order to be approved the lender will have to have an acceptable level of financial soundness as determined by a lender rating service. The submission of materials demonstrating capacity will be required if the lender's response is selected.

Lenders who are otherwise ineligible may become eligible if they maintain a correspondent relationship with an eligible lender that does have the capacity to underwrite, originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner. In this case, the eligible lender must submit the response and application. All contractual and legal documentation will be signed between RHS and the lender that submitted the response and application.

RHS Lender Approval Application: Lenders whose responses are selected will be notified by the RHS to submit a request for RHS lender approval application within 30 days of notification. Lenders that have received RHS lender approval in the past and are in good standing do not need to reapply for RHS lender approval.

Submission of Documentation for RHS Lender Approval: All lenders that have not yet received RHS lender approval must submit a complete application for RHS lender approval to the Director of the Multi-Family Housing Processing Division at the address provided in the "NOTICE SUBMISSION ADDRESS" section of this notice. As RHS does not have a formal application form, a complete application will consist of a cover letter requesting RHS lender approval and the following documentation:

(1) Request for RHS lender approval on the lender's letterhead;

(2) Lenders who are HUD, Freddie Mac or Fannie Mae multi-family approved lenders are required to show evidence of this status, such as a copy of a letter designating the distinction;

(3) The lender's Loan Origination, Loan Servicing and Portfolio Management Handbooks. These handbooks should detail the lender's policies and procedures on loan origination through termination for multi-family loans;

(4) Portfolio performance data;

(5) Copies of standard documents that will be used in processing GRRHP loans;

(6) Resumes and qualifications of key personnel that will be involved in the GRRHP;

(7) Identification of standards and processes that deviate from those outlined in the GRRHP Origination and Servicing Handbook (HB–1–3565) found at *http://rdinit.usda.gov/regs;*

(8) A copy of the most recent audited financial statements;

(9) Lender specific information including: (a) Legal name and address, (b) list of principal officers and their responsibilities, (c) certification that the officers and principals of the lender have not been debarred or suspended from Federal programs, (d) Form AD 1047, (e) certification that the lender is not in default or delinquent on any Federal debt or loan, or possess an outstanding finding of deficiency in a Federal housing program, and (f) certification of the lender's credit rating; and

(10) Documentation on bonding and insurance.

RHS Lender Approval Requirements: Lenders who request RHS lender approval must meet the standards stipulated in the 7 CFR 3565.103.

Lender Responsibilities: Lenders will be responsible for the full range of loan origination, underwriting, management, servicing, compliance issues and property disposition activities associated with their projects. The lender will be expected to provide guidance to the prospective borrower on the RHS requirements during the application phase. Once the guarantee is issued, the lender is expected to service each loan it underwrites or contract these services to another capable entity.

Discussion of Notice

Content of Notice Responses: All responses require lender information and project specific data. Incomplete responses will not be considered for funding. Lenders will be notified of incomplete responses. Complete responses are to include a signed cover letter from the lender on the lender's letterhead and the following information:

(1) Lender certification—The lender must certify that the lender will make a loan to the prospective borrower for the proposed project, under specified terms and conditions subject to the issuance of the RHS guarantee. Lender certification must be on the lender's letterhead and signed by both the lender and the prospective borrower.

(2) Project specific data—The lender must submit the project specific data below on the lender's letterhead, signed by both the lender and the prospective borrower.

Lender Name	Insert the lender's name.
Lender Tax ID #	Insert lender's tax ID #.
Lender Contact Name	Name of the lender contact for loan
Mailing Address	Lender's complete mailing address
Phone #	Phone # for lender contact.

Fax #	Insert lender's fax #.
E-mail Address	Insert lender contact e-mail address.
Borrower Name and Organization Type	State whether borrower is a Limited Partnership, Corporation, Indian Tribe, etc.
Tax Classification Type	State whether borrower is for profit, not for profit, etc.
Borrower Tax ID #	Insert borrower's tax ID #.
Borrower Address, including County	Insert borrower's address and county.
Borrower Phone #	Insert borrower's phone #.
Principal or Key Member for the Borrower	Insert name and title.
Borrower Information and Statement of Housing Development Experience.	Attach relevant information.
New Construction or Acquisition or Repair or Rehabilitation	State whether the project is new construction or acquisition or repair or rehabilitation.
Project Location Town or City	Town or city in which the project is located.
Project County	County in which the project is located.
Project State	State in which the project is located.
Project Zip Code	Insert zip code.
Project Congressional District	Congressional District for project location.
Project Name	Insert project name.
Project Type	Family, senior (all residents over 55), or mixed.
Property Description and Proposed Development Schedule	Provide as an attachment.
Total Project Development Cost	Enter amount for total project.
# of Units	Insert the # of units in the project.
Cost Per Unit	Total development cost divided by # of units.
Bedroom Mix	# of units by # of bedrooms.
Rent	Proposed rent structure.
Median Income for Community	Provide median income for the community.
Evidence of Site Control	Attach relevant information.
Description of Any Environmental Issues	Attach relevant information.
Loan Amount	Insert the loan amount.
Interest Credit (IC)	Is interest credit requested for this loan? (Yes or No)
Interest Rate (for interest credit requests only)	Lenders seeking interest credit must provide the interest rate. Priority points will be awarded to projects requesting interest credit for interest rates less than 250 basis points over the monthly applicable federal rate on the day of closing.
If Above Is Yes, Should Proposal Be Considered Under Non-IC Selection if IC Funds Are Exhausted?.	If Yes, proposal must show financial feasibility for Non-IC consideration.
Borrower's Proposed Equity	Insert amount.
Tax Credits	Will the project be allocated tax credits? How much? What is the estimated value of the tax credits awarded?
Other Sources of Funds	List all funding sources.
Loan to Value	Guaranteed loan divided by value of project.
Debt Coverage Ratio	Net Operating Income divided by debt service payments.

Percentage of Guarantee	Percentage guarantee requested.
Collateral	Attach relevant information.
Empowerment Zone (EZ) or Enterprise Community (EC)	Yes or No. Is the project in a recognized EZ or EC?
Colonia or Tribal Land	Is the project in a Colonia or on an Indian Reservation? (Yes or No)
Population	Must be within the 20,000 population limit set for the program.
Is a Guarantee for Construction Being Requested? Are Advances Being Requested?.	State yes or no. The Agency will guarantee construction advances, only as part of a combination construction and permanent loan.
Loan Term	Up to a 40-year amortized loan. Balloon mortgages with a minimum 25-year term are eligible.

Scoring of Priority Criteria for Selection of Projects with Interest Credit Requests: RHS will allocate points to projects with requests for interest credit. Projects with no interest credit request will be reviewed for eligibility and viability on a continuous basis and without any priority selection criteria.

The seven priority criteria for projects with requests for interest credit are listed below.

Priority 1—Projects located in eligible rural communities with the lowest populations will receive the highest points.

Population size	Points
0–5,000 people	15
5,001–10,000 people	10
10,001–15,000 people	5
15,001–20,000 people	0

Priority 2—The RHS will award points for projects with 3–5 bedroom units as follows:

Number of 3–5 bedroom units	Points
more than 15	20
10–15	15
5–9	10
1–4	5

Priority 3—The most needy communities as determined by the median income from the most recent census data will receive points. The RHS will allocate points to projects located in communities having the lowest median income. Points for median income will be awarded as follows:

Median income (dollars)	Points
Less than $35,000	20
$35,001–$45,000	15
$45,001–$55,000	10
$55,001–$65,000	5
More than $65,000	0

Priority 4—Projects that demonstrate partnering and leveraging in order to develop the maximum number of units and promote partnerships with state and local communities will also receive points. Points will awarded as follows:

Loan to value ratio (percentage %)	Points
More than 75	10
70–75	15
Less than 70	20

Priority 5—The development of projects on Tribal Lands, or in an Empowerment Zone or Enterprise Community will receive points. The RHS will attribute 20 points to projects that are developed in any of the locations described in this priority.

Priority 6—The development of projects in a Colonia or in a place identified in the State's Consolidated Plan or State Needs Assessment as a high need community for multi-family housing will receive points. The RHS will attribute 20 points to projects that are developed in any of the locations described in this priority.

Priority 7—RHS will award points for interest rates above the applicable Federal rate at the time of loan closing as follows:

Interest rate	Points
More than 250 basis points	(20)
200 to 250 basis points, inclusive	5
100 to 199 basis points, inclusive	10
0 to 99 basis points, inclusive	15

Notice Submission Address: Eligible lenders will send responses to: Director, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 1263, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. Responses for participation in the program must be identified as "Section 538 Guaranteed Rural Rental Housing Program" on the envelope.

Notifications: Responses will be reviewed for completeness and eligibility. The RHS will notify those lenders whose responses are selected via letter. The RHS will request lenders without RHS lender approval to apply for RHS lender approval within 30 days of receipt of the notification of selection. For information regarding RHS lender approval, please refer to the section entitled *"Submission of Documentation for RHS Lender Approval"* in this notice. Requests for RHS lender approval should be sent to the person and address listed in the *"Notice Submission Address"* section in this notice.

Lenders will also be invited to submit a complete application and the required application fee of $2,500 to the Rural Development State Office where the project is located.

Submission of GRRHP Applications: Notification letters will instruct lenders to contact the Rural Development State Office immediately following notification of selection to schedule required agency reviews. Rural Development State Office addresses can be found on the Rural Development Web site, *http://www.rurdev.usda.gov*, under "State Offices".

Rural Development State Office staff will work with lenders in the development of an application package. Required documentation for a complete application package is stated in Chapter 3 of HB–1–3565.

The deadline for the submission of a complete application and application fee is 90 days from the date of notification of response selection. If the application and fee are not submitted within 90 days from the date of notification, the selection is subject to cancellation, thereby allowing another response that is ready to proceed with processing to be selected.

Obligation of Program Funds: The RHS will only obligate funds to projects that meet the requirements for obligation, including undergoing a satisfactory environmental review in accordance with the National Environmental Protection Act (NEPA) and lenders who have submitted the $2,500 application fee and completed

Form RD 3565–1 for the selected project.

Conditional Commitment: Once required documents for obligation and the application fee are received and all NEPA requirements have been met, the Rural Development State Office will issue a conditional commitment, which stipulates the conditions that must be fulfilled before the issuance of a guarantee, in accordance with 7 CFR 3565.303.

Issuance of Guarantee: The RHS will issue a guarantee to the lender for a project in accordance with 7 CFR 3565.303. No guarantee can be issued without a complete application, review of appropriate certifications, satisfactory assessment of the appropriate level of environmental review, and the completion of any conditional requirements.

Dated: February 2, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–2595 Filed 2–5–04; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 7, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 12, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 F.R. 69375) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Custodial Services, Dan E. Russell Federal Building, 2012 15th Street, Gulfport, Mississippi.

NPA: Mississippi Goodworks, Inc., Gulfport, Mississippi.

Contract Activity: GSA, Property Management Center (4PMB), Atlanta, Georgia. This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–2634 Filed 2–5–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 7, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Strap, Eyewear, Retention, 8470–01–487–1605

NPA: Lions Services, Inc., Charlotte, North Carolina

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania

Product/NSN: Wet Floor Sign—Bilingual (English/Spanish), 9905–00–NIB–0046

NPA: Lions Volunteer Blind Industries, Inc., Morristown, Tennessee

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York,

New York

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–2635 Filed 2–5–04; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: February 11, 2004; 1 p.m.–4 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: February 4, 2004.

Carol Booker,

Legal Counsel.

[FR Doc. 04–2747 Filed 2–04–04; 3:30 pm]

BILLING CODE 8320–01–M

DEPARTMENT OF COMMERCE

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 Institute of Standards and Technology (NIST).

Title: Malcolm Baldrige National Quality Award Application.

Form Number(s): None.

OMB Approval Number: 0693–0006.

Type of Review: Regular submission.

Burden Hours: 7,400.

Number of Respondents: 100.

Average Hours Per Response: 74.

Needs and Uses: Public Law 100–107, the Malcolm Baldrige National Quality Improvement Act of 1987, established an annual U.S. National Quality Award. The Secretary of Commerce leads and NIST develops and manages the Award with cooperation from the private sector. The purposes of the Award are to promote quality awareness, recognize quality achievements of U.S. organizations, and to share successful quality strategies and practices. The failure to collect the information required of Award applicants would make it impossible to grant the Award and violate statutory responsibilities.

Affected Public: Business or for-profit organizations, not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jacqueline Zeiher, (202) 395–4638.

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 within 30 days of publication of this notice to Jacqueline Zeiher, OMB Desk Officer, FAX number (202) 395–5167 or *JZeiher@omb.eop.gov*

Dated: February 2, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–2559 Filed 2–5–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC 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: U.S. Census Bureau.

Title: 2004 Panel of the Survey of Income & Program Participation, Wave 2 Topical Modules.

Form Number(s): SIPP 24205(L) Director's Letter; SIPP/CAPI Automated Instrument; SIPP 24003 Reminder Card.

Agency Approval Number: 0607–0905.

Type of Request: Revision of a currently approved collection.

Burden: 98,685 hours.

Number of Respondents: 97,650.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 2 topical module interview for the 2004 Panel of the Survey of Income and Program Participation (SIPP). We are also requesting approval for a few replacement questions in the reinterview instrument. The core SIPP and reinterview instruments were cleared under Authorization No. 0607–0905.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of 3 to 4 years. The 2004 Panel is scheduled for 4 years and will include 12 waves of interviewing. All household members 15 years old or over are interviewed a total of 12 times (12 waves), at 4-month intervals, making the SIPP a longitudinal survey.

The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 2004 Panel Wave 2 are Work History, Education and Training History, Marital History, Fertility History, Migration History, and Household Relationships. These topical modules were previously conducted in the SIPP 2001 Panel Wave 2 instrument. Wave 2 interviews will be conducted from June through September 2004.

Data provided by the SIPP are being used by economic policymakers, the Congress, State and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and

private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time. Monetary incentives to encourage non-respondents to participate is planned for all waves of the 2004 SIPP Panel.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

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 within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or email (*susan_schechter@omb.eop.gov*).

Dated: February 3, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–2624 Filed 2–5–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2005 New York City Housing and Vacancy Survey

ACTION: Proposed collection; comment request.

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 6, 2004.

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(s) and instructions should be directed to: Howard Savage, Census Bureau, FB3–1433, Washington, DC 20233–8500, or phone (301)763–5665.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct the 2005 New York City Housing and Vacancy Survey (NYCHVS) under contract for the City of New York. The primary purpose of the survey is to measure the rental vacancy rate which is the primary factor in determining the continuation of rent control regulations. Other survey information is used by city and state agencies for planning purposes as well as the private sector for business decisions. New York is required by law to have such a survey conducted every three years.

Information to be collected includes: Age, gender, race, Hispanic origin, and relationship of all household members; employment status, education level, and income for persons aged 15 and above. Owner/renter status (tenure) is asked for all units, including vacants. Utility costs, monthly rent, availability of kitchen and bathroom facilities, maintenance deficiencies, neighborhood suitability, and other specific questions about each unit such as number of rooms and bedrooms are also asked. The survey also poses a number of questions relating to handicapped accessibility. For vacant units, a shorter series of similar questions is asked. Finally, all vacant units and approximately five percent of occupied units will be reinterviewed for quality assurance purposes.

The Census Bureau compiles the data in tabular format based on specifications of the survey sponsor, as well as non-identifiable microdata. Both types of data are also made available to the general public through the Census internet site. Note, however, that the sponsor receives the same data that are made generally available so as not to enable the identification of any sample respondent or household.

II. Method of Collection

All information will be collected by personal interview.

III. Data

OMB Number: 0607–0757 (expired 08/31/2002).

Form Number: H–100, H–108 (reinterview).

Type of Review: Regular.

Affected Public: Households.

Estimated Number of Respondents: 18,000 + 2,000 reinterviews.

Estimated Time Per Response: 30 minutes occupied (16,500); 10 minutes vacant (1,500); 10 minutes reinterview (2,000).

Estimated Total Annual Burden Hours: 8,835.

Estimated Total Annual Cost: The only cost to the respondent is that of his/her time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C.—section 8b and Local Emergency Housing Rent Control Act, Laws of New York (Chapters 8603 and 657).

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: February 3, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer

[FR Doc. 04–2625 Filed 2–5–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

One-time Report for Foreign Software or Technology Eligible for De Minimis Exclusion

ACTION: Notice and request for comments.

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, Public Law 104–13 (44U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 6, 2004.

ADDRESSES: Direct all written comments to Diane Hynek, Departmental Paperwork Clearance Officer, U.S. Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington DC 20230 (or via Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mrs. Marna Dove, Management Analyst, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 734.4 exempts from the EAR reexports of foreign technology commingled with or drawn from controlled U.S. origin technology valued at 10% or less of the total value of the foreign technology. However, persons must submit a one-time report for the foreign software or technology to BIS prior to reliance upon this *de minimis* exclusion.

II. Method of Collection

Exporters intending to rely on the *de minimis* exclusion for foreign software and technology commingled with U.S. software and technology must file a one-time report for the foreign software or technology.

III. Data

OMB Number: 0694–0101.
Form Number: None.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 7.
Estimated Time Per Response: 25 hours.
Estimated Total Annual Burden Hours: 175.
Estimated Total Annual Cost: No start-up capital expenditures.

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 will also become a matter of public record.

Dated: February 3, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer, Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 04–2626 Filed 2–5–04; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Special Iraq Reconstruction License Procedures

ACTION: Notice and request for comments.

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, Public Law 104–13 (44U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 6, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The primary purpose of this proposed collection of information is to establish a new and expedited export license type developed specifically for exports and reexports of controlled items destined to civil infrastructure rebuilding projects in Iraq. The name given this license type is the Special Iraq Reconstruction License or SIRL. The information furnished by U.S. exporters provides the basis for decisions to grant licenses for export, reexport, and classifications of commodities, goods and technologies that are controlled for reasons of national security and foreign policy.

II. Method of Collection

Submitted on form BIS–748P or electronically through the Simplified Network Application Process (SNAP).

III. Data

OMB Number: None.
Form Number: BIS–748P.
Type of Review: New collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 25.
Estimated Time Per Response: 3 to 3.5 hours per response.
Estimated Total Annual Burden Hours: 88.
Estimated Total Annual Cost: No start-up capital expenditures.

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 will also become a matter of public record.

Dated: February 3, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–2627 Filed 2–5–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

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

ACTION: Initiation of new shipper antidumping duty reviews.

EFFECTIVE DATE: February 6, 2004.

FOR FURTHER INFORMATION CONTACT: Shireen Pasha or Brandon Farlander at (202) 482–0913 or (202) 482–0182, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from the following companies: Anhui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui), Eurasia Bee's Products Co., Ltd. (Eurasia), Foodworld International Club Limited (Foodworld), Inner Mongolia Youth Trade Development Co., Ltd. (Inner Mongolia Youth), Jiangsu Kanghong Natural Healthfoods Co., Ltd. (Jiangsu Kanghong), and Shanghai Shinomiel International Trade Corporation (Shanghai Shinomiel), in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the People's Republic of China (PRC), which has a December annual anniversary month and a June semiannual anniversary month. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). Anhui Honghui identified itself as both the exporter and producer of the subject merchandise. Eurasia identified itself as the exporter and producer of the subject merchandise, as well as the exporter of subject merchandise produced by its supplier Chuzhou Huadi Foodstuffs Co., Ltd. (Chuzhou). Foodworld identified itself as the exporter of honey produced by its producer Anhui Tianxin Bee Products Co., Ltd. (Anhui Tianxin). Inner Mongolia Youth identified itself as the exporter of the subject merchandise produced by Qinhuangdao Municipal Dafeng Industrial Co. Ltd. (Qinhuangdao). Jiangsu Kanghong identified itself as both the exporter and producer of the subject merchandise. Shanghai Shinomiel identified itself as the exporter of subject merchandise produced by Hangzhou Green Forever Apiculture Co. (Hangzhou Green), and Hubei Yangzijian Apiculture Co. (Hubei Yangzijian).

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), Anhui Honghui, Eurasia, Foodworld, Inner Mongolia, Jiangsu Kanghong, and Shanghai Shinomiel certified that they did not export honey to the United States during the period of investigation (POI), and that they have never been affiliated with any exporter or producer which exported honey during the POI. Furthermore, Anhui Honghui, Eurasia, Foodworld, Inner Mongolia, Jiangsu Kanghong, and Shanghai Shinomiel certified that their export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Anhui Honghui, Eurasia, Inner Mongolia, Jiangsu Kanghong, and Shanghai Shinomiel submitted documentation establishing the date on which the subject merchandise was first entered for consumption in the United States, the volume of that first shipment, and the date of the first sale to an unaffiliated customer in the United States. We note that Foodworld only submitted the volume and date of the first sale to an unaffiliated customer in the United States, and did not submit documentation establishing the date the merchandise was first entered for consumption in the United States. Moreover, Shanghai Shinomiel indicated in its new shipper review request that both of its suppliers (Hubei Yangzijian and Hangzhou Green Forever) had also previously supplied an exporter that exported subject merchandise to the United States during the period of investigation and subsequently.

On December 19, 2003, the Department issued pre-initiation supplemental questionnaires to all companies to clarify company information submitted in their requests to the Department for new shipper reviews. We received supplemental questionnaire responses from each company. In Foodworld's supplemental questionnaire response, dated December 31, 2003, Foodworld indicated that its shipment had not entered the United States during the POR, but that it was expected to arrive in the United States before the end of the year, and that the official date of entry would likely be in January 2004. Further, Foodworld indicated that it would submit a copy of the Customs Form 7501 when it became available. As of January 30, 2004, Foodworld had not submitted to the Department a copy of the Customs Form 7501 for this shipment.

The Department conducted multiple Customs run queries in December 2003 and January 2004 to determine whether Foodworld's shipment had officially entered the United States via assignment of an entry date in the Customs database by the U.S. Customs and Border Protection (CBP). We also made multiple phone calls to CBP, including a phone call on January 30, 2004, to inquire whether this shipment had entered the United States. As of January 30, 2004, and based on available information on the record, it appears that Foodworld's shipment did not enter the United States for consumption during the POR, nor has it entered by the initiation date, which is 60 days after the end of the POR. *See Memoranda to the File through Richard O. Weible, "New Shipper Review Initiation Checklist,"* dated January 30, 2004, for Foodworld.

Scope

The merchandise under review is honey from the PRC. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise under review is currently classifiable under item 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs

purposes, the written description of the merchandise under review is dispositive.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating new shipper reviews for Anhui Honghui, Eurasia, Inner Mongolia, and Jiangsu Kanghong. *See Memoranda to the File through Richard O. Weible, "New Shipper Review Initiation Checklist,"* dated January 30, 2004, for each respective company. We intend to issue the preliminary results of these reviews not later than 180 days after the date on which these reviews were initiated, and the final results of these reviews within 90 days after the date on which the preliminary results were issued.

The Department is not initiating new shipper reviews for the remaining two companies (*i.e.*, Foodworld and Shanghai Shinomiel). With regard to Foodworld, as noted above, Foodworld's shipment did not enter the United States during the POR. Under section 351.214(f)(2)(ii) of the Department's regulations, when the sale of the subject merchandise occurs within the POR, but the entry occurs after the normal POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. While the regulations do not provide a definitive date by which the entry must occur, the preamble to the Department's regulations state that both the entry and the sale should occur during the POR, and that only under "appropriate" circumstances should the POR be extended when the entry is made after the POR. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27319 (May 19, 1997). In this instance, Foodworld's shipment has not entered by the date of initiation. Accordingly, we are not initiating the new shipper review request for Foodworld for the period December 1, 2002 through November 30, 2003. For further information, *see* the *Letter to Foodworld from Richard O. Weible,* dated January 30, 2004. *See Memoranda to the File through Richard O. Weible, "New Shipper Review Initiation Checklist,"* dated January 30, 2004, for Foodworld. We note that an administrative review was requested for Foodworld. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 69 FR 3117 (January 22, 2004).

With regard to Shanghai Shinomiel, we note that both of its suppliers (Hangzhou Green Forever and Hubei Yangzijian) previously supplied subject merchandise to an exporter during the original investigation, which was subsequently exported to the United States. Moreover, the Department examined the factors of production data for both of Shanghai Shinomiel's suppliers in the original investigation. For further information, *see* the *Letter to Shanghai Shinomiel from Richard O. Weible,* dated January 30, 2004. *See Memoranda to File through Richard O. Weible, "New Shipper Review Initiation Checklist,"* dated January 30, 2004.

Based on these facts, we determine that Shanghai Shinomiel is not a new shipper within the meaning of Section 751(a)(2)(B) of the Act, and section 351.214 of the Department's regulations. Because Shanghai Shinomiel's two suppliers had established a chain of distribution for exporting their subject merchandise to the United States during the POI, Shanghai Shinomiel may not claim new shipper status for merchandise supplied by these same two suppliers. We note that this decision is consistent with our established practice of limiting the benefits of new shipper reviews to particular producer/exporter combinations. *See Import Administration Policy Bulletin 03.2—Combination Rates in New Shipper Reviews* (March 4, 2003). We note also that an administrative review was requested for Shanghai Shinomiel. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 69 FR 3117 (January 22, 2004).

Pursuant to 19 CFR 351.214(g)(1)(i)(A) of the Department's regulations, the period of review (POR) for a new shipper review initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR for these new shipper reviews is:

Antidumping duty proceeding	Period to be reviewed
Exporter: Anhui Honghui Foodstuff (Group) Co., Ltd.	
Producer: Anhui Honghui Foodstuff (Group) Co., Ltd.	12/01/02–11/30/03
Exporter: Eurasia Bee's Products Co., Ltd.	
Producer: Eurasia Bee's Products Co., Ltd.	
Producer: Chuzhou Huadi Foodstuffs Co., Ltd.	12/01/02–11/30/03
Exporter: Inner Mongolia Youth Trade Development Co., Ltd.	
Producer: Qinhuangdao Municipal Dafeng Industrial Co., Ltd.	12/01/02–11/30/03
Exporter: Jiangsu Kanghong Natural Healthfoods Co., Ltd.	
Producer: Jiangsu Kanghong Natural Healthfoods Co., Ltd.	12/01/02–11/30/03

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate to provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Anhui Honghui, Eurasia, Inner Mongolia, and Jiangsu Kanghong, including a separate rates section. The review will proceed if the responses provide sufficient indication that Anhui Honghui, Eurasia, Inner Mongolia, and Jiangsu Kanghong are not subject to either *de jure* or *de facto* government control with respect to their exports of honey. However, if Anhui Honghui, Eurasia, Inner Mongolia, and Jiangsu Kanghong do not demonstrate their eligibility for a separate rate, then they will be deemed not separate from other companies that exported during the POI and the new shipper review of that respondent will be rescinded.[1]

In accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to allow, at the option of the importer, the posting, until the

[1] We note that Anhui Honghui, Eurasia, Inner Mongolia, and Jiangsu Kanghong requested administrative reviews, in addition to the new shipper reviews. If for any reason the Department rescinds any of the aforementioned companies' new shipper reviews, we will then include any such company in the administrative review.

completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by the above-listed companies, *e.g.:* Exporter Anhui Honghui certified that it produced and exported the subject merchandise for the sale under review; thus, we will instruct Customs to limit Anhui Honghui's bonding option only to entries of such merchandise for which it is both the producer and exporter. Exporter Eurasia certified itself and Chuzhou as the producer of subject merchandise for the sale under review; thus, we will instruct Customs to limit the bonding option only to entries of subject merchandise exported by Eurasia and produced either by Eurasia or Chuzhou. Exporter Inner Mongolia Youth certified Qinhuangdao as the producer of subject merchandise; thus, we will limit the bonding option to entries of subject merchandise produced by Qinhuangdao and exported by Inner Mongolia Youth. Exporter Jiangsu Kanghong certified that it produced and exported the subject merchandise; thus, we will instruct Customs to limit Jiangsu Kanghong's bonding option only to entries of subject merchandise for which it is both the producer and exporter.

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: January 30, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–2630 Filed 2–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[ID. 012904A]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of the Receipt an exempted fishing permit application, announcement of the intent to issue the EFP, request for comments.

SUMMARY: NMFS announces the receipt of an exempted fishing permit (EFP) application from the Oregon Department of Fish and Wildlife (ODFW). If awarded, this EFP will allow qualifying vessels to harvest and retain federally managed groundfish in excess of cumulative trip limits. This is otherwise prohibited. Vessels fishing under this EFP will be required to carry a federal fisheries observer during all EFP fishing. This EFP proposal is intended to promote the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by assessing the effectiveness of a new discard reduction strategy for the trawl fishery.

DATES: Comments must be received by February 23, 2004.

ADDRESSES: Copies of the EFP application are available from Becky Renko Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko (206)526–6150.

SUPPLEMENTARY INFORMATION: This action is authorized by the FMP and implementing regulations at 50 CFR-600.745 and 50 CFR 660.350.

Dover sole, shortspine thornyhead, longspine thornyhead, and sablefish (DTS complex) are abundant and important upper continental slope species in the Pacific Coast groundfish fishery. Reductions in cumulative catch limits (trip limits) for the DTS complex in recent years have created strong incentives for vessels to high-grade their catch (keep only the most valuable fish) to maximize its value. In addition, differences between trip limits for the different DTS species may not accurately reflect the true ratios of the species that actually occur in the catch of the individual vessels. This could result in one species being discarded, because the trp limits of that species have been reached, while the vessel continues to fish for another species in the DTS complex. When the trip limits are reduced or when the ratios between species do not reflect what is actually harvested very high levels of discarded catch can result. An experimental research project conducted by ODFW in 2003 suggests that discarded catch levels can be reduced by redefining market categories and the associated price structure.

The purpose of the proposed exempted fishing activity is to collect data that can be used to examine the feasability of using a new discard-reduction strategy as a management tool for the DTS complex trawl fishery. Written agreements between the vessel, processors and the State of Oregon will be used to redefine existing market categories for the DTS species; to create an EFP price for each redefined category of marketable DTS species; and to require the full retention of all marketable Dover sole and sablefish and all rockfish (*Sebastes* and *Sebastolobus*). Modest economic benefits to the participating vessels and processors are anticipated. If this EFP is successful, these benefits are expected to create an economic incentive that will encourage further development of this discard reduction approach.

Three vessels from three different ports along the Oregon coast will be used to fish under this EFP. The EFP fishing will occur from March to June 2004. Because this EFP applies to vessels using large footrope trawl gear, all depth restrictions and cumulative limits restrictions specific to the use of large footrope trawl gear as announced in the **Federal Register** will apply to the EFP fishing. Vessels will be required to all marketable Dover sole and sablefish and all rockfish (including thornyheads). The proceeds from the sale of DTS species in excess of the EFP limits and non-DTS species that are retained in excess of cumulative trip limits as published in the **Federal Register** will be forfeited to the state of Oregon.

During the effective dates of the EFP, participating vessels must carry a federal fisheries observer whenever they fish under the EFP. Observers will collect data from which the composition of discarded and landed catch can be estimated and they will assure that all rockfish are being retained by the participating vessel.

The total amount (discard plus retained) of Dover sole allowed to be taken under this EFP is not expected to exceed 125 metric tons(mt), the total amount (discard plus retained) of shortspine thornyhead allowed to be taken under this EFP is not expected to exceed 122 mt. The total amount (discard plus retained) of longspine thornyhead allowed to be taken under this EFP is not expected to exceed 63 mt and the total amount (discard plus retained) of sablefish taken under this permit is not expected to exceed 367 mt.

The EFP fishing will be constrained by the following EFP limits for overfished species: yelloweye rockfish 1.2 mt, canary rockfish 0.1 mt, lingcod 0.2 mt, widow rockfish 0 mt, Pacific whiting 145 mt, darkblotch rockfish 6.0 mt, and POP 23 mt. If the total catch of any one of these species reaches the EFP

limits, the EFP will be terminated for the remainder of the 2004 fishing year.

All EFP harvests of overfished species are expected to be within the EFP set-asides within the OYs specified for 2004. The harvests of other groundfish species also are expected to be within the Optimum Yields (OYs) specified for 2004. Therefore, no groundfish OY is expected to be exceeded as a result of this EFP fishing. At the Pacific Fishery Management Council's (Council) November 2003, meeting in Del Mar, CA, the applicants presented their EFP application to the Council. The Council considered the application and recommended that NMFS issue the EFP for the proposed activity. Data collected during this project are expected to have a broad significance to the management of the groundfish fishery by providing information that can be used to examine the feasability of using this new discard reduction strategy in the trawl fishery for the DTS complex. The information gathered through this EFP may lead to future rulemakings. Copies of the applications are available for review from NMFS (see **ADDRESSES**).

Dated: February 2, 2004.

Peter H. Fricke,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–2631 Filed 2–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010703A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a special one-day Council meeting on February 24, 2004 to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, February 24, 2004. The meeting will begin at 8:30 a.m.

ADDRESSES: The meeting will be held at Wentworth-by-the-Sea,588 Wentworth Road, New Castle NH 03854; telephone 603/422–7322. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, February 24, 2004

Following introductions, NOAA Fisheries will present information and consult with the Council on a recommendation by the Atlantic States Fisheries Commission to re-open Federal waters to fishing for striped bass. The Council will then consider final approval of Framework Adjustment 16 to the Atlantic Sea Scallop Fishery Management Plan (FMP)/ Framework Adjustment 39 to the Northeast Multispecies FMP. The action would allow scallop vessels to fish in areas previously closed to them for groundfish conservation purposes. Measures include, but are not limited to: boundaries for the access areas; adjustments to the habitat closure definitions in the Scallop FMP to be consistent with those in Amendment 13 to the Northeast Multispecies FMP; area rotation order and fishing mortality targets; a mechanism for allocating trips and days-at-sea use in the access areas for part-time and occasional limited access scallop vessels; specifications for minimizing bycatch and bycatch mortality, including recommendations from the Council's Groundfish Committee; groundfish possession limits; observer coverage and an associated funding mechanism; and gear and other restrictions for general category scallop vessels. Following this agenda item, the Council intends to review and approve comments the proposed rule for Amendment 13 to the Northeast Multispecies FMP for submission to NOAA Fisheries. The meeting is scheduled to adjourn after any other outstanding business is addressed.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 2,2004.

Peter H. Fricke,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–2632 Filed 2–5–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Nepal

February 2, 2004.

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

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: February 6, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.cbp.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 369-S is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 68598, published on December 9, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 2, 2004.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 3, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on February 6, 2004, you are directed to increase the current limit for Category 369-S to 1,228,643 kilograms [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs' exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–2551 Filed 2–5–04; 8:45 am]

BILLING CODE 3510–DR–S

[1] Category 369–S: only HTS number 6307.10.2005; the limit has not been adjusted to account for any imports exported after December 31, 2003.

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

AGENCY: Department of Defense.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by March 8, 2004.

Title, Form and OMB Number: Department of Defense Education Activity (DoDEA) High School Longitudinal Study; OMB Number [to be determined].

Type of Request: New collection.

Number of Respondents: 1,626.

Responses per Respondent: 1.

Annual Responses: 1,626.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 407.

Needs and Uses: The Department of Defense Education Activity (DoDEA) operates 224 public schools in 21 districts located in 14 foreign countries, seven states, Guam, and Puerto Rico. To evaluate the Quality High School Initiative developed at the DoDEA High School Symposium in October 2001, contact with DoDEA high school students and their sponsors who have left DoDEA high schools is necessary. Sponsors and students in grades 9 through 12 who leave DoDEA high schools for any reason (including permanent change of station and graduation) will be contacted three to five months after leaving DoDEA schools and then again one year later using a telephonic survey. The collected data will be used to determine if quality educational programs are provided to all DoDEA high school students, regardless of where their sponsors are stationed. There is no existing data that is sufficiently comprehensive to meet the need for this information requirement.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 30, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2539 Filed 2–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

United States Marine Corps

Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to delete a records system.

SUMMARY: The U.S. Marine Corps is deleting one system of records notice from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The deletion will be effective on March 8, 2004 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC-ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' records system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The U.S. Marine Corps proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) or the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records system being amended is set forth below, as amended, published in its entirety.

Dated: January 30, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MIL00004

SYSTEM NAME:

Personal Property Program (May 11, 1999, 64 FR 25299).

REASON:

These records are now under the control of the Military Traffic Management Command, which provides services for all of the military services. The applicable system of records is A0055–355 MTMC, Personal Property Movement and Storage Records (February 1, 1996, 61 FR 3685).

[FR Doc. 04–2541 Filed 2–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendment being made is to alert the users of this system of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the 'Routine Use' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant

to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: This proposed action will be effective without further notice on March 8, 2004 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 30, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AFSG G

SYSTEM NAME:

Aircrew Standards Case File (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Aeromedical Information and Waiver Tracking System (AIMWTS)'.

* * * * *

PURPOSE(S):

Add to entry 'transmit medical informaiton for waiver consideration, track waiver dispositions,'.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry **Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

* * * * *

STORAGE:

Delete entry and replace with 'Maintained in file folders and web-based database.'

RETRIEVABILITY:

Add to entry 'or Social Security Number.'

* * * * *

F044 AFSG G

SYSTEM NAME:

Aeromedical Information and Waiver Tracking System (AIMWTS).

SYSTEM LOCATION:

Air Force Medical Support Agency (AFMSA/SGPA), 110 Luke Avenue, Room 405, Bolling Air Force Base, DC 20332–7050.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This record system is maintained on all Air Force members who have been considered for medical waiver for flying duty due to conditions defined as serious illness or for waiver for flying training.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record system contains members' Report of Medical Examination, Report of Medical History, Narrative Summary, Aeromedical Evaluation, Electrocardiographic Record, Clinical Record Consultation Sheet, and USAF School of Aerospace Medicine Evaluation Report (if accomplished).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and Air Force Instruction 48–123, Medical Examination and Medical Standards.

PURPOSE(S):

Used to transmit medical information for waiver consideration, track waiver dispositions, determine if a previous action has been taken, if a precedent exists for granting a waiver for a specific medical condition, and to provide a scientific basis to justify and improve waiver policies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(6) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, aplies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and web-based database.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Physical Standards, Air Force Medical Support Agency (AFMSA/SGPA), 110 Luke Avenue, Room 405, Bolling Air Force Base, DC 20332–7050.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to their MAJCOM Flight Surgeon's Office.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written

inquiries to their MAJCOM Flight Surgeon's Office.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–2542 Filed 2–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, Defense.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds two routine uses, revises the purpose category, and makes other administrative changes to the system notice.

DATES: This action will be effective without further notice on March 8, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 29, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 30, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S253.10 DLA–G

SYSTEM NAME:

Invention Disclosure (February 22, 1993, 58 FR 10854).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Replace 'S253.10 DLA–G' with 'S100.70'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'to the DLA General Counsel' at the end of the sentence and replace with 'to DLA.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Inventor's name, Social Security Number, address, and telephone numbers; descriptions of inventions; designs or drawings, as appropriate; evaluations of patentability; recommendations for employee awards; licensing documents; and similar records. Where patent protection is pursued by DLA, the file may also contain copies of applications, Letters Patent, and related materials.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 4502, General provisions; 10 U.S.C. 2320, Rights in technical data; 15 U.S.C. 3710b, Rewards for scientific, engineering, and technical personnel of federal agencies; 15 U.S.C. 3711d, Employee activities; 35 U.S.C. 181–185, Secrecy of Certain Inventions and Filing Applications in Foreign Countries; E.O. 9397 (SSN); and E.O. 10096 (Inventions Made by Government Employees) as amended by E.O. 10930.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Data is maintained for making determinations regarding and recording DLA interest in the acquisition of patents; for documenting the patent process; and for documenting any rights of the inventor. The records may also used in conjunction with the employee award program, where appropriate.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Add two new paragraphs 'To the U.S. Patent and Trademark Office for use in processing applications and performing related functions and responsibilities under Title 35 of the U.S. Code.

To foreign government patent offices for the purpose of securing foreign patent rights.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, or guarded cabinets. The electronic records systems employ user identification and password or smart card technology protocols.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records maintained by Headquarters and field Offices of Counsel are destroyed 26 years after file is closed. Records maintained by field level Offices of Counsel where patent applications are not prepared are destroyed 7 years after closure.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Inventors, reviewers, evaluators, officials of U.S. and foreign patent offices, and other persons having a direct interest in the file.'

* * * * *

S100.70

SYSTEM NAME:

Invention Disclosure.

SYSTEM LOCATION:

Office of the General Counsel, HQ DLA–DG, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the offices of counsel of the DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and military personnel assigned to DLA who have submitted invention disclosures to DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inventor's name, Social Security Number, address, and telephone numbers; descriptions of inventions; designs or drawings, as appropriate; evaluations of patentability; recommendations for employee awards; licensing documents; and similar records. Where patent protection is pursued by DLA, the file may also contain copies of applications, Letters Patent, and related materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 4502, General provisions; 10 U.S.C. 2320, Rights in technical data; 15 U.S.C. 3710b, Rewards for scientific, engineering, and technical personnel of federal agencies; 15 U.S.C. 3711d, Employee activities; 35 U.S.C. 181–185, Secrecy of Certain Inventions and Filing Applications in Foreign Countries; E.O. 9397 (SSN); and E.O. 10096 (Inventions Made by Government Employees) as amended by E.O. 10930.

PURPOSE(S):

Data is maintained for making determinations regarding and recording DLA interest in the acquisition of patents, for documenting the patent process, and for documenting any rights of the inventor. The records may also be used in conjunction with the employee award program, where appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Patent and Trademark Office for use in processing applications and performing related functions and responsibilities under Title 35 of the U.S. Code.

To foreign government patent offices for the purposes of securing foreign patent rights.

Information may be referred to other government agencies or to non-government agencies or to non-government personnel (including contractors or prospective contractors) having an identified interest in a particular invention and the Government's rights therein.

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and computerized form.

RETRIEVABILITY:

Filed by names of inventors.

SAFEGUARDS:

Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, or guarded cabinets. The electronic records systems employ user identification and password or smart card technology protocols.

RETENTION AND DISPOSAL:

Records maintained by the HQ and field Offices of Counsel are destroyed 26 years after file is closed. Records maintained by field level Offices of Counsel where patent applications are not prepared are destroyed 7 years after closure.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, Headquarters, Defense Logistics Agency, ATTN: DG, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or the Privacy Officers at DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or the Privacy Officers at the DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals should provide information that contains full name, current address and telephone numbers of requester.

For personal visits, each individual shall provide acceptable identification, *e.g.*, driver's license or identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Inventors, reviewers, evaluators, officials of U.S. and foreign patent offices, and other persons having a direct interest in the file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–2540 Filed 2–5–04; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army: Corps of Engineers

Availability of the Draft Environmental Impact Statement (DEIS), for the Pike County, KY (Levisa Fork Basin), Section 202 Project

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

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Huntington District has prepared a Draft Environmental Impact Statement (DEIS) in response to section 202 of the Water Resources Development Act of 1996 (WRDA). This act authorizes the Corps to design, construct and implement flood damage reduction measures relating to the Levisa and Tug Fork of the Big Sandy River and Cumberland River in West Virginia, Kentucky and Virginia. The DEIS documents analyses of flood damage reduction measures that would provide protection for the Levisa Fork and Russell Fork basins within Pike County, Kentucky against flooding such as occurred in April 1977, the flood of record for most of the county.

DATES: The agency must receive comments on or before March 26, 2004, to ensure consideration in final plan development. A public hearing on the Pike County, Kentucky (Levisa Fork Basin), Section 202 Project DEIS will be held at the Pikeville High School, 120 Championship Drive, Pikeville, Kentucky on Thursday, March 4, 2004, beginning at 5 p.m.

ADDRESSES: Send written comments and suggestions concerning this proposed project to S. Michael Worley, PM–PD, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV 25701–2070. Telephone: (304) 399–5636 or Fax: (304) 399–5136. Requests for copies of the DEIS or to be placed on the mailing list should also be sent to this address. Submit electronic comments in ASCII, Microsoft Word, or Word Perfect file format to *Stephen.M.Worley@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the proposed project, contact Mr. Mark D. Kessinger, PM–P, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV 25701–2070. Telephone: (304) 399–5083. Electronic mail: *Mark.d.kessinger@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Detailed project studies have included consideration of a number of basin-wide and local flood damage reduction measures including floodwall/levee systems protecting Pikeville and Coal Run, non-structural flood-proofing measures, floodplain acquisition and ring walls protecting several individual structures. The project would provide flood protection measures to approximately 2,000 structures, 75 percent of which are residential. Three alternatives, based on these flood damage reduction measures, along with the no action alternative, have been evaluated in detail and the results documented in the DEIS.

A public hearing on the DEIS will be held at Pikeville High School (see **DATES**). The hearing will provide an opportunity for the public to present oral and/or written comments. All persons and organizations that have an interest in the Levisa Fork Basin flooding problems as they affect Pike County and the environment are urged to participate in this meeting.

USACE has distributed copies of the DEIS to appropriate Members of Congress, State and local government officials in Kentucky, Federal agencies, and other interested parties. Copies of the document may be obtained by contacting USACE Huntington District Office of the Corps of Engineers (See **ADDRESSES**) and are available for public review at the following locations:

(1) Pike County Public Library, 119 College Street, Pikeville, Kentucky 41522.

(2) Pike County Public Library, Elkhorn City Branch, 309 Main Street, Elkhorn City, KY 41522.

(3) Pike County Public Library, Phelps Branch, 38575 State Highway 194 E., Phelps, KY 41553.

(4) Vesta Roberts Johnson Memorial Library, Virgie, KY 41572.

(5) Frank M. Allara Library, Pikeville College, 147 Sycamore Street, Pikeville, KY 41500.

(6) US Army Corps of Engineers, Room 3100, 502 Eighth Street PD-R, Huntington, WV 25701.

(7) Internet–*http://www.lrh.usace.army.mil/projects/current/pikelevisafork.*

After the public comment period ends on March 26, 2004, USACE will consider all comments received. The Draft EIS will be revised as appropriate, and a Final EIS will be issued.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–2499 Filed 2–5–04; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–533–009]

Algonquin Gas Transmission Company; Notice of Compliance Filing

January 30, 2004.

Take notice that on January 21, 2004, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to become effective March 4, 2003:

Second Sub Second Revised Sheet No. 632
Second Sub Fourth Revised Sheet No. 633
Third Sub First Revised Sheet No. 634
Second Sub Fourth Revised Sheet No. 800
Second Sub Fourth Revised Sheet No. 810
Second Sub Fourth Revised Sheet No. 820
Second Sub Fourth Revised Sheet No. 830
Second Sub Second Revised Sheet No. 900
Second Sub Tenth Revised Sheet No. 940

Algonquin states that the filing is being made to comply with the Commission's Order issued on December 22, 2003, in the above captioned proceeding.

Algonquin states that copies of the filing have been served upon all affected customers, interested state commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–202 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–144–000]

ANR Pipeline Company; Notice of Tariff Filing

January 30, 2004.

Take notice that on January 26, 2004, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets referenced as Exhibit "A" to the filing, with an effective date of March 1, 2004.

ANR states that it is tendering the revised tariff sheets to revise ANR's FERC Gas Tariff to include an updated Request for Service form and corresponding changes to the General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections

385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–211 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–006]

Dauphin Island Gathering Partners; Notice of Negotiated Rates

January 30, 2004.

Take notice that on January 27, 2004, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixteenth Revised Sheet No. 9 and Thirteenth Revised Sheet No. 10, to become effective January 1, 2004.

Dauphin Island states that these tariff sheets reflect changes to Maximum Daily Quantities (MDQ's) and a shipper name.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–207 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–021]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

January 30, 2004.

Take notice that on January 20, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sub Original Sheet No. 80, to be effective November 1, 2003.

Gulfstream states that it is filing this tariff sheet to comply with the Commission's January 9, 2004, Order in the captioned docket regarding negotiated rate transactions under Rate Schedule ITS and Rate Schedule PALS.

Gulfstream states that copies of its filing have been mailed to all parties on the Commission's Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–204 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–153–006]

Horizon Pipeline Company, L.L.C.; Notice of Compliance Filing

January 30, 2004.

Take notice that on January 26, 2004, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, certain tariff sheets, to be effective December 19, 2003.

Horizon states that the purpose of this filing is to comply with the Commission's Order on Rehearing and Compliance Filing issued in the captioned docket on December 19, 2003 (Order). The Order addressed the one remaining issue pending in Horizon's Order No. 637 compliance plan.

Horizon states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP02–153–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–203 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–363–008]

North Baja Pipeline, LLC; Notice of Compliance Filing

January 30, 2004.

Take notice that on January 23, 2004, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing. NBP requests that the Commission accept certain of the proposed tariff sheets to be effective August 12, 2002, and the remainder to be effective February 28, 2003.

NBP states that the filing is being made to comply with the Commission's December 24, 2003 Order Denying Rehearing and Clarifying Prior Order and Accepting Compliance Filings Subject to Modification.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–205 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85–60–016]

Overthrust Pipeline Company; Notice of Report of Refunds

January 30, 2004.

Take notice that on January 20, 2004, Overthrust Pipeline Company tendered for filing a refund report. Overthrust states that the report documents refunds of amounts pertaining to and detailing the Deferred Income Tax (DIT) refund payments for the year 2003.

Overthrust states that it is filing the refund report pursuant to a Commission Order issued May 21, 1991, "Order Approving Settlement with Modifications" in Docket Nos. RP85–60–000 and –002. Overthrust explains that Article V of the settlement, as modified, requires Overthrust to file an annual report 60 days after making the actual DIT refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: February 6, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–194 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–57–000]

Southern Star Central Gas Pipeline, Inc; Notice of Application

January 30, 2004.

Take notice that on January 23, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP04–57–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon the Carter-Waters 4-inch pipeline XS–6 and appurtenant facilities and one domestic tap in Platte County, Missouri, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern Star states the pipeline was constructed in 1950 to provide gas service to The Carter-Waters Corporation (Buildex), a quarry operation near New Market, Missouri, for use in its haydite plant. Souther Star further states that the Buildex measurement facilities were relocated in 1999 to the nearby Dearborn 6-inch pipeline XS–7 in order to locate them outside of the quarry area, and the Carter-Waters pipeline is no longer needed to provide the gas service for which it was originally constructed. Southern Star states that it proposes to abandon the pipeline in place where the land restoration to original condition will be difficult to obtain and to reclaim those sections where the land can be backfilled and seeded to restore to original condition and all aboveground auxiliary facilities such as meters, piping, regulators and fencing will be reclaimed. Southern Star states that those domestic customers who do not

have a tap clause on another pipeline will be converted at Southern Star's sole expense to propane gas service.

Any questions concerning this application may be directed to David N. Roberts, Manager, Regulatory Affairs, at (270) 852–4654.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary." Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 20, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–195 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–330–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

January 30, 2004.

Take notice that on January 21, 2004, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, First Revised Sheet No. 1401 to be made effective February 1, 2004.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–212 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–116–001]

Texas Eastern Transmission, LP; Notice of Compliance Filing

January 30, 2004.

Take notice that on January 26, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Sub Original Sheet No. 521A, to be effective January 18, 2004.

Texas Eastern states that it is making this filing in compliance with an Order issued by the Commission in the captioned docket on January 16, 2004. The January 16 Order accepted Original Sheet No. 521A, subject to Texas Eastern's submission, within 15 days, of revised tariff language reflecting certain modifications specified in the order.

Texas Eastern states that copies of its filing have been served upon all affected customers of Texas Eastern and interested State commissions, and to all parties on the official service list compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–208 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–143–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

January 30, 2004.

Take notice that on January 26, 2004, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective March 1, 2004:

Second Revised Sheet No. 200
Original Sheet No. 268
Original Sheet No. 269
Sheet Nos. 270—299

TransColorado states that it is making this filing to clarify its discounting provisions to the General Terms and Conditions of TransColorado's FERC Gas Tariff to reflect the order in which the components of the maximum rate shall be discounted, and generic types of discount agreements that TransColorado may enter into with shippers on its system without creating a material deviation from TransColorado's pro forma service agreement.

TransColorado states that a copy of this filing has been served upon all of

its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–210 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–13–004 and RP01–236–014]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

January 30, 2004.

Take notice that on January 23, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 374O.01, which tariff sheet is proposed to be effective January 23, 2004.

Transco states that the purpose of this filing is to comply with the Commission's "Order on Tariff Filing and Request for Clarification" issued on December 24, 2003, in the referenced dockets, in which the Commission directed Transco to file, within 30 days, revised tariff sheets to modify its right of first refusal provisions.

Transco states that copies of the filing are being mailed to parties included on the official service list in the referenced dockets, interested State Commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–206 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–117–001]

Trunkline Gas Company, LLC; Notice of Compliance Filing

January 30, 2004.

Take notice that on January 26, 2004, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sub First Revised Sheet No. 323, to be effective January 22, 2004.

Trunkline states that this filing is being made to comply with the Commission's Letter Order dated January 21, 2004, in Docket No. RP04–117–000.

Trunkline states that copies of this filing are being served on all affected shippers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–209 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–61–000, et al.]

Reliant Energy Choctaw County, LLC, et al.; Electric Rate and Corporate Filings

January 30, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Reliant Energy Choctaw County, LLC

[Docket No. EL04–61–000]

Take notice that on January 29, 2004, pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2003), Reliant Energy Choctaw County, LLC (Reliant Energy Choctaw) filed a Complaint Requesting That The Federal Energy Regulatory Commission Issue An Order Requiring Entergy Services, Inc. To Comply With Commission Orders And Further Requesting Fast Track Processing.

Reliant Energy Choctaw avers that Entergy Services, Inc. is violating Commission precedent regarding the flexible use of transmission credits.

Comment Date: February 19, 2004.

2. Pure Energy, Inc.

[Docket No. ER04–452–000]

Take notice that on January 20, 2004, Pure Energy, LLC tendered for a change of the structure of the company from a limited liability company (LLC) to a corporation (INC); Pure Energy, LLC has changed to Pure Energy, Inc.

Comment Date: February 10, 2004.

3. Louis Dreyfus Energy LL

[Docket No. ER04–465–000]

Take notice that on December 16, 2003, Louis Dreyfus Energy LLC (LDE) filed to make ministerial changes to it First Revised Rate Schedule FERC No. 1.

Comment Date: February 6, 2004.

4. Powerex Corp.

[Docket No. ER04–466–000]

Take notice that on December 17, 2003, Powerex Corp. (Powerex) tendered revisions to its Second Revised FERC Electric Rate Schedule No. 1.

Comment Date: February 6, 2004.

5. The Clark Fort and Blackfoot, L.L.C.

[Docket No. ER04–467–000]

Take notice that on December 17, 2003, The Clark Fort and Blackfoot, L.L.C. (TCFB) tendered for filing revisions to its FERC Electric Tariff, First Revised Volume No. 1.

Comment Date: February 6, 2004.

6. AES Eastern Energy, L.P.

[Docket No. ER04–468–000]

Take notice that on December 17, 2003, AES Eastern Energy, L.P., AES Creative Resources, L.P. and AEE 2, L.L.C. (collectively, the AES Parties) tendered for filing revisions to certain ministerial changes to the AES Parties' Codes of Conduct to reflect that they are no longer affiliated with Central Illinois Light Company.

Comment Date: February 6, 2004.

7. FortisOntario, Inc.

[Docket No. ER04–469–000]

Take notice that on December 16, 2003, FortisOntario, Inc. tendered for filing an application for authorization to remove prohibition on inter-affiliate sales and a cancellation of code of conduct.

Comment Date: February 6, 2004.

8. CAM Energy Products, Inc.

[Docket No. ER04–481–000]

Take notice that on December 17, 2003, CAM Energy Products, LP (CAM) tendered for filing an amended Rate Schedule No. 1 to expand its authority to resell firm transmission rights, or their equivalent, beyond the PJM Interconnection, L.L.C. and New York markets.

Comment Date: February 6, 2004.

9. Global Common Greenport, LLC

[Docket No. ER04–482–000]

Take notice that on December 17, 2003, Global Common Greenport, LLC (GCG) filed revisions to its revised Rate Schedule FERC No. 1.

Comment Date: February 6, 2004.

10. LMP Capital, LLC

[Docket No. ER04–483–000]

Take notice that on December 17, 2003, LMP Capital, LLC (LMP Capital) tendered for filing are amended Rate Schedule No. 1 to update LMP Capital's authorizations to include resale of auction revenue rights.

Comment Date: February 6, 2004.

11. MS Retail Development Corp.

[Docket No. ER04–488–000]

Take notice that on December 17, 2003, MS Retail Development Corp., filed revisions to its market-based rate schedule to update certain rate schedule provisions.

Comment Date: February 6, 2004.

12. PacifiCorp

[Docket No. ER04–489–000]

Take notice that on December 17, 2003, PacifiCorp tendered for filing proposed changes to its market based rate tariff to eliminate terms and conditions that conflict with the various standard agreements under which PacifiCorp and the industry now transact.

Comment Date: February 6, 2004.

13. Merrill Lynch Capital Services, Inc.

[Docket No. ER04–490–000]

Take notice that on December 17, 2003, Merrill Lynch Capital Services, Inc., filed revisions to its market-based rate schedule to update certain rate schedule provisions.

Comment Date: February 6, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–213 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–310–000, et al.]

Morgan Stanley Capital Group, Inc., et al.; Electric Rate and Corporate Filings

January 29, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Morgan Stanley Capital Group, Inc.

[Docket No. ER04–310–000]

Take notice that on December 17, 2003, Morgan Stanley Capital Group, Inc., (MSCG) tendered for filing proposed changes to its First Revised Rate Schedule FERC No. 1 to authorize sales of ancillary services, reassignments of transmission capacity and resale of firm transmission rights.

Comment Date: February 6, 2004.

2. Nevada Power Company and Sierra Pacific Power Company

[Docket No. ER04–418–000]

Take notice that on January 21, 2004, Nevada Power Company and Sierra Pacific Power Company) submitted a compliance filing pursuant to the notice Clarifying Compliance Procedures issued January 8, 2004, in Docket Nos. RM02–1–000 and 001.

Comment Date: February 11, 2004.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–429–000]

Take notice that on January 21, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO), pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12 (2002), submitted for filing an Interconnection and Operating Agreement among Manitowoc Public Utilities, a municipal electric utility operated under Chap. 66, Wisconsin Statutes and political subdivision of the State of Wisconsin, the Midwest ISO and American Transmission Company LLC.

Midwest ISO states that a copy of this filing was served on the applicable parties.

Comment Date: February 11, 2004.

4. Ameren Services Company

[Docket No. ER04–430–000]

Take notice that on January 21, 2004, Ameren Services Company (ASC) tendered for filing an executed Network Integration Transmission Service and Network Operating Agreement between ASC and the City of Linneus, Missouri. ASC states that the purpose of the Agreements is to permit ASC to provide transmission service to the City of Linneus, Missouri, pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: February 11, 2004.

5. Southwest Power Pool, Inc.

[Docket No.ER04–434–000]

Take notice that on January 20, 2004, the Southwest Power Pool, Inc. (SPP) submitted to the Federal Energy Regulatory Commission a compliance filing providing for changes to its currently effective Open Access Transmission Tariff (OATT). Specifically, SPP states that it filed proposed revisions in its standard Large Generator Interconnection Agreement (LGIA) and Large Generator Interconnection Procedures (LGIP), in accordance with Order No. 2003.

SPP states that it has served a copy of its transmittal letter on each of its Members and Customers, as well as on all generators in existing generation queue. SPP states that a complete copy of this filing will be posted on the SPP Web site *http://www.spp.org*, and is also being served on all affected State commissions.

Comment Date: February 11, 2004.

6. Southern California Edison Company

[Docket No. ER04–435–000]

Take notice that on January 20, 2004, Southern California Edison Company (SCE) tendered for filing revisions to its Transmission Owner Tariff in compliance with Commission Order No. 2003, Standardization of Generator Interconnection Agreements and Procedures.

Comment Date: February 10, 2004.

7. Tampa Electric Company

[Docket No. ER04–436–000]

Take notice that on January 20, 2004, Tampa Electric Company (Tampa Electric) tendered for filing open access transmission tariff sheets containing the Large Generator Interconnection Procedures and the Large Generator Interconnection Agreement that the Commission adopted in Order No. 2003, Standardization of Generator Interconnection Agreements and Procedures ¶ 31,146 (2003). Tampa Electric is requesting an effective date of January 20, 2004.

Tampa Electric states that the filing has been served on the customers under Tampa Electric's open access transmission tariff and the Florida Public Service Commission.

Comment Date: February 10, 2004.

8. Idaho Power Company

[Docket No. ER04–437–000]

Take notice that on January 20, 2004, Idaho Power Company in compliance with Order No. 2003, Standardization of Generator Interconnection Agreements and Procedures, FERC Stats. & Regs. Preambles ¶ 31,146 (2003), tendered for filing Attachment J to its revised Open Access Transmission Tariff, FERC Electric Tariff First Revised Volume No. 1.

Comment Date: February 10, 2004.

9. Novarco Ltd.

[Docket No. ER04–438–000]

Take notice that on January 20, 2004, Navarco Ltd. tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 1.

Comment Date: February 10, 2004.

10. PacifiCorp

[Docket No. ER04–439–000]

Take notice that PacifiCorp on January 20, 2004, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, revisions to Schedules 4, 7, and 8 and Attachments M and S to PacifiCorp's Open Access Transmission Tariff.

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and PacifiCorp's Network Customers.

Comment Date: February 10, 2004.

11. PSI Energy, Inc.

[Docket No. ER04–440–000]

Take notice that on January 20, 2004, PSI Energy, Inc., (PSI) tendered for filing the Transmission and Local Facilities Agreement for Calendar Year 2002 Reconciliation between PSI and Wabash Valley Power Association, Inc., and between PSI and Indiana Municipal Power Agency. PSI Energy, Inc., states that the Transmission and Local Facilities Agreement has been designated as PSI's Rate Schedule FERC No. 253.

Comment Date: February 10, 2004.

12. San Diego Gas & Electric Company

[Docket No. ER04–441–000]

Take notice that on January 20, 2004, San Diego Gas & Electric Company (SDG&E) tendered for filing its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Original Volume No. 11 and the first revised rate sheets for its TO Tariff to comply with the Federal Energy Regulatory Commission's Order No. 2003.

SDG&E states that copies of this filing were served upon the California Public Utilities Commission.

Comment Date: February 10, 2004.

13. Arizona Public Service Company

[Docket No. ER04–442–000]

Take notice that on January 20, 2004, Arizona Public Service Company (APS) tendered for filing revisions to its Open Access Transmission Tariff (OATT) in order to comply with Order 2003 in FERC Docket Nos. RM02–1–000 and 001. APS requests an effective date of January 20, 2004.

APS states that a copy of the transmittal letter has been served on the Arizona Corporation Commission and all customers taking service under APS' OATT. APS further states that copies of the complete filing can be found at *http://www.azpsoasis.com.*

Comment Date: February 10, 2004.

14. Pacific Gas and Electric Company

[Docket No. ER04–443–000]

Take notice that on January 20, 2004, Pacific Gas and Electric Company (PG&E) tendered for revisions to its Transmission Owner (TO) Tariff, FERC Electric Tariff, Sixth Revised Volume No. 5 to comply with Commission Order No. 2003. PG&E requests that the subject revisions to its TO Tariff become effective on the same date as a companion tariff filing being made by

the California Independent System Operator Corporation in compliance with Order No. 2003.

Comment Date: February 10, 2004.

15. Diverse Power Incorporated (formerly Troup Electric Membership Corp.)

[Docket No. ER04–444–000]

Take a notice that on January 20, 2004, Diverse Power Incorporated, an Electric Membership Corporation, tendered for filing with the Federal Energy Regulatory Commission a compliance filing in response to the Commission's November 17, 2003, Order Amending Market-based Rate Tariffs and Authorizations, in Docket No. EL01–118–000 and 001.

Comment Date: February 10, 2004.

16. California Independent System Operator System

[Docket No. ER04–445–000]

Take notice that on January 20, 2004, California Independent System Operator Corporation (ISO) pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission Regulations, submitted for filing its Standard Large Generator Interconnection Procedures compliance with Order No. 2003. The ISO states that it included the related pro forma interconnection study agreements, which will not be part of the ISO Tariff, and related ISO Tariff amendments for Commission approval.

Comment Date: February 10, 2004.

17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–446–000]

Take notice that on January 20, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a proposed Schedule 10–FERC–METC of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. Midwest ISO is requested an effective date of January 21, 2004.

The Midwest ISO requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region and in addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: February 10, 2004.

18. PacifiCorp

[Docket No. ER04–447–000]

Take notice that on January 20, 2004, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) a request for an extension of time to adopt the pro forma large generator interconnection tariff provisions (*pro forma*) of the Commission's Order No. 2003 or, in the alternative, a request for acceptance by the Commission of PacifiCorp's amended large generator interconnection provisions for incorporation into its open access transmission tariff.

PacifiCorp states that the filing was served upon all appropriate parties.

Comment Date: February 10, 2004.

19. El Paso Electric Company

[Docket No. ER04–448–000]

Take notice that on January 20, 2004, El Paso Electric Company in compliance with Order No. 2003, Standardization of Generator Interconnection Agreements and Procedures, FERC Stats. & Regs. Preambles ¶ 31,146 (2003), tendered for filing Attachment J to its revised Open Access Transmission Tariff, FERC Electric Tariff Third Revised Volume No. 1.

Comment Date: February 10, 2004.

20. New York Independent System Operator Inc.

[Docket No. ER04–449–000]

Take notice that on January 20, 2004, the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners filed a joint Compliance Filing pursuant to Order No. 2003.

NYISO states that it has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: February 10, 2004.

21. Citizens Communications Company

[Docket No. ER04–450–000]

Take notice that on January 20, 2004, Citizens Communications Company (Citizens) filed with the Federal Energy Regulatory Commission a Notice of Cancellation of its FERC Electric Tariff Original Volume No. 2 and all Service Agreements thereunder. Citizens states that it filed the Notice of Cancellation in connection with the sale of its remaining jurisdictional assets in Vermont to Vermont Electric Cooperative, Inc. (VEC).

Comment Date: February 10, 2004.

22. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–453–000]

Take notice that on January 21, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12 (2002), the submitted for filing an Interconnection and Operating Agreement among Borderline Wind, LLC, the Midwest ISO and Otter Tail Power Company, a division of Otter Tail Corporation.

Midwest ISO states that a copy of this filing was served on the applicable parties.

Comment Date: February 11, 2004.

23. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–454–000]

Take notice that on January 21, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12 (2002), submitted for filing an Interconnection and Operating Agreement among GM Transmission, LLC, the Midwest ISO and Interstate Power and Light Company, a wholly owned subsidiary of Alliant Energy Corporation.

Midwest ISO states that a copy of this filing was served on the applicable parties.

Comment Date: February 11, 2004.

24. Duke Energy Corporation

[Docket No. ER04–455–000]

Take notice that on January 21, 2004, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing a new Service Agreement for Network Integration Transmission Service between Duke and each of Energy United Electric Membership Corporation, Piedmont Electric Membership Corporation, Blue Ridge Electric Membership Corporation, Rutherford Electric Membership Corporation, and Western Carolina Energy, LLC. Duke seeks an effective date of January 1, 2004.

Comment Date: February 11, 2004.

25. Ameren Services Company

[Docket No. ER04–456–000]

Take notice that on January 20, 2004, Ameren Services Company (Ameren) filed revisions to its open access transmission tariff (OATT) to comply with the Commission's order, issued July 23, 2003, in Docket No. RM02–1–000, by amending Attachment J and setting out in Attachment K the procedures for large generator interconnection, applicable to Generating Facilities that exceed 20 MWs.

Ameren states that it has served copies of this filing on its transmission customers and on the Missouri Public Service Commission and the Illinois Commerce Commission.

Comment Date: February 10, 2004.

26. PJM Interconnection, L.L.C.

[Docket No. ER04–457–000]

Take notice that on January 20, 2004, PJM Interconnection, L.L.C. (PJM) tendered for filing proposed changes to the PJM Open Access Transmission Tariff to comply with the Commission's Order No. 2003, issued July 24, 2003, in Docket No. RM02–1–000.

PJM states that copies of this filing have been served on all PJM Members and the State electric regulatory commissions in the PJM region.

Comment Date: February 10, 2004.

27. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–458–000]

Take notice that on January 20, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), filed proposed revised and original tariff sheets to its Open Access Transmission Tariff to comply with the Federal Energy Regulatory Commission's Standardization of Generator Interconnection Agreements and Procedures, 68 FR 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003).

Comment Date: February 10, 2004.

28. Southern Company Services, Inc.

[Docket No. ER04–459–000]

Take notice that on January 20, 2004, Southern Company Services, Inc., on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company, submitted a filing pursuant to the Notice Clarifying Compliance Procedures issued in Docket No. RM02–1–000 on January 8, 2004.

Comment Date: February 10, 2004.

29. Tucson Electric Power Company UNS Electric, Inc.

[Docket No. ER04–460–000]

Take notice that on January 20, 2004, Tucson Electric Power Company (Tucson Electric) and UNS Electric, Inc. (UNS Electric) submitted a joint compliance filing pursuant to Order No. 2003, Standardization of Generator Interconnection Agreements and Procedures ¶ 31,146 (2003).

Comment Date: February 10, 2004.

30. Eagle Energy Partners I, L.P.

[Docket No. ER04–463–000]

On December 17, 2003, Eagle Energy Partners I, L.P. tendered for filing a name change from Eagle Energy Partners, Inc. This filing is in compliance with Order No. 614.

Comment Date: February 6, 2004.

31. Devon Power LLC, Middletown Power LLC, Montville Power LLC, and NRG Power Marketing Inc.

[Docket Nos. ER04–464–000 and 001, and ER04–23–002 and 003 (not consolidated)]

Take notice that on January 16, 2004, as amended on January 22, 2004, Devon Power LLC, Middletown Power LLC, and Montville Power LLC (Applicants), and NRG Power Marketing Inc. (PMI), acting as agent for Applicants, tendered for filing, pursuant to section 205 of the Federal Power Act and part 35 of the Federal Energy Regulatory Commission's regulations, Reliability Must Run Agreements among each of the Applicants, PMI and ISO New England Inc.

Applicants state that they have provided copies of the filings to ISO–NE and served each person designated on the official service list in Docket Nos. ER04–23–000.

Comment Date: February 12, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–214 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2100–119]

California Department of Water Resources; Notice of Availability of Draft Environmental Assessment

January 30, 2004.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission or FERC) regulations (18 CFR part 380), the Commission staff reviewed an application for amendment to the approved recreation plan for the Feather River Project (FERC No. 2100) and prepared a draft environmental assessment (EA) on the application. The project is located on the Feather River in Butte County, California, near the city of Oroville.

Specifically, the project licensee, the California Department of Water Resources, has requested that the Commission amend the approved recreation plan for the project to allow shared use of certain recreation trails within the project boundaries. In the EA, the Commission staff analyzes the probable environmental effects of the proposed amendment and concludes that the proposal should not be approved.

Copies of the DEA are available for review in Public Reference Room 2-A of the Commission's offices at 888 First Street, NE., Washington, DC. The DEA also may be viewed on the Commission's Web site (*http://www.ferc.gov*) using the eLibrary (formerly FERRIS) link. Additional information about the project is available from the Commission's Office

of External Affairs, at (202) 502–8004, or on the Commission's Web site using the eLibrary link. You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

Any comments on the DEA should be filed within 30 days of the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference "Feather River Project, FERC Project No. 2100–119" on all comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–198 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 30, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license.

b. *Project No.:* 2514–086.

c. *Date Filed:* January 8, 2004.

d. *Applicant:* Appalachian Power Company, Virginia.

e. *Name of Project:* Byllesby/Buck Project.

f. *Location:* The project is located on the New River in Carroll County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 18 CFR 4.38(a)(4)(v).

h. *Applicant Contact:* Frank M. Simms, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Eric Gross at (202) 502–6213, or e-mail address: *eric.gross@ferc.gov.*

j. *Deadline for filing comments and or motions:* March 1, 2004.

k. *Description of Request:* The Appalachian Power Company is requesting a temporary variance to their license to allow them to lower the reservoir at the Byllesby Development by up to 11 feet below the licensed minimum elevation. The variance is needed to perform routine maintenance on the spillway and tainter gates. The drawdown would occur from May 1 through October 15 in 2004 and 2005.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*— Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*— Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–199 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

January 30, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands and Waters.

b. *Project No*: 349–091.

c. *Date Filed*: January 16, 2004.

d. *Applicant*: Alabama Power Company.

e. *Name of Project*: Martin Dam Hydroelectric Project.

f. *Location*: Lake Martin in Tallapoosa County, Alabama.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a), 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Keith E. Bryant, Sr. Engineer, Hydro Services, Alabama Power, 600 North 18th Street, Post Office Box 2641, Birmingham, Alabama 35291, (205) 257–1403.

i. *FERC Contacts*: Any questions on this notice should be addressed to Ms. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for filing comments and or motions*: March 1, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–349–091) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Proposal:* Alabama Power Company is requesting Commission approval to permit Harbor Pointe Development to use project lands below the 490-foot contour to accommodate the following: (1) Installation of a total of 64 new boat slips; (2) relocation and upgrade of a walkway and fuel dock; (3) relocation and upgrade of the sewage pump out station; (4) construction of a seawall approximately 2,812 feet long (of which 400 feet are presently under construction pursuant to the Commission's Order Approving Non-Project Use of Project Lands issued December 23, 2003); and (5) the construction of a new boat ramp. The marina presently consists of 153 floating boat slips, a fuel dock and sewage pump out station. The marina is located on the Blue Creek portion of Lake Martin within the StillWaters Resort near Dadeville, Tallapoosa County, Alabama.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, D.C. 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCOnLineSupport@ferc.gov.* For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–200 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

January 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 8866–006.

c. *Date Filed:* November 12, 2003, supplemented on January 23, 2004.

d. *Applicants:* Jerry Lou Jaramillo, William J. Stevenson, and Linda S. Akers, co-personal representatives of the Estate of Lynn E. Stevenson (Transferor) and N. Stanley Standal, Jr. and Loretta M. Standal (Transferees).

e. *Name of Project:* Project No. 2.

f. *Location:* On an unnamed tributary of the Snake River in Gooding County, Idaho near the town of Bliss.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* N. Stanley Standal, Jr., 609 River Road, Bliss, Idaho 83314.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* March 1, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–8866–006) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* Jerry Lou Jaramillo, William J. Stevenson, and Linda S. Akers, as co-personal representatives of the Estate of Lynn E. Stevenson, and N. Stanley Standal, Jr. and Loretta M. Standal jointly seek Commission approval to transfer the license for Project No. 2 from Lynn E. Stevenson to N. Stanley Standal, Jr. and Loretta M. Standal.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–201 Filed 2–5–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7619–2]

Proposed Settlement Agreement, Clean Air Act Petitions For Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address one of four issues briefed in lawsuits filed by Sierra Club and Georgia ForestWatch (collectively, "Petitioners"): *Sierra Club* v. *Leavitt,* Nos. 03–10262–F & 03–10263–F, and *Georgia ForestWatch* v. *Leavitt,* Nos. 03–10264–F and 03–10265–F (11th Cir.) (consolidated). On or about January 16, 2003, Petitioners filed petitions for review of four orders in which the Administrator denied Petitioners' administrative petitions requesting that EPA object to operating permits issued by the Georgia Department of Natural Resources, Environmental Protection Division ("Georgia EPD"), under title V of the Act for four facilities in Georgia. The petitions for review, which have been consolidated, seek a court order requiring EPA to object to the permits based on Petitioners' allegations that the permits fail to comply with aspects of Georgia's title V program, the Act and EPA's title V implementing regulations. One of Petitioners' allegations is that EPA was required to object to the title V operating permit issued by Georgia EPD for the Monroe Power facility in Monroe (Walton County), Georgia, because the permit contains inadequate monitoring for carbon monoxide. Under the terms of the proposed settlement agreement, EPA and Petitioners (collectively, the "Parties") jointly would request that the court stay the oral argument (scheduled for January 29, 2004) and hold the consolidated cases in abeyance while Georgia EPD proposes to reopen and revise the Monroe Power title V permit to require continuous monitoring of carbon monoxide emissions from two combustion turbines and to include certain related requirements. If the permit were revised consistent with the draft permit revisions attached to the proposed settlement agreement, the Parties jointly would notify the court that their dispute concerning the Monroe Power carbon monoxide monitoring issue had been resolved and would ask that the court set a date for oral argument on the remaining issues in the consolidated cases.

DATES: Written comments on the proposed settlement agreement must be received by March 8, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2004–0002, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Kerry E. Rodgers, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 564–5671.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

On or about January 16, 2003, Petitioners filed four petitions for review with the U.S. Court of Appeals for the Eleventh Circuit challenging four orders in which the Administrator of the EPA denied administrative petitions filed by Sierra Club and Georgia ForestWatch. The administrative petitions asked the Administrator to object to operating permits issued by the Georgia Department of Natural Resources, Environmental Protection Division ("Georgia EPD"), pursuant to title V of the Clean Air Act ("Act"), 42 U.S.C. 7661–7661f, for four facilities in Georgia: (1) King America Finishing, Inc.; (2) Monroe Power Company; (3) Shaw Industries, Inc., Plant No. 2; and (4) Shaw Industries, Inc., Plant No. 80 (collectively, "Shaw").[1] The petitions for review asked the court to order EPA to object to the permits based on Petitioners' allegations that the permits violate aspects of Georgia's title V operating permits program and fail to meet certain requirements of the Act and EPA's title V implementing regulations at 40 CFR part 70. Specifically, Petitioners sought to require EPA to object to the permits issued to King Finishing, Monroe Power and Shaw based on the State's requirements for reporting monitoring results and the content of the State's public notices of draft permits. Sierra Club also sought to require EPA to object to the King Finishing permit because Georgia EPD did not use a mailing list as one of several means of providing public notice of the draft permit. Finally, Sierra Club sought to require EPA to object to the Monroe Power permit based on allegations that the permit contains inadequate monitoring requirements for carbon monoxide ("CO") emissions from two combustion turbines. The permit relies on continuous monitoring of nitrogen

[1] EPA published notice of the orders at 67 FR 69739, 69740 (November 19, 2002), and at 67 FR 79610, 79611 (December 30, 2002). The orders are available at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiandb/petitiondb2001.htm.*

oxides ("NO_X") as a surrogate for CO, rather than direct monitoring of CO. In an order signed on October 9, 2002, the Administrator found that this approach complies with the Act and therefore denied Sierra Club's administrative petition for an objection to the Monroe Power permit based on the adequacy of the CO monitoring requirements.

The proposed settlement agreement only concerns the Parties' dispute over the adequacy of the CO monitoring requirements in the Monroe Power permit. It does not address the other issues in the consolidated cases. Under the proposed settlement agreement, the Parties jointly would request that the court stay the oral argument (scheduled for January 29, 2004) and hold the consolidated cases in abeyance while Georgia EPD proposes to reopen and revise the title V operating permit issued for the Monroe Power facility in Monroe (Walton County), Georgia, to require continuous monitoring of CO emissions and to include certain related requirements as set forth in the draft permit revisions attached to the proposed settlement agreement.[2] Petitioners could ask the court to lift the stay if certain events specified in the proposed settlement agreement occur (*e.g.*, if Georgia EPD did not propose the draft permit revisions within a certain time) and the Parties could not resolve their dispute through mediation. If the permit were revised consistent with the draft permit revisions attached to the proposed settlement agreement, the Parties jointly would notify the court that their dispute concerning the Monroe Power CO monitoring issue had been resolved and would ask that the court set a new date for oral argument on the remaining issues in the consolidated cases. The proposed settlement agreement would reserve Petitioners' right to seek attorneys' fees from the court.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

[2] The Parties filed a "Joint Motion To Stay Proceedings Pending Settlement Discussions" on January 13, 2004. In an order dated January 14, 2004, U.S. Circuit Judge R. Lanier Anderson granted the joint motion and directed EPA to file monthly status reports every thirty (30) days beginning February 17, 2004.

II. Additional Information About Commenting on the Proposed Settlement

A. How Can I Get a Copy of the Settlement?

EPA has established an official public docket for this action under Docket ID No. OGC–2004–0002 which contains a copy of the settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: January 28, 2004.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 04–2623 Filed 2–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6648–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (Erp), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–BIA–L02031–OR Rating EC2, Wanapa Energy Center, Construction and Operation a New 1,200 Megawatt (MW) Natural Gas-Fired Electric Power Generating Facility, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the City of Hermiston and the Port of Umatilla, OR.

Summary: EPA identified environmental concerns with the potential air quality impacts and cumulative effects. EPA recommended that additional information be included in the EIS related to potential air quality impacts, cumulative effects, impact characterizations, mitigation measures, Endangered Species Act implications of the project, range of alternatives evaluated in the EIS and coordination with other decision making processes.

ERP No. D–FHW–G40178–TX Rating EC2, Grand Parkway/TX–99 Segment F–1 Highway Construction, U.S. 290 to TX–249, Funding and US Army COE Section 404 Permit Issuance, Harris, Montgomery, Fort Bend, Liberty, Brazoria, Galveston and Chambers Counties, TX.

Summary: EPA expressed concerns regarding wetland delineation and mitigation. EPA requested that the final EIS include additional information on these issues.

ERP No. D–USN–L11036–WA Rating LO, Fox Island Laboratory Stabilization of In-Water Facilities, Naval Surface Warfare Center, Carderock Division, Pierce County, WA.

Summary: EPA has no objection to the proposed action.

Final EISs

ERP No. F–IBW–G36155–TX, Lower Rio Grande Flood Control Project, Alternative Vegetation Maintenance Practices Impacts, Implementation, Portions of the Rio Grande, Cameron, Hidalgo and Willacy Counties, TX.

Summary: No formal comment letter was sent to the preparing agency.

Dated: February 3, 2004.

Kenneth Mittleholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–2629 Filed 2–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6648–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements

Filed January 26, 2004, Through January 30, 2004,

Pursuant to 40 CFR 1506.9.

EIS No. 040044, FINAL EIS, COE, IL, Programmatic EIS—East St. Louis and Vicinity, Illinois Ecosystem Restoration and Flood Damage Reduction Project, Implementation, Madison and St. Clair Counties, IL, Wait Period Ends: March 8, 2004,. Contact: Deborah Roush (314) 331–8033.

EIS No. 040045, DRAFT EIS, FHW, TX, Grand Parkway (State Highway TX–99) Segment F–2 from TX–249 to Interstate Highway (IH) 45 Construction of a New Location Facility, Right-of-Way Permit and U.S. Army COE Section 404 Permit, City of Houston, Harris County, TX, Comment Period Ends: May 7, 2004, Contact: John R. Mack (512) 536–5960.

EIS No. 040046, FINAL EIS, FHW, OH, OH–161/37 Improvement, from OH–161 (New Albany Bypass) to west of OH–161/37 Interchange with OH–16, Funding, Franklin and Licking Counties, OH, Wait Period Ends: March 8, 2004, Contact: Dennis Decker (614) 469–6896.

EIS No. 040047, DRAFT EIS, FHW, MN, I–94/TH–10 Interregional Connection from St. Cloud to Becker, Transportation Improvements, Funding and U.S. Army COE Section 404 Permit, In the Cities of Becker and St. Cloud, Sherurne, Stearns and Wright Counties, MN, Comment Period Ends: March 23, 2004, Contact: Cheryl Martin (651) 291–6120. This document is available on the Internet at: *http://www.fhwa.dot.gov/mndiv/.*

EIS No. 040048, DRAFT EIS, AFS, MN, Virginia Forest Management Project Area, To Conduct Resource Management Activities on the 101,000 Acres of Federal Land, Superior National Forest, Eastern Region, St. Louis County, MN, Comment Period Ends: March 22, 2004, Contact: Susan Duffy (218) 229–8832. This document is available on the Internet at: *http://www.superiornationalforest.org/.*

EIS No. 040049, FINAL EIS, COE, WA, Centralia Flood Damage Reduction Project, Chehalis River, Lewis and Thurston Counties, WA, Wait Period Ends: March 8, 2004, Contact: George Hart (206) 764–3641. This document is available on the Internet at: *http://www.nws.usace.army.mil.*

EIS No. 040050, DRAFT EIS, NAS, FL, International Space Research Park (ISRP) To Bring New Research and Development Uses to the John F. Kennedy Center, Brevard County, FL, Comment Period Ends: March 22, 2004, Contact: Mario Busacca (321) 867–8456.

EIS No. 040051, FINAL EIS, FHW, CA, I–880/CA–92 Interchange Reconstruction, I–880 from Winton Avenue to Tennyson Road and CA–92 from Hesperian Boulevard to Santa Clara Street, Updated Information, Funding, City of Hayward, Alameda County, CA, Wait Period Ends: March 8, 2004, Contact: Maiser Khaled (916) 498–5020.

EIS No. 040052, FINAL EIS, BLM, OR, Timbered Rock Fire Salvage and Elk Creek Watershed Restoration Project, Implementation, Northwest Forest Plan, Butte Falls Resource Area, Medford District, Douglas, Jackson and Josephine Counties, OR, Wait Period Ends: March 8, 2004, Contact: Jean Williams (541) 840–9989.

EIS No. 040053, DRAFT EIS, COE, CA, Mare Island Reuse of Dredged Material Disposal Ponds, Issuing Section 404 Permit under the Clean Act and Section 10 Permit under the Rivers and Harbor Act, San Francisco Bay Area, City of Vallejo, Solando County, CA, Comment Period Ends: March 22, 2004, Contact: Elizabeth Dyer (415) 977–8451. This document is available on the Internet at: *http://www.mareisland.org.*

EIS No. 040054, FINAL SUPPLEMENT, NOA, MA, ME, RI, NH, CT, VT, NY, NJ, DE, MD, VA and NC, Northeast Multispecies Fishery Management Plan Amendment 13, Provides Detailed Information concerning Management Alternatives and Impact Analysis, Adoption, Approval and Implementation, New England Management Council, ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, VA and

NC, Wait Period Ends: March 8, 2004, Contact: Paul Howard (978) 465–0492.

Dated: February 3, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–2628 Filed 2–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7619–3]

Good Neighbor Environmental Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Good Neighbor Environmental Board, a Federal advisory committee that reports to the President and Congress on environmental and infrastructure projects along the U.S. border with Mexico, will take place in Washington, DC, on February 24 and 25, 2004. It is open to the public.

DATES: On February 24, the meeting will begin at 9:30 a.m. (registration at 9 a.m.) and end at 5:30 p.m. On February 25, the Board will hold its annual Strategic Planning Session from 9 a.m. until 12 noon, and a routine business meeting from 1 p.m. until 4 p.m. (registration at 8:30 a.m.).

ADDRESSES: The meeting site is the Chesapeake Room of the Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC. The nearest metro is Foggy Bottom on the Orange and Blue Line.

FOR FURTHER INFORMATION CONTACT: Elaine M. Koerner, Designated Federal Officer for the Good Neighbor Environmental Board, U.S. Environmental Protection Agency Region 9 Office, 75 Hawthorne St., San Francisco, California, 94105. Tel: Region 9 office: (415) 972–3437; DC office (202) 233-0069. E-mail: *koerner.elaine@epa.gov.*

SUPPLEMENTARY INFORMATION:

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the Designated Federal Officer at least five business days prior to the meeting so that appropriate arrangements can be made.

Agenda: On the first day of the meeting, which begins at 9:30 a.m. (registration at 9 a.m.), the Board will host an expert panel session called Border Environmental Forecast 2004. The morning session will include a panel discussion, followed by a public comment session. After lunch, a second panel discussion will take place, followed by briefings from border-region water experts. In addition, several public officials have been invited to speak throughout the day. The first day of the meeting will conclude at 5:30 p.m.

The second day of the meeting, February 25, begins at 9 a.m., with registration at 8:30 a.m. The morning session will be devoted to the Board's annual Strategic Planning Session. In the afternoon, the Board will hold a routine business meeting. The meeting is scheduled to end at 4 p.m.

Public Attendance: The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public comment session are encouraged to contact the Designated Federal Officer for the Board prior to the meeting.

Background: The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border and in Washington, DC. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The U.S. Environmental Protection Agency gives notice of this meeting of the Good Neighbor Environmental Board pursuant to the Federal Advisory Committee Act (Pub. L. 92–463).

Dated: January 30, 2004.

Mark Joyce,

Associate Director, Committee Management Operations.

[FR Doc. 04–2622 Filed 2–5–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 20, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Thelma Virginia Cummings Guilbeau, Sunset, Louisiana; to retain voting shares of Sunset Bancorp, Inc., Sunset, Louisiana, and thereby indirectly retain voting shares of Bank of Sunset & Trust Company, Sunset, Louisiana.

Board of Governors of the Federal Reserve System, February 2, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–2657 Filed 2–5–04; 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 March 1, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. LBT Bancshares, Inc., Litchfield, Illinois; to acquire 53.98 percent of Security Bancshares, Inc., and thereby indirectly acquire Security National Bank, both of Witt, Illinois.

Board of Governors of the Federal Reserve System, February 2, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–2656 Filed 2–5–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 12% for the quarter ended December 31, 2003. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 29, 2004.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 04–2548 Filed 2–5–04; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0248]

Determination of Regulatory Review Period for Purposes of Patent Extension; EXTRANAEAL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for EXTRANAEAL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product EXTRANAEAL (icodextrin). EXTRANAEAL is indicated for a single daily exchange for the long (8–to 16–hour) dwell during continuous ambulatory peritoneal dialysis (CAPD) or automated peritoneal dialysis (APD) for the management of chronic renal failure. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for EXTRANAEAL (U.S. Patent No. 4,761,237) from Baxter International, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of EXTRANAEAL represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for EXTRANAEAL is 2,207 days. Of this time, 1,478 days occurred during the testing phase of the regulatory review period, while 729 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* December 6, 1996. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 6, 1996.

2. *The date the application was initially submitted with respect to the*

human drug product under section 505 of the act: December 22, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for EXTRANAEAL (NDA 21–321) was initially submitted on December 22, 2000.

3. *The date the application was approved:* December 20, 2002. FDA has verified the applicant's claim that NDA 21–321 was approved on December 20, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,467 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 6, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 4, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–2546 Filed 2–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0081]

Determination of Regulatory Review Period for Purposes of Patent Extension; ORTHO-EVRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ORTHO-EVRA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ORTHO-EVRA (norelgestromin/ethinyl estradiol transdermal system). ORTHO-EVRA is indicated for the prevention of pregnancy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ORTHO-EVRA (U.S. Patent No. 5,876,746) from Johnson and Johnson, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ORTHO-EVRA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ORTHO-EVRA is 2,001 days. Of this time, 1,666 days occurred during the testing phase of the regulatory review period, while 335 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* May 31, 1996. The applicant claims May 30, 1996, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 31, 1996, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* December 21, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for ORTHO-EVRA (NDA 21–180) was initially submitted on December 21, 2000.

3. *The date the application was approved:* November 20, 2001. FDA has verified the applicant's claim that NDA

21–180 was approved on November 20, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 664 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written comments or electronic comments and ask for a redetermination by April 6, 2004. Furthermore, any interested person may petition FDA, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 4, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–2547 Filed 2–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Extension of General Program Test Regarding Post Entry Amendment Processing

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that the general program test regarding post entry amendment processing is being extended for a one year period. The test will continue to operate in accordance with the notice published in the **Federal Register** on November 28, 2000, as modified by the notice published in the **Federal Register** on February 20, 2003.

DATES: The test allowing post entry amendment to entry summaries is extended to December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Don Yando, Chief, Entry and Drawback Branch, Office of Field Operations, 202–927–1082 or Debbie Scott, Entry and Drawback Branch, OFO, 202–927–1962.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Customs and Border Protection (CBP) announced and described the post entry amendment processing test in a general notice document published in the **Federal Register** (65 FR 70872) on November 28, 2000. That notice announced that the test would commence no earlier than December 28, 2000, and run for approximately one year. On January 7, 2002, CBP published a general notice in the **Federal Register** (67 FR 768) extending the test for a one year period to December 21, 2002. CBP published another general notice in the **Federal Register** (68 FR 8329) on February 20, 2003, extending the test for an additional year to December 31, 2003.

This document announces that the test is being extended to December 31, 2004. The test allows importers to amend entry summaries (not informal entries) prior to liquidation by filing with CBP either an individual amendment letter upon discovery of an error or a quarterly tracking report covering any errors that occurred during the quarter. The November 28, 2000, general notice described how to file post entry amendments for revenue related errors and non-revenue related errors and the consequences of misconduct by importers during the test. It also provided that there are no application procedures or eligibility requirements. To participate in the test, an importer need only follow the procedure for making a post entry amendment set forth in the November 28, 2000, general notice.

Comments received in response to the previously published general notices have been reviewed and CBP continues to evaluate the test. Changes to the test based on the comments and the evaluation will be announced in the **Federal Register** in due course. The test may be further extended if warranted. Additional information on the post entry amendment procedures can be found under "import", then "cargo summary" at *http://www.cbp.gov.*

Dated: February 3, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–2589 Filed 2–5–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–06]

Notice of Submission of Proposed Information Collection to OMB: Application for Healthy Homes and Lead Hazard Control Programs Grant Funding

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This submission is a request for an extension of the approval to collect information for the applications for Healthy Homes and Lead Hazard Control Program Grant Funding to address and reduce the lead-based paint and other hazards in privately owned housing. Some of the information in the applications has be reformatted in a number of forms.

DATES: *Comments Due Date:* March 8, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2539–0015) and should be sent to: Melanie Kadlic, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; fax number (202) 395–6974; e-mail *Melanie_Kadlic@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal

for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Application for Healthy Homes and Lead Hazard Control Program Grant Funding.

OMB Approval Number: 2539–0015.

Form Numbers: HUD 96008, HUD 96009, and the standard grant application forms: HUD 96010SF 424, HUD 424B, HUD 424C, HUD 424CBW, HUD 27061, HUD 2880, HUD 2990, HUD 2991, HUD 2993, HUD 2994, SF LLL, SF 1199A, HUD 27054.

Description of the Need for the Information and its Proposed Use: This submission is a request for an extension of the approval to collect information for the applications for Healthy Homes and Lead Hazard Control Program Grant Funding to address and reduce the lead-based paint and other hazards in privately owned housing. Some of the information in the applications has be reformatted in a number of forms.

Respondents: Business or other for-profit, not-for-profit institutions, State, local or tribal government.

Frequency of Submission: Revision of a currently approved collection.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	250	1.32	....	64.48	....	21,280

Total Estimated Burden Hours: 21,280.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 30, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–2544 Filed 2–5–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–06]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: February 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988, court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 30, 2004.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–2345 Filed 2–5–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Southern Sea Otter (*Enhydra lutris nereis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to remove the southern sea otter (*Enhydra lutris nereis*), throughout its range, from the Federal List of Endangered and Threatened Wildlife, pursuant to the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*). We reviewed the petition and supporting documentation, information in our files, and other available information, and find that there is not substantial information indicating that delisting of the southern sea otter may be warranted. We will not be initiating a further status review in response to the petition to delist. We ask the public to submit to us any new information that becomes available concerning the status of this species. This information will help us monitor and promote the conservation of this species.

DATES: The finding announced in this document was made on November 14, 2003. You may submit new information concerning this species for our consideration at anytime.

ADDRESSES: Data, information, written comments and materials, or questions concerning this petition and finding should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. The petition finding and supporting data are available for public inspection, by appointment, during normal business hours at the above Ventura address.

FOR FURTHER INFORMATION CONTACT: Lilian Carswell, Biologist, Southern Sea Otter Recovery Program, at the above Ventura address, or telephone 805–644–1766.

SUPPLEMENTARY INFORMATION:

Background

We listed the southern sea otter as a threatened species in 1977 (42 FR 2968; January 14, 1977) because of its small population size, its limited distribution, and potential risk to its habitat and population from oil spills. Critical habitat was not proposed. We approved the first recovery plan for the southern sea otter in 1982, and we published a final revised recovery plan in 2003 (Service 2003).

Because the southern sea otter is listed as a threatened species, it is also recognized as depleted under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407). Under the Marine Mammal Protection Act, Federal agencies are charged with managing marine mammals to their optimum sustainable population level. The estimated optimum sustainable population level for southern sea otters is greater than that required for delisting consideration under the ESA. We estimate that the lower limit of the optimum sustainable population level for the southern sea otter is approximately 8,400 animals (Service 2003).

The petition to delist the southern sea otter under the ESA, dated July 30, 1998, was submitted by Nancy E. Gregg to the National Marine Fisheries Service along with four petitions to delist other marine mammal species under the ESA: the California sea lion (*Zalophus californianus*), the Pacific harbor seal (*Phoca vitulina*), the polar bear (*Ursus maritimus*), and the Pacific walrus (*Odobenus rosmarus divergens*). Although these four species are protected by the Marine Mammal Protection Act, they are not currently listed under the ESA and consequently cannot be considered for delisting. The southern sea otter is a listed species under the ESA and is under the jurisdiction of the Service. Therefore, the National Marine Fisheries Service forwarded the petition to delist the southern sea otter to us. The petition, which we received on May 13, 1999, requested that we remove the southern sea otter from the List of Endangered and Threatened Wildlife and Plants.

Section 4(b)(3)(A) of the ESA requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We base the finding on information in the petition and its supporting documentation, information in our files, and other information available to us at the time the finding is made. To the maximum extent practicable, we make this finding within 90 days of receipt of the petition and promptly publish notice of the finding in the **Federal Register**. If we find that substantial information was presented, we are required to commence a review of the status of the species promptly, if one has not already been initiated (50 CFR 424.14).

The factors for listing, delisting, or reclassifying species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened for one or more of the following reasons: (1) Extinction; (2) recovery; and/or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

In response to the petitioner's request to delist the southern sea otter, we sent a letter to the petitioner on June 8, 1999, acknowledging our receipt of the petition. We were unable to act upon the petition due to the low priority assigned to delisting petitions in accordance with our Listing Priority Guidance for Fiscal Years 1998 through 1999, which was published in the **Federal Register** on May 8, 1998 (63 FR 25502). Since 1999, higher priority work has not allowed us to examine or to act upon the petition to delist the southern sea otter.

Discussion

The petition offers no information on the population trends or status of the southern sea otter to support the proposed administrative action. Much of the material offered in support of the petition to delist the southern sea otter refers to pinnipeds (seals, sea lions, and walruses), marine mammals in general, or the Marine Mammal Protection Act. The petition mentions sea otters only in passing, in a quote from the April 7, 1981, testimony of C. Dale Snow, who testified on behalf of the Oregon Department of Fish and Wildlife before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the House Committee on Fisheries and Wildlife. Mr. Snow's testimony was given in the context of congressional hearings on the reauthorization of the Marine Mammal Protection Act. The excerpted testimony reads as follows: "(6) *Seals, Sea Lions, Polar Bears, Walrus, and Sea Otters:* If these animals were removed from the [Marine Mammal Protection] Act, it might solve Oregon's problems, and probably those of several other states. The Act would still afford the desired protection for whales and manatees and yet allow management of a valuable natural resource." Although the petitioner included the full text of this testimony with the petition as supporting documentation, this remark constitutes its sole mention of sea otters.

Mr. Snow's testimony relates primarily to the management of marine mammals in Oregon under the Marine Mammal Protection Act and focuses specifically on pinnipeds and salmon (*Oncorhynchus* spp.) in Oregon. It does not provide any information about the status of southern sea otters. Southern sea otters do not currently occur in northern California or Oregon. Historically, southern sea otters ranged from about mid-Baja California, Mexico, to at least northern California (Wilson *et al.* 1991), and possibly as far north as Prince William Sound in Alaska (reviewed in Riedman and Estes 1990). Currently, however, southern sea otters occur only in central and southern California. The mainland range of the southern sea otter extends from about Point Conception, Santa Barbara County, to Half Moon Bay, San Mateo County. A small experimental colony of southern sea otters also exists at San Nicolas Island, Ventura County.

The petition does not provide a narrative justification for delisting the southern sea otter under the ESA. We infer that the petitioner advocates delisting the southern sea otter in the belief that it would allow for the control of predation on anadromous salmonids. In addition to the congressional testimony of Mr. Snow, the petitioner cites as supporting information two reports concerning anadromous salmonids. The petitioner states: "These reports clearly show that the Federal government's failure to delist these species is the reason for the endangerment of the west coast salmon."

We have no information to indicate that southern sea otters are implicated in the decline of anadromous salmonids as the petitioner suggests. Southern sea otters are not known predators of anadromous salmonids. The diet of southern sea otters is composed almost entirely of nearshore invertebrates (Riedman and Estes 1990). Although sea otters of the subspecies *Enhydra lutris lutris* and *E. l. kenyoni* consume fishes as well as invertebrates in areas of their range in Russia and Alaska, predation on fishes in California, where the southern sea otter occurs, is extremely rare (reviewed in Riedman and Estes 1990).

Regardless, the effects of predation by a listed species are not a relevant consideration in determining whether a species should be considered for delisting under the ESA. As noted

above, we may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. The petitioner provided no scientific or commercial data to substantiate that the southern sea otter is extinct, has recovered, or that the original data used to classify the southern sea otter as threatened were in error.

Information in our files, and other information available to us, does not support a finding that delisting of the southern sea otter should be considered at this time. We recently published a final revised recovery plan for the southern sea otter (Service 2003), which reviews the current status of the species. Continuing threats to the southern sea otter include disease, exposure to environmental contaminants, intentional take (shooting), and potential entanglement in fishing gear. Oil spills, which could occur at any time, threaten the southern sea otter with catastrophic decimation or localized extinction (Service 2003). The recovery plan gives recovery criteria for the southern sea otter and states that the species will be considered for delisting under the ESA when the average population level over a 3-year period exceeds 3,090 animals. The most recent spring survey recorded 2,505 southern sea otters (U.S. Geological Survey, unpublished data), and the latest available 3-year running average (for 2002) is only 2,268 animals.

Finding

We have reviewed the petition and its supporting documentation, information in our files, and other available information. We find that there is not substantial information indicating that delisting of the southern sea otter may be warranted.

Information Solicited

When we find that there is not substantial information indicating that the petitioned action may be warranted, initiation of a status review is not required by the ESA. However, we regularly assess the status of species listed as threatened or endangered and welcome any information concerning the status of the southern sea otter. You may submit any information at any time to the Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES**).

References Cited

Riedman, M.L. and J.A. Estes. 1990. The sea otter (*Enhydra lutris*): behavior, ecology, and natural history. U.S. Fish and Wildlife Service, Biol. Rep. 90(14). 126 pp.

U.S. Fish and Wildlife Service. 2003. Final Revised Recovery Plan for the Southern Sea Otter (*Enhydra lutris nereis*). Portland, Oregon. xi + 165 pp.

U.S. Geological Survey, Biological Resources Division. 2003. Spring 2003 mainland California sea otter survey results. Memorandum from B. Hatfield dated 9 June 2003.

Wilson, D. E., M. A. Bogan, R. L. Brownell, Jr., A. M. Burdin, and M. K. Maminov. 1991. Geographic variation in sea otters, *Enhydra lutris*. J. Mamm., 72(1):22–36.

Author

The primary author of this document is Lilian Carswell, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 14, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 04–2558 Filed 2–5–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,890]

Arrow Terminals, Allquipps, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 29, 2004, in response to a petition filed by the United Steelworkers of America on behalf of workers at Arrow Terminals, Allquippa, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of January, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2613 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,781]

Bes-Tex Fabrics, Inc., New York, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 11, 2003 in response to a petition filed by a company official on behalf of workers of Bes-Tex Fabrics, Inc., New York, New York.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC this 12th day of January 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2601 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,927]

Dixie Chips, Inc., Evergreen, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 2, 2004 in response to a worker petition filed by a company official on behalf of workers at Dixie Chips, Inc., Evergreen, Alabama.

The petitioning group of workers is covered by an earlier petition filed on December 29, 2003 (TA–W–53,906) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 8th day of January, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2598 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,920]

Eaton Corp., Airflex Division, Cleveland, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 31, 2003, in response to a petition filed by PACE International Union local 5–0967 on behalf of workers at Eaton Corporation, Airflex Division, Cleveland, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2611 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,858]

Elo Touchsystems, Inc., a Subsidiary of Tyco Electronics, Fremont, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 22, 2003 in response to a petition filed by a company official on behalf of workers at Elo TouchSystems, Inc., a subsidiary of Tyco Electronics, Fremont, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 12th day of January 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2599 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,760]

Fishing Vessel Freedom (F/V) Freedom Mt. Vernon, WA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Fishing Vessel (F/V) Freedom, Mt. Vernon, Washington. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–52,760; Fishing Vessel.F/V) Freedom Mt. Vernon, Washington (January 14, 2004)

Signed at Washington, DC this 27th day of January 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–2605 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,950]

Fishing Vessel (F/V) Lisa Lynn Anchorage, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 31, 2003 in response to a petition filed by a company official on behalf of workers of F/V Lisa Lynn, Anchorage, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC this 12th day of January 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2610 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,929]

Fishing Vessel (F/V) Viking, Cordova, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 2, 2004 in response to a petition filed by a company official on behalf of workers of F/V Viking, Cordova, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC, this 8th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2597 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,979]

Gorecki Manufacturing, Inc., Milaca, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 12, 2004 in response to a petition filed on behalf of workers of Gorecki Manufacturing, Inc., Milaca, Minnesota.

The petitioning group of workers is covered by an active certification issued on March 10, 2003 and which remains in effect (TA–W–50,521). Consequently, further investigation in this case would

serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 21st day of January, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2609 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,914]

Intermetro Industries Corp., Cucamonga, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 31, 2003, in response to a petition filed by a company official on behalf of workers at InterMetro Industries Corporation, Cucamonga, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 12th day of January, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2612 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,412]

Lear Corporation, SSD Division, Elsie, MI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Lear Corporation, SSD Division, Elsie, Michigan. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–52,412; Lear Corporation, SSD Division Elsie, Michigan (December 16, 2003)

Signed at Washington, DC this 27th day of January 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–2606 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of December 2003 and January 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.)(Increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–53,991; Omni Tech Corp., End-User Div., Pewaukee, WI

TA–W–53,705; Vistakon, a Johnson and Johnson Co., Richard Street Facility, Jacksonville, FL
TA–W–53,397; Alden Scientific Corp., Alden, NY
TA–W–53,570; Thermo Forma, Marietta, OH
TA–W–53,776; Valeo, Inc., Engine Cooling Div., Greensburg, IN
TA–W–53,597; Fashion Technologies, Gaffney, SC
TA–W–53,708; Weyerhaeuser Co., Northwest Hardwoods Div., Sedro Woolley Sawmill, Sedro Woolley, WA
TA–W–53,510; Chicago Bridge & Iron Constructors, Inc., Industrial Div., a subsidiary of Chicago Bridge and Iron Co., N.V., Provo, UT
TA–W–53,899; Crane Lithography, Cedarburg, WI
TA–W–53,735; Phillips Plastics Corp., Multi Shot Facility, Eau Claire, WI
TA–W–53,839; Benitez, Inc., Fishing Vessel (F/V) Mr. Kirton, Corpus Christi, TX
TA–W–53,635; Keykert USA, Inc., Webberville, MI
TA–W–53,650; Stimson Lumber Co., Atlas Plant, Coeur D'Alene, ID
TA–W–53,595; Perm Cast, LLC, a/k/a Grede Foundries, Inc., Cynthiana, KY
TA–W–53,201; Louisiana Pacific Corp., Sandpoint, ID
TA–W–53,632; Coventry Narrow Fabrics, Inc., a div. of Wayne Industries, Coventry, RI
TA–W–53,661; Newstech PA, Northhampton, PA
TA–W–53,680; US Axle, Inc., Pottstown, PA
TA–W–53,942; Winalta USA, Linton, IN
TA–W–53,802; J&L Specialty Steel, LLC, Moon Township, PA
TA–W–53,726; Butler Manufacturing Co., Buildings Div., Galesburg, IL
TA–W–53,630; Pechiney Plastic Packaging, Inc., Meat and Dairy Div., Des Moines, IA
TA–W–53,616; Watlow Controls, Winona, MN
TA–W–53,835; Davidson Printing, Graphic Digital Imaging, Duluth, MN
TA–W–53,829; Micro Contacts, Inc., Warwick Facility, Warwick, RI
TA–W–53,775; Rexnord Corp., Coupling Div., Warren, PA
TA–W–53841; Komo Machine, a div. of PMC Global, Inc., Sauk Rapids, MN

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–53,934; Phillips Plastics Corp., Eau Claire, WI
TA–W–53,923; Agilent Technologies Ltd, Data Networks Div., Portsmouth, NH
TA–W–53,852; Solid Wood Systems, Inc., High Point, NC
TA–W–53,892; IBM Global Services, Cypress, CA
TA–W–53,740; Unisys Corp., ETS Industries, Charlotte, NC
TA–W–53,715; Verticalnet, Inc., Endicott, NY
TA–W–53,724; Temporary Solutions, Inc. (TSI), Manassas, VA
TA–W–53,904; Secutronex, Miami, FL
TA–W–53,782; Bombardier Motor Corp. of America, El Paso Warehouse, El Paso, TX
TA–W–53,681; Apache Micro Peripherals, Inc., Irvine, CA
TA–W–53,719; Bluecross Blueshield of Missouri, a div. of Wellpoint Health Networks, Springfield Offices, Springfield, MO
TA–W–53,721; Standard Boiler Works, Lebanon, PA
TA–W–53,783; Geotrac, Inc., Norwalk, OH
TA–W–53,819; APL Logistics, Socorro, TX
TA–W–53,984; GE Insurance, a div. of General Electric Corp., Lynchburg, VA
TA–W–53,848; Hanes Dye & Finishing, Falcon Plant, Easley, SC
TA–W–54,038; Network Associates, Inc., Oakbridge Terrance, IL
TA–W–53,800; Schroeder & Tremayne, Inc., Affton Plant, Saint Louis, MO
TA–W–53,811; Winkelman Photography, Oak Park, IL
TA–W–53,842; Cendant Mobility Service Corp., Danbury, CT
TA–W–53,840; American Eagle Airlines, Lawton, OK
TA–W–53,674; American Express Business Travel Services, Nashville, TN
TA–W–53,675; Pincus Brothers, Inc. (10175 Northeast Boulevard), Philadelphia, PA
TA–W–53,704; Lucent Technologies, Lisle, IL
TA–W–53,457; Thomson, Inc., a subsidiary of Thomson, SA, Indianapolis, IN.
TA–W–53,604; Springs Industries, Inc., Creative Products Group, Rock Hill, SC.
TA–W–53,792; Menasha Forest Products Corp., North Bend, OR.
TA–W–53,850; Combined Specialty Group, Inc., Alpharetta, GA.
TA–W–53,938 & A, B: Oshkosh B'Gosh, Inc., Oshkosh, WI, Oshkosh B'Gosh Retail, Inc., Oshkosh, WI and OBG Product Development and Sales, Inc., Oshkosh, WI.
TA–W–53,900; Pennsylvania Southwestern Railroad, a subsidiary of Watco Companies, Inc., Midland PA.
TA–W–53,903; H.H. Brown Shoe Co., Inc., Carolina Div., Morganton, NC.
TA–W–54,017; NCS Pearson, Inc., d/b/a Person Performance Solutions, Butler, PA.

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment decline) has not been met.

TA–W–53,901; Delaine Worsted Mills, Inc., Gastonia, NC.
TA–W–53,558A; Red Wing Shoe Co., Potosi Manufacturing Plant, Last to Pack Div., Potosi, MO.

The investigation revealed that criteria (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(A)(II.A) (no employment decline) has not been met.

TA–W–53,886; Fishing Vessel (F/V) Pacific Pacer, Cordova, AK.
TA–W–53,617; Fleetguard, Inc., Neillsville West Plant, a subsidiary of Cummins, Inc., Neillsville, WI.
TA–W–53,838; Wah Chang, a subsidiary of Allegheny Technologies, Inc., Albany, OR.

The investigation revealed that criteria (a)(2)(A) (I.B) (Sales or production, or both, did not decline) and (a) (2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–53,778; Park-Ohio, Inc., Geneva Rubber Div., Geneva, OH.
TA–W–53,565; Nylstar, Inc., Ridgeway, VA.
TA–W–53,538 & A; Allegheny Ludlum Corp., Brackenridge Works, Backenridge, PA and Leechburg Works, Leechburg, PA.
TA–W–53,785; Berger Co., Atchison, KS.
TA–W–53,662; Newstech NY, Inc., Deferiet, NY.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–53,637; Melton's Metals, Concord, NC.
TA–W–53,788; Ohio Valley Alloy Services, Inc., Marietta, OH.
TA–W–53,679; General Cable, Tauton, MS.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a) (2) (A) (increased imports) of Section 222 have been met.

TA–W–53,746; All Service Molding, Inc., Clay City, KY: November 12, 2002.

TA–W–53,799; Hoffman Carbon, Inc., a div. of Schunk Graphite Technology, a subsidiary of The Schunk Group, Bradford, PA: December 12, 2002.

TA–W–53,653; Portland Forge, a div. of TDY Industries, Inc., Portland, IN: November 21, 2002.

TA–W–53,933; Homak Professional Manufacturing Co., Inc., Bedford Park, IL: January 2, 2003.

TA–W–53,855; American Fast Print Ltd, a subsidiary of Atlantex Ltd, Spartanburg, SC: November 28, 2002.

TA–W–53,321; Charter Fabrics, Inc., New York, NY: September 29, 2002.

TA–W–53,552 & A; Carson Industries, Inc., Carson Home Accents, formerly Gift Hub Limited Partnership, Freeport, PA and Yatesboro, PA: November 14, 2002.

TA–W–53,509; Armstrong Floor Products, A Business Unit of Armstrong World Industries, Warren, AR: November 10, 2002.

TA–W–53,423; Drexel Heritage Furniture Industries, Plant #43, including leased workers of Manpower and Friday Services, Hildebran, NC: October 24, 2002.

TA–W–53,716; Hargro Fabrics, Inc., New York, NY: November 24, 2002.

TA–W–53,699 & A; Tomlinson Industries, Cleveland, OH and West Bend, WI: November 26, 2002.

TA–W–53,902; Technical Rubber Products, Inc., Rockford, TN: December 15, 2002.

TA–W–53,907; Phillips Plastics Corp., Origen Center, Menomonie, WI: December 22, 2002.

TA–W–53,600; Leica Microsystems, Inc., Depew, NY: November 12, 2002.

TA–W–53,645; Robert Bosch Tool Corp., Walnut Ridge, AR: November 24, 2002.

TA–W–53,676; Morton International, Inc., Inorganic and Specialty Solutions, A Rohm and Haas Co., Mainistee, MI: November 19, 2002.

TA–W–53,725; CCI Power Supplies, LLC, Pardeeville, WI: December 3, 2002.

TA–W–53,684; Lempco Industries, Inc., Metals Div., Lexington, OH: November 21, 2002.

TA–W–53,649; Parallax Power Components, a subsidiary of American Circuit Breaker Corpl, Inc., Bridgeport, CT: November 18, 2002.

TA–W–53,567; Ampacet Corp., Latexo, TX: November 12, 2002.

TA–W–53,736; King Products, Los Angeles, CA: November 3, 2002.

TA–W–53,770; L & Z Tool and Engineering, Inc., Watchung, NJ: December 9, 2002.

TA–W–53,988; Coperion Corp., Ramsey, NJ: January 5, 2003.

TA–W–53,774; Aneco Trousers Corp., Hanover, PA: December 9, 2002.

TA–W–53,665; Brown and Williamson Tobacco Corp., Macon, GA: November 14, 2002.

TA–W–53,659; Bristol Compressors, Inc., a subsidiary of York International Corp., Bristol, VA: November 7, 2002.

TA–W–53,701; American Uniform Co., Robbinsville, NC: November 26, 2002.

TA–W–53,609; Conn-Selmer, Inc., a div. of Steinway Musical Instruments, Inc., East Lake Facility, East Lake, Oh: November 17, 2002.

TA–W–53,594; Kaneka Delaware Corp. Delaware City, DE: November 12, 2002.

TA–W–53,612; P.H. Glatfelter Co., Neenah Facility Div., Neenah, WI: November 19, 2002.

TA–W–53,722; Fisher Controls, North Stonington, CT: December 2, 2002.

TA–W–53,686; OGG Harding Machine, Lexington, TN: November 17, 2002.

TA–W–53,742; Delphi Corp., Automotive Holdings Group, Moraine, OH: December 4, 2002.

TA–W–53,733 & A, B; The Coleman Co., Inc., Wichita KS, Maize, KS and Lake City, SC: December 5, 2002.

TA–W–53,831; Green Tree Chemical Technologies, Inc., Parlin, NJ: December 17, 2002.

TA–W–53,879; Johnson-Rose Corp., Lockport, NY: December 17, 2002.

TA–W–53,683; Kirby Manufacturing Co., Inc., Lenoir City, TN: November 25, 2002.

TA–W–53,723 & A,B,C; Johnston Industries, Inc., Langdale Mill, Valley, AL, Utilization Plant, Valley, AL, Lantuck Plant, Lanett, AL, Dewitt Plant, Dewitt, IA: December 2, 2002.

TA–W–53,908; Cal-Jac, Inc., Macon, MS: December 19, 2002.

TA–W–53,859; Crane Plumbing, LLC, Vitreous China Plant, Mansfield, OH: December 6, 2002.

TA–W–53,853; Four Leaf Textiles, LLC, Shamrock Plant, Spindale, NC: December 19, 2002.

TA–W–53,765; Caraustar, Ashland Carton Plant, Custom Packaging Group, Ashland, OH: December 5, 2002.

TA–W–53,756; Viking Pump, Machine Shop Div., Cedar Falls, IA: December 5, 2002.

TA–W–53,515; Thomasville Furniture Industries, Inc., Plant A, Thomasville, NC, A; Plant C, Thomasville, NC, C; Plant D, Thomasville, NC, F; Plant N, Thomasville, NC, G; Plant V, New Veneer Div., Thomasville, NC, H; Plant V, Old Veneer Div., Thomasville, NC, J; Plant X, Thomasville, NC: November 7, 2002.

TA–W–53,558; Red Wing Shoe Co., Potosi Manufacturing Plant, Cut to Fit Div., Potosi, MO: November 5, 2002.

TA–W–53,743 & A; Plastics Engineering Co., Geele Ave. Facility and North Avenue Facility, Sheboygan, WI: December 3, 2002.

TA–W–53,504; Coe Manufacturing Co., Tigard, OR: November 10, 2002.

TA–W–53,588; Amphenol RF, Severna Operations, Parsippany, NJ: November 18, 2003.

TA–W–53,560; International Paper, Shared Services Center, Employed in the Accounts Payable, General Ledger, Credit and Collections Departments, Memphis, TN: November 17, 2002.

TA–W–53,529; Giddings & Lewis LLC, Machine Tools Div., a Company of Thyssenkrupp Industries, AG, Fond du Lac, WI: August 15, 2003.

TA–W–53,512; Plus Mark, Inc., a subsidiary of AmericanGreetings Co., Greenville, TN: November 7, 2002.

TA–W–53,658; Dana Corp., Hydraulics and Chassis Div., Oklahoma City, OK: November 11, 2002.

TA–W–53,480; Bodycote Thermal Processing, Inc., a subsidiary of The Lindberg Corp., Racine, WI: October 31, 2002.

TA–W–53,465; Tomco Products, Inc., Div. of CircorInternational, Painesville, Township, OH: October 27, 2002.

TA–W–53,384; Deltic Timber Corp., Ola, AR: October 27, 2002.

TA–W–53,194; Penn-Union Corp., Edinboro, PA: October 7, 2003.

TA–W–53,049; Visteon Systems, LLC, North Penn Electronics Facility, Lansdale, PA: September 29, 2002.

TA–W–53,329; Advanced Forming Technology, a div. of Precision Castparts Corp., including leased workers of Corestaff and Express Personnel, Longmont, CO: October 14, 2002.

TA–W–53,325; Halliburton Energy Services, Inc., Security DBS Manufacturing Div., Dallas, TX: October 21, 2002.

TA–W–53,275; Hetran, Inc., Orwigsburg, PA: September 26, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–53,692; Schrader Bridgeport International, Inc., Muskogee, OK: November 26, 2002.

TA–W–53,773; Ademco, a div. of Honeywell Security, Syosset, NY: October 31, 2003.
TA–W–53,795; Omniglow Corp., West Springfield, MA: December 11, 2002.
TA–W–53,789; Millanwood, Inc., Barnesville, GA: December 9, 2002.
TA–W–53,940; PolyOne Corp., DeForest, WI: December 29, 2002.
TA–W–53,909; Lancer Partnership, Ltd, San Antonio, TX: December 15, 2002.
TA–W–53,836; Olon Industries, Inc., Mocksville, NC: December 5, 2002.
TA–W–53,813; Xtex, Inc., a subsidiary of Eumetra, Greenville, SC: December 12, 2002.
TA–W–53,837; SPX Dock Products, Milwaukee, WI: December 3, 2002.
TA–W–53,707; Demag Plastics Group, Fountain Inn, SC: November 24, 2002.
TA–W–53,784; William Carter Co., Material Utilization Department, Carver Road Plant, Griffin, GA: November 28, 2002.
TA–W–54,034; Andrews Corp., Dallas, TX: January 5, 2003.
TA–W–53,771; Interlink Technologies, d/b/a Homaco, Inc., Chicago, IL: December 9, 2002.
TA–W–53,343; Arteva Specialties S.a.r.l. d/b/a KoSa, Shelby Site Div., Shelby, NC: All workers engaged in the production of polyester textile filament who became totally or partially separated from employment on or after October 23, 2002.
TA–W–53,809; Copperweld Corp., Piqua, OH: December 15, 2002.
TA–W–53,777; Thermo Electron, Materials and Minerals Div., San Diego, CA: December 8, 2002.
TA–W–53,816; Tellabs Operations, Inc., Lisle, IL: November 14, 2002.
TA–W–53,399; Lindberg, Lindberg Div., a unit of SPX Corp., Watertown, WI.
TA–W–53,508 & A; The Paper Magic Group, Inc., Canton, and Troy, PA: November 7, 2002.
TA–W–53,529; General Bindig Corp., Commercial and Consumer Group, including temporary workers from Hamilton-Ryker, Booneville, MS: November 3, 2002.
TA–W–53,728; Wohlert Corp., Gladwin Operations, Gladwin, MI: November 24, 2002.
TA–W–53,424; Clore Automotive, LLC, Eden Prairie, MN: October 30, 2002.
TA–W–53,351 & A,B; GKN Automotive, Inc., Sanford, NC, Mebane, NC and Timberlake, NC: October 24, 2002.
TA–W–53,149; Arch Chemicals, Inc., including leased workers from CDI Processional Services, Lake Charles, LA: October 3, 2002.
TA–W–53,575; PolyOne Corp., Wynne, AR: November 17, 2002.
TA–W–53,296; Solectron Technology, Inc., a subsidiary of Solectron Corp., including temporary workers of Kelly Temporary Services, Charlotte, NC: October 17, 2002.
TA–W–53,511; Rusch, Inc., including leased workers of TRC Staffing, Decatur, GA: November 4, 2002.
TA–W–53,758; Standard Motor Company, Argos Assemblies Plant, Argos, IN: December 8, 2002.
TA–W–53,444; Emerson Process Management Power and Water Solutions, Operations Department, a wholly owned subsidiary of Emerson Co., Pittsburgh, PA: November 5, 2002.
TA–W–53,780; Teva Pharmaceuticals USA, Elmwood Park, NJ: December 10, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–53,689; Washington Manufacturing Co., LLC, Washington, GA: November 25, 2002.
TA–W–54,061; Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant, Lincoln, ME: January 16, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–53,504; Coe Manufacturing Co., Tigard, OR
TA–W–53,588; Amphenol RF, Severna Operations, Parsippany, NJ
TA–W–53,560; International Paper, Shared Services Center, Employed in The Accounts Payable, General Ledger, Credit and Collections Departments, Memphis, TN
TA–W–53,520; Giddings & Lewis LLC, Machine Tools Div., a Company of Thyssenkrupp Industries, AG, Fond du Lac, WI
TA–W–53,512; Plus Mark, Inc., a subsidiary of American Greetings Co., Greeneville, TN
TA–W–53,658; Dana Corp., Hydraulics and Chassis Div., Oklahoma City, OK
TA–W–53,480; Bodycote Thermal Processing, Inc., a subsidiary of The Lindberg Corp., Racine, WI
TA–W–53,465; Tomco Products, Inc., Div. of Circor International, Painesville Township, OH
TA–W–53,384; Deltic Timber Corp., Ola, AR
TA–W–53,194; Penn-Union Corp., Edinboro, PA
TA–W–53,049; Visteon Systems, LLC, North Penn Electronics Facility, Lansdale, PA
TA–W–53,329; Advanced Forming Technology, a div. of Precision Castparts Corp., including leased workers of Corestaff and Express Personnel, Longmont, CO
TA–W–53,325; Halliburton Energy Services, Inc., Security DBS Manufacturing Div., Dallas, TX
TA–W–53,275; Hetran, Inc., Orwigsburg, PA
TA–W–53,777; Thyermo Electron, Materials and Minerals Div., San Diego, CA
TA–W–53,816; Tellabs Operations, Inc., Lisle, IL
TA–W–53,399; Lindberg, Lindberg Div., a Unit of SPX Corp., Watertown, WI
TA–W–53,809; Copperweld Corp., Piqua, OH
TA–W–53,508 & A; The Paper Magic Group, Inc., Canton, PA and Troy, PA 9
TA–W–53,529; General Binding Corp., Commercial and Consumer Group, including temporary workers from Hamilton-Ryker, Booneville, MS
TA–W–53,728; Wohlert Corp., Gladwin Operations, Gladwin, MI
TA–W–53,424; Clore Automotive, LLC, Eden Prairie, MN
TA–W–53,351 & A, B; GKN Automotive, Inc., Sanford, NC, Mebane, NC and Timerlake, NC
TA–W–52,872; Becton Dickinson and Co., Consumer Healthcare Div., Holdrege, NE
TA–W–53,149; Arch Chemicals, Inc., including leased workers from CDI Professional Services, Lake Charles, LA
TA–W–53,296; Solectron Technology, Inc., a subsidiary of Solectron Corp., including temporary workers of Kelly Temporary Service, Charlotte, NC
TA–W–53,511; Rusch, Inc., including leased workers of TRC Staffing, Decatur, GA
TA–W–53,758; Standard Motor Co., Argos Assemblies Plant, Argos, IN
TA–W–53,444; Emerson Process Management Power and Water Solutions, Operations Department,

a wholly owned subsidiary of Emerson Co., Pittsburgh, PA
TA–W–53,780; Teva Pharmaceuticals USA, Elmwood Park, NJ
TA–W–53,575; PolyOne Corp., Wynne, AR

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–53,650; Stimson Lumber Co., Atlas Plant, Coer D'Alene, ID
TA–W–53,661; Newstech PA< Northhampton, PA
TA–W–53,595; Perm Cast, LLC, a/k/a Grede Foundries, Inc., Cynthiana, KY
TA–W–53,201; Louisiana Pacific Corp., Sandpoint, ID
TA–W–53,632; Coventry Narrow Fabrics, Inc., a div. of Wayne Industries, Coventry, RI
TA–W–53,680; U.S. Axle, Inc., Pottstown, PA
TA–W–53,942; Winalta USA, Linton, IN
TA–W–53,802; J&L Specialty Steel, LLC, Moon Township, PA
TA–W–53,726; Butler Manufacturing Co., Buildings Div., Galesburg, IL
TA–W–53,630; Pechiney Plastic Packaging, Inc., Meat and Dairy Div., Des Moines, IA
TA–W–53,616; Watlow Controls, Winona, MN
TA–W–53,835; Davidson Printing, Graphic Digital Imaging, Duluth, MN
TA–W–53,829; Micro Contracts, Inc., Warwick Facility, Warwick, RI
TA–W–53,775; Rexnord Corp., Coupling Div., Warren, PA
TA–W–53,841; Komo Machine, a div. of PMC Global, Inc., Sauk Rapids, MN
TA–W–53,842; Cendant Mobility Services Corp., Danbury, CT
TA–W–53,840; American Eagle Airlines, Lawton, OK
TA–W–53,674; American Express Business Travel Services, Nashville, TN
TA–W–53,675; Pincus Brothers, Inc. (10175 Northeast Boulevard), Philadelphia, PA
TA–W–53,704; Lucent Technologies, Lisle, IL
TA–W–53,457; Thomson, Inc., a subsidiary of Thomson, SA, Indianapolis, IN
TA–W–53,604; Springs Industries, Inc., Creative Products Group, Rock Hill, SC
TA–W–53,792; Menasha Forest Products Corp., North Bend, OR
TA–W–53,850; Combined Specialty Group, Inc., Alpharetta, GA
TA–W–53,938 & A, B; Oshkosh B'Gosh, Inc., Oshkosh, WI, Oshkosh B'Gosh Retail, Inc., Oshkosh, WI and OBG Product Development and Sales, Inc., Oshkosh, WI
TA–W–53,900; Pennsylvania Southwestern Railroad, a subsidiary of Watco Companies, Inc., Midland, PA
TA–W–53,903; H.H. Brown Shoe Co., Inc., Carolina Div., Morganton, NC
TA–W–54,017; NCS Pearson, Inc., d/b/a Pearson Performance Solutions, Butler, PA
TA–W–53,679; General Cable, Taunton, MA
TA–W–53,617; Fleetguard, Inc., Neillsville West Plant, a subsidiary of Cummings, Inc., Neillsville, WI
TA–W–53,538 & A; Allegheny Ludlum Corp., Brackenridge Works, Brackenridge, PA and Leechburg Works, Leechburg, PA
TA–W–53,785; Berger Co., Atchison, KS
TA–W–53,662; Newstech NY, Inc., Deferiet, NY
TA–W–53,838; Wah Chang, a subsidiary of Allegheny Technologies, Inc., Albany, OR

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–53,562; Weyerhaeuser, Longview Fine Paper, Longview, WA: November 13, 2002.
TA–W–53,693; Tyco Electronics Corp., Global Industrial and Commercial Business, General Purpose Relay Business Unit, Guttenberg, IA: November 25, 2002.
TA–W–53,885; NTN–BCA Corp., a wholly owned subsidiary of NTN–USA, Greenburg, IN: December 23, 2002.
TA–W–53,604; Carrier Corp., Syracuse, NY: November 14, 2002.
TA–W–53,558; Red Wing Shoe Co., Potosi Manufacturing Plant, Cut to Fit Div., Potosi, MO: November 5, 2002.
TA–W–53,873; Olympic West Sportswear, Inc., a div. of Cascade West Sportswear, Inc., Puyallup, WA: December 22, 2002.
TA–W–53,804; Keef Hosiery, Ft. Payne, AL: December 10, 2002.
TA–W–53,823; Real Wood of Virginia, Inc., d/b/a Cooper Wood Products, including leased workers of Ameristuff, Rocky Mount, VA: December 27, 2003.
TA–W–53,769; Textron Fastening Systems, a subsidiary of Textron, Inc., Greensburg, IN: December 9, 2002.
TA–W–53,796; Sandvik Mining and Tunneling, LLC, Bolt, WV: December 12, 2002.
TA–W–53,821; Parker Hannifin Corp., Hose Products Div., Green Camp, OH: December 16, 2002.
TA–W–53,857; Parkdale America, LLC, Plant #7, Caroleen, NC: December 12, 2002.
TA–W–53,867; Froedtert Malt Co., Inc., West Plant, Milwaukee, WI: December 19, 2002.
TA–W–53,887; Regal Beloit Corp., Motor Technologies Group, Leeson Electric, Grafton, WI: December 23, 2002.
TA–W–53,925; Avery Dennison, Office Products Group, and leased workers of Adecco, Flowery Branch, GA: December 30, 2002.
TA–W–53,945; Basf Corp., Coatings Div., Belvidere, NJ: January 5, 2003.
TA–W–53,952; Pass & Seymour/ Legrand, San Antonio, TX: January 5, 2003.
TA–W–53,760; Parker Hannifin Corp., Composite Sealing Systems Div., Tempe, AZ: December 8, 2002.
TA–W–53,729; Adhesive Technologies, Inc., Hampton, NH: November 24, 2002.
TA–W–53,601; Paxar-Alkahn, formerly Alkahn Labels, Inc., Pentex Div., Cowpens, SC: November 20, 2002.
TA–W–53,693; Continental Teves, a div. of Continental Automotive Systems North America, a div. of Continental Automotive Systems, a div. of Continental AG, Asheville, NC: November 20, 2002.
TA–W–53,818; Gross National Product, LLC, Elmhurst, NY: December 16, 2002.
TA–W–53,805; Encompass Group, LLC, Clio, AL: December 12, 2002.
TA–W–53,767; Vermilion Rubber Technology, a div. of The Fukoku Corp., Window Coupling and Anti-Vibration Device Lines, Danville, IL: December 1, 2002.
TA–W–53,600; Leica Microsystems, Inc., Depew, NY: November 12, 2002.

TA–W–53,645; Robert Bosch Tool Corp., Walnut Ridge, AR: November 24, 2002.
TA–W–53,676; Morton International, Inc., Inorganic and Specialty Solutions, A Rohm and Haas Co., Manistee, MI: November 19, 2002.
TA–W–53,725; CCI Power Supplies, LLC, Pardeeville, WI: December 3, 2002.
TA–W–53,684; Lempco Industries, Inc., Metals Div., Lexington, OH: November 21, 2002.
TA–W–53,649; Parallax Power Components, a subsidiary of American Circuit Breaker Corp., Inc., Bridgeport, CT: November 18, 2002.
TA–W–53,567; Ampacet Corp., Latexo, TX: November 12, 2002.
TA–W–53,736; King Products, Los Angeles, CA: November 3, 2002.
TA–W–53,770; L & Z Tool and Engineering, Inc., Watchung, NJ: December 9, 2002.
TA–W–53,988; Coperion Corp., Ramsey, NJ: January 5, 2003.
TA–W–53,774; Aneco Trousers Corp., Hanover, PA: December 9, 2002.
TA–W–53,665; Brown and Williamson Tobacco Corp., Macon, GA: November 14, 2002.
TA–W–53,659; Bristol Compressors, Inc., a subsidiary of York International Corp., Bristol, VA: November 7, 2002.
TA–W–53,701; American Uniform Co., Robbinsville, NC: November 26, 2002.
TA–W–53,609; Conn-Selmer, Inc., a div. of Steinway Musical Instruments, Inc., East Lake Facility, East Lake, OH: November 17, 2002.
TA–W–53,594; Kaneka Delaware Corp., Delaware City, DE: November 12, 2002.
TA–W–53,612; P.H. Glatfelter Co., Neenah Facility Div., Neenah, WI: November 19, 2002.
TA–W–53,722; Fisher Controls, North Stonington, CT: December 2, 2002.
TA–W–53,686; OGG Harding Machine, Lexington, TN: November 17, 2002.
TA–W–53,742; Delphi Corp., Automotive Holdings Group, Moraine, OH: December 4, 2002.
TA–W–53,733 & A, B; The Coleman Co., Inc., Wichita, KS, Maize, KS and Lake City, SC: December 5, 2002.
TA–W–53,831; Green Tree Chemical Technologies, Inc., Parlin, NJ: December 17, 2002.
TA–W–53,879; Johnson-Rose Corp., Lockport, NY: December 17, 2002.
TA–W–53,683; Kirby Manufacturing Co., Inc., Lenoir City, TN: November 25, 2002.
TA–W–53,723 & A,B,C; Johnston Industries, Inc., Langdale Mill, Valley, AL, Utilization Plant, Valley, AL, Lantuck Plant, Lanett, AL and Dewitt Plant, Dewitt, IA: December 2, 2002.
TA–W–53,908; Cal-Jac, Inc., Macon, MS: December 19, 2002.
TA–W–53,859; Crane Plumbing, LLC, Vitreous China Plant, Mansfield, OH: December 6, 2002.
TA–W–53,853; Four Leaf Textiles, LLC, Shamrock Plant, Spindale, NC: December 19, 2002.
TA–W–53,765; Caraustar, Ashland Carton Plant, Custom Packaging Group, Ashland, OH: December 5, 2002.
TA–W–53,756; Viking Pump, Machine Shop Div., Cedar Falls, IA: December 5, 2002.
TA–W–53,515; Thomasville Furniture Industries, Inc., Plant A Thomasville, NC, A; Plant C, Thomasville, NC, C; Plant D, Thomasville, NC, F; Plant N, Thomasville, NC, G; Plant V, New Veneer Div., Thomasville, NC, H; Plant V, Old Veneer Div., Thomasville, NC, J; Plant X, Thomasville, NC: November 7, 2002.
TA–W–54,061; Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant, Lincoln, ME: January 16, 2003.

I hereby certify that the aforementioned determinations were issued during the months of December 2003 and January 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 2, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–2608 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,871]

Polyone, Inc., Burlington, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 23, 2003, in response to a worker petition filed by a state agency on behalf of workers at PolyOne, Inc., Burlington, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of January, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2614 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,866]

Schott Scientific Glass; Parkersburg, WV; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 23, 2003, in response to a petition filed by the United Steelworkers of America. local 570 on behalf of workers at Schott Scientific Glass, Parkersburg, West Virginia.

The petitioning group of workers is covered by an active certification issued on February 20, 2002, and which remains in effect (TA–W–40,263). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 14th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2615 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,019]

Thermal Engineering International Utility Products Division, Joplin, MO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Thermal Engineering International, Utility Products Division, Joplin, Missouri. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–53,019; Thermal Engineering International Utility Products Division, Joplin, Missouri (January 16, 2003)

Signed at Washington, DC this 27th day of January 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–2604 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,515B; TA–W–53,515E; TA–W–53,515I; and TA–W–53,515K]

Thomasville Furniture Industries, Inc., CDK/CPS, Thomasville, NC; Thomasville Furniture Industries, Inc., Plant M, Thomasville, NC; Thomasville Furniture Industries, Inc., Warehouse, Thomasville, NC; and Thomasville Furniture Industries, Inc., Lenoir Plant, Lenoir, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 13, 2003, in response to a petition filed by a company official on behalf of workers of Thomasville Furniture Industries, Inc., CDK/CPS, Thomasville, North Carolina (TA–W–53,515B); Thomasville Furniture Industries, Inc., Plant M, Thomasville, North Carolina (TA–W–53,515E); Thomasville Furniture Industries, Inc., Warehouse, Thomasville, North Carolina (TA–W–53,515I); and Thomasville Furniture Industries, Inc., Lenoir Plant, Lenoir, North Carolina (TA–W–53,515K).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 13th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2616 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,667]

Toro Irrigation, El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, investigation was initiated on November 28, 2003 in response to a petition filed by a company official at Toro Irrigation, El Paso, Texas.

The petitioner has asked that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 12th day of January 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2603 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,752]

Tuscadora Yarns, Inc., Mt. Pleasant, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 9, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Tuscarora Yarns, Inc., Mt. Pleasant, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 9th day of January, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2602 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,794]

Weyerhaeuser, Bay City Sorting Yard, Cosmopolis, WA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 12, 2003 in response to a worker petition which was filed by a State agency representative on behalf of workers at Weyerhaeuser, Bay City Sorting Yard, Cosmopolis, Washington (TA-W–53,794).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of January 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2600 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,001]

Yellow Book USA, Effingham, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 14, 2004, in response to a worker petition filed on behalf of workers at Yellow Book USA, Effingham, Illinois.

A negative determination applicable to the petitioning group of workers was issued on June 24, 2003 (TA–W–51,897). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 16th day of January 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–2607 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29

CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 in CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity of issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT030001 (Jun. 13, 2003)
CT030002 (Jun. 13, 2003)
CT030004 (Jun. 13, 2003)
CT030005 (Jun. 13, 2003)

Volume II

Delaware
DE030002 (Jun. 13, 2003)
DE030004 (Jun. 13, 2003)
DE030009 (Jun. 13, 2003)
Maryland
MD030016 (Jun. 13, 2003)
MD030034 (Jun. 13, 2003)
MD030036 (Jun. 13, 2003)
MD030050 (Jun. 13, 2003)
MD030056 (Jun. 13, 2003)
MD030057 (Jun. 13, 2003)

Volume III

Mississippi
MS030031 (Jun. 13, 2003)
North Carolina
NC030055 (Jun. 13, 2003)

Volume IV

None

Volume V

Louisiana
LA030001 (Jun. 13, 2003)
LA030005 (Jun. 13, 2003)
LA030012 (Jun. 13, 2003)
LA030013 (Jun. 13, 2003)
LA030018 (Jun. 13, 2003)
LA030040 (Jun. 13, 2003)
LA030043 (Jun. 13, 2003)
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Alaska
AK030001 (Jun. 13, 2003)
Oregon
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Washington
WA030001 (Jun. 13, 2003)
WA030002 (Jun. 13, 2003)
WA030003 (Jun. 13, 2003)
WA030005 (Jun. 13, 2003)
WA030007 (Jun. 13, 2003)
WA030008 (Jun. 13, 2003)
WA030010 (Jun. 13, 2003)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 14,00 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service *(http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 29th day of January, 2004.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–2283 Filed 2–5–04; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) #1203.

Dates & Times: February 18, 2004; 7:30 a.m.–6 p.m. (open 10–12, 1–4:45). February 19, 2004; 8 a.m.–5 p.m. (open 9:30–11).

Place: University of California at Santa Barbara, CA.

Type of Meeting: Part open.

Contact Person: Dr. Thomas Riekier, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, telephone (703) 292–4914.

Purpose of Meeting: To provide advice and recommendations concerning progress of Materials Research Science and Engineering Center for future funding decisions.

Agenda: February 18, 2004—Open to review and evaluate progress of Materials Research Science and Engineering Center.

Reason for Closing: The work being reviewed may include information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 3, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–2587 Filed 2–5–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) #1203.

Dates & Times: March 3, 2004; 8 a.m.—6 p.m. (open 10:45–12, 1:15–4:30). March 4, 2004; 8 a.m.—4 p.m. (open 9:45–10:45).

Place: Pennsylvania State University, University Park, PA.

Type of Meeting: Part open.

Contact Person: Dr. Ulrich Strom, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, telephone (703) 292–4938.

Purpose of Meeting: To provide advice and recommendations concerning progress of Materials Research Science and Engineering Center and future funding decisions.

Agenda: March 3, 2004—Open for Director's overview of Materials Research Science and Engineering Center and presentations. March 4, 2004—Closed to review and evaluate progress of Materials Research Science and Engineering Center.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 3, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–2588 Filed 2–5–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3103; CLI–04–03]

In the Matter of Louisiana Energy Services, L.P. (National Enrichment Facility); Notice of Receipt of Application for License; Notice of Availability of Applicant's Environmental Report; Notice of Consideration of Issuance of License; and Notice of Hearing and Commission Order

Commissioners: Nils J. Diaz, Chairman, Edward McGaffigan, Jr., Jeffrey S. Merrifield.

I. Receipt of Application and Availability of Documents

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) received on December 15, 2003, an application, safety analysis report, and environmental report from Louisiana Energy Services, L.P. (LES), for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of 5 percent U–235 by the gas centrifuge process. The plant, to be known as the National Enrichment Facility (or NEF), would be constructed in Eunice, New Mexico. LES is a limited Partnership whose general Partners are Urenco Investments, Inc. (a subsidiary of Urenco, Ltd.) and Westinghouse Enrichment Company. In addition, there are six limited Partners.

Copies of LES's application, safety analysis report, and environmental report (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390, Availability of Public Records) are available for public inspection at the Commission's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are also available for review and copying using any of the following methods: (1) Enter the NRC's Gas Centrifuge Enrichment Facility Licensing Web site at *http://www.nrc.gov/materials/fuel-cycle-fac/gas-centrifuge.html#correspondence*; (2) enter the NRC's Agency wide Document Access and Management System (ADAMS) at *http://www.nrc.gov/NRC/ADAMS/index.htm*, where the accession number for LES's application (including LES's safety analysis report and LES's environmental report) is ML040020261; or (3) contact the NRC's Public Document Room (PDR) by calling (800) 397–4209, faxing a request to (301) 415–3548, or sending a request by electronic mail to *pdr@nrc.gov*. Hard copies of the documents are available from the PDR for a fee.

The NRC has now accepted LES's application for docketing and accordingly is providing this notice of hearing and notice of opportunity to intervene on LES's application for a license to construct and operate a centrifuge enrichment facility. Pursuant to the Atomic Energy Act of 1954, as amended, (Act) the NRC staff will prepare a safety evaluation report after reviewing the application and making findings concerning the public health and safety and common defense and security. In addition, pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR part 51, NRC will complete an environmental evaluation and prepare an environmental impact statement (EIS) before the hearing on the issuance of a license is completed. The preparation of the EIS will be the subject of a separate notice in the **Federal Register**.

When available, the NRC staff's safety evaluation and its EIS (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390) will also be placed in the PDR and in ADAMS. Copies of correspondence between the NRC and LES, and transcripts of prehearing conferences and hearings (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390) will be similarly made available to the public.

If following the hearing, the Commission is satisfied that LES has complied with the Commission's regulations and the requirements of this Notice and Commission Order and the Commission finds that the application satisfies the applicable standards set

forth in 10 CFR 30.33, 40.32, and 70.23, a single license will be issued authorizing: (1) The receipt, possession, use, delivery, and transfer of byproduct (*e.g.*, calibration sources), source, and special nuclear material in the National Enrichment Facility; and (2) the construction and operation of the National Enrichment Facility. Prior to commencement of operations of the National Enrichment Facility if it is licensed, in accordance with section 193(c) of the Act and 10 CFR 70.32(k), NRC will verify through inspection that the facility has been constructed in accordance with the requirements of the license for such construction and operation. The inspection findings will be published in the **Federal Register**.

II. Notice of Hearing

A. Pursuant to 10 CFR 70.23a and Section 193 of the Atomic Energy Act of 1954, as amended (Act), as amended by the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101–575), a hearing will be conducted according to the rules of procedure in new 10 CFR part 2, subparts A, C, G, and to the extent that classified information becomes involved, subpart I (final rule published at 69 FR 2182, January 14, 2004).[1] The hearing will be held under the authority of sections 53, 63, 189, 191, and 193 of the Act. The applicant and NRC staff shall be parties to the proceeding.

B. Pursuant to 10 CFR part 2, Subpart C, the hearing shall be conducted by an Atomic Safety and Licensing Board (Board) appointed by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel. Notice as to the membership of the Board will be published in the **Federal Register** at a later date.

C. The matters of fact and law to be considered are whether the application satisfies the standards set forth in this Notice and Commission Order and the applicable standards in 10 CFR 30.33, 40.32, and 70.23, and whether the requirements of 10 CFR part 51 have been met.

D. If this proceeding is not a contested proceeding, as defined by 10 CFR 2.4, the Board will determine the following, without conducting a de novo evaluation of the application: (1) Whether the application and record of the proceeding contain sufficient information and whether the NRC staff's review of the application has been adequate to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards, with respect to the matters set forth in paragraph C of this section, and (2) whether the review conducted by the NRC staff pursuant to 10 CFR part 51 has been adequate.

E. Regardless of whether the proceeding is contested or uncontested, the Board will, in its initial decision, in accordance with Subpart A of part 51: Determine whether the requirements of sections 102(2) (A), (C), and (E) of NEPA and Subpart A of part 51 have been complied with in the proceeding; independently consider the final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and determine whether a license should be issued, denied, or conditioned to protect the environment.

F. If the proceeding becomes a contested proceeding, the Board shall make findings of fact and conclusions of law on admitted contentions. With respect to matters set forth in paragraph C of this section but not covered by admitted contentions, the Board will make the determinations set forth in paragraph D without conducting a de novo evaluation of the application.

G. By April 6, 2004, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Petitions for leave to intervene shall be filed in accordance with the provisions of 10 CFR 2.309. Interested persons should consult the new 10 CFR part 2, section 2.309 (69 FR 2182, 2238), which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site, at *http://www.nrc.gov*. If a petition for leave to intervene is filed by the above date, the Commission will issue an order determining standing and refer petitions from persons with the requisite standing to the Atomic Safety and Licensing Board for further processing in the proceeding.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petition must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license in response to LES's application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that 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 petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Board will set the time and place for any prehearing conferences and evidentiary hearings, and the respective notices will be published in the **Federal Register**.

A petition for leave to intervene and proffered contentions must be filed with

[1] By its terms, the new 10 CFR part 2 applies to licensing actions the notice of hearing for which was issued on or after the effective date of the new rule, February 13, 2004. *See* 69 FR 2182. By this order, the Commission directs the application of the new 10 CFR part 2 for the LES Proceeding. Accordingly, references in this Notice and Order are to the new 10 CFR part 2.

the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Associate General Counsel for Hearings, Enforcement, and Administration, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to James Curtiss, Esq., Winston & Strawn, 1400 L Street, Washington, DC 20005–3502, attorney for the applicant.

Non-timely filings of petitions for leave to intervene, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission or the Atomic Safety and Licensing Board that the petition should be granted, based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

H. A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as an interested entity under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by April 6, 2004. The petition must be filed in accordance with the filing instructions in paragraph G, above, for petitions submitted under 10 CFR 2.309, except that State and Federally recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1). The Commission will rule on petitions filed under 10 CFR 2.309(d)(2). The entities listed above could also seek to participate in a hearing as a non-party pursuant to 10 CFR 2.315(c).

I. Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by April 6, 2004.

III. Commission Guidance

A. Contentions on Environmental Justice

The Commission will make the determination as to whether contentions associated with environmental justice matters will be admitted in this proceeding. Parties responding to such contentions pursuant to 10 CFR 2.309(h) shall submit their answers to the Commission's Secretary as noted above with copies to the other parties and Board. The Commission itself will rule on the admissibility of such contentions and provide appropriate guidance on the litigation of such contentions.

B. Presiding Officer Determination of Contentions

For contentions other than environmental justice (addressed in III.A. above), the presiding officer shall issue a decision on the admissibility of contentions no later than sixty (60) days after the petitions and contentions are referred to the ASLB.

C. Novel Legal Issues

If rulings on the admissibility of contentions or the admitted contentions themselves raise novel legal or policy questions, the Commission will provide early guidance and direction on the treatment and resolution of such issues. Accordingly, the Commission directs the Board to promptly certify to the Commission in accordance with 10 CFR 2.319(l) and 2.323(f) all novel legal or policy issues that would benefit from early Commission consideration should such issues arise in this proceeding.

D. Discovery Management

(1) All parties, except the NRC staff, shall make the mandatory disclosures required by 10 CFR 2.704 within forty-five (45) days of the issuance of the order admitting that contention.

(2) The presiding officer, consistent with fairness to all parties, should narrow the issues requiring discovery and limit discovery to no more than one round for admitted contentions.

(3) All discovery against the Staff shall be governed by 10 CFR 2.336(b) and 2.709. The Staff shall comply with 10 CFR 2.336(b) no later than 30 days after the ASLB order admitting contentions and shall update the information at the same time as the issuance of the Safety Evaluation Report (SER) or the Final Environmental Impact Statement (FEIS). Discovery under 10 CFR 2.709 shall not commence until the issuance of the particular document, *i.e.*, SER or EIS, unless the ASLB in its discretion finds that commencing discovery against the Staff on safety issues before the SER is issued, or on environmental issues before the FEIS is issued will expedite the hearing without adversely impacting the Staff's ability to complete its evaluations in a timely manner.

(4) No later than 30 days before the commencement of the hearing at which an issue is to be presented, all parties other than the Staff shall make the pretrial disclosures required by 10 CFR 2.704(c).

E. Hearing Schedule

The Commission believes that a reasonably-achievable schedule would result in a final NRC decision on the pending application within about two and a half years of the date the application was received, and the Commission thus will impose a 30-month milestone schedule for this proceeding. The Commission recognizes, however, that legislation currently being considered would require the NRC to issue decisions on new enrichment facility applications within two years of receipt of the application; consequently, the Commission will endeavor to identify efficiencies, and provide the pertinent resources, to further reduce the time the agency needs to complete reviews and reach decisions in licensing uranium enrichment facilities.

In the interest of providing a fair hearing, avoiding unnecessary delays in the NRC's review and hearing process, and producing an informed adjudicatory record that supports the licensing determination to be made in this proceeding, the Commission directs that both the Atomic Safety and Licensing Board and the NRC staff, as well as the applicant and other parties to this proceeding, follow the applicable requirements contained in the new 10 CFR part 2 and the guidance in the Commission's Statement of Policy on Conduct of Adjudicatory Proceedings, CLI–98–12, 48 NRC 18 (1998) [63 FR 41872 (August 5, 1998)] to the extent that such guidance is not inconsistent with specific guidance in this Order.

The guidance in the Statement of Policy on Conduct of Adjudicatory Proceedings is intended to improve the management and the timely completion of the proceeding and addresses hearing schedules, parties' obligations, contentions, and discovery management. Consistent with that guidance, the Commission directs the Licensing Board to expeditiously decide legal and policy issues that may resolve threshold issues or expedite this proceeding. Threshold environmental legal and policy issues need not await issuance of the final EIS. In addition, the Commission is providing the following direction for this proceeding:

(1) The Commission directs the Licensing Board to set a schedule for the hearing in this proceeding consistent with this order that establishes as a goal the issuance of a final Commission decision on the pending application within two and a half years (30 months) from the date that the application was received. Formal discovery against the Staff shall be suspended until after the Staff completes its final SER and EIS in accordance with the direction provided in paragraph D.(3), above.

(2) The evidentiary hearing with respect to issues should commence promptly after completion of the final staff documents (SER or EIS) unless the Licensing Board in its discretion finds that starting the hearing with respect to one or more safety issues prior to issuance of the final SER [2] (or one or more environmental contentions directed to the applicant's Environmental Report) will expedite the proceeding without adversely impacting the Staff's ability to complete its evaluations in a timely manner.

(3) The Commission also believes that issuing a decision on the pending application within about two and a half years may be reasonably achieved under the rules of practice contained in the new 10 CFR part 2 and the enhancements directed by this order. We do not expect the Licensing Board to sacrifice fairness and sound decision-making to expedite any hearing granted on this application. We do expect, however, the Licensing Board to use the techniques specified in this order and in the Commission's policy statement on the conduct of adjudicatory proceedings (CLI–98–12, *supra*) to ensure prompt and efficient resolution of contested issues. *See also* Statement of Policy on Conduct of Licensing Proceedings, CLI–81–8, 13 NRC 452 (1981).

(4) If this is a contested proceeding, the Board should adopt the following milestones, in developing a schedule, for conclusion of significant steps in the adjudicatory proceeding: [3]

Within *10 days* of the Commission's order determining standing and admission of any environmental justice contentions:	Persons found to have standing or entities participating under 10 CFR 2.309(d) may submit a motion for reconsideration (*see*, below, at Section IV.B).*
Within *20 days* of the Commission's order determining standing:	Persons found to have standing or entities participating under 10 CFR 2.309(d) may respond to any motion for reconsideration.
Within *60 days* of the Commission's order determining standing and referring the petition and contentions to the ASLB:	ASLB decision on admissibility of remaining contentions.
Within *30 days* of the ASLB decision determining admission of contentions:	Staff prepares hearing file.
Within *90 days* of the ASLB decision determining admission of contentions:.	Completion of discovery on admitted contentions, except against the Staff (including contentions on environmental issues arising under NEPA).
Within *110 days* of the ASLB decision determining admission of contentions:	Deadline for summary disposition motions on admitted contentions.**
Within *150 days* of the ASLB decision determining admission of contentions:	ASLB decision on summary disposition motions on admitted contentions.
Date of issuance of final SER/EIS:	Staff updates hearing file.
Within *20 days* of the issuance of final SER/EIS:	Motions to amend contentions; motions for late-filed contentions.
Within *40 days* of the issuance of final SER/EIS:	Completion of answers and replies to motions for amended and late-filed contentions.
Within *50 days* of the issuance of final SER/EIS:	ASLB decision on admissibility of late-filed contentions; deadline for summary disposition motions on remaining admitted contentions.***
Within *80 days* of the issuance of final SER/EIS:	Completion of discovery on late-filed contentions; ASLB decision on summary disposition motions on remaining contentions.
Within *90 days* of the issuance of final SER/EIS:	Direct testimony filed on remaining contentions and any amended or admitted late-filed contentions.
Within *100 days* of the issuance of final SER/EIS:	Cross-examination plans filed on remaining contentions and any amended or admitted late-filed contentions.
Within *105 days* of the issuance of final SER/EIS:	Evidentiary hearing begins on remaining contentions and any amended or admitted late-filed contentions.
Within *135 days* of the issuance of final SER/EIS:	Completion of evidentiary hearing on remaining contentions and any amended or admitted late-filed contentions.
Within 180 days of the issuance of final SER/EIS:	Completion of findings and replies.
Within *240 days* of the issuance of final SER/EIS:	ASLB's initial decision.

* Motions for reconsideration do not stay this schedule.

** The schedule presumes that a prehearing conference order would establish the deadline for filing of summary disposition motions 20 days after close of discovery consistent with 10 CFR 2.710(a), answers to be filed 10 days after filing of any motion, replies to be filed 10 days after any answer, and the ASLB to issue a decision on any summary disposition motion 20 days thereafter.

*** No summary disposition motions on late-filed contentions are contemplated.

[2] The Commission believes that, in the appropriate circumstances, allowing discovery or an evidentiary hearing with respect to safety-related issues to proceed before the final SER is issued will serve to further the Commission's objective, as reflected in the Statement of Policy on Conduct of Adjudicatory Proceedings, CLI–98–12, *supra*, to ensure a fair, prompt, and efficient resolution of contested issues. For example, it may be appropriate for the Licensing Board to permit discovery against the staff and/or the commencement of an evidentiary hearing with respect to safety issues prior to the issuance of the final SER in cases where the applicant has responded to the Staff's "open items" and there is an appreciable lag time until the issuance of the final SER, or in cases where the initial SER identifies only a few open items.

[3] This schedule assumes that the SER and Final EIS are issued essentially at the same time. If these documents are not to be issued very close in time, the Board should adopt separate schedules but concurrently running for the safety and environmental reviews consistent with the time frames herein for each document.

To meet these milestones, the Licensing Board should direct the participants to serve all filings by electronic mail (in order to be considered timely, such filings must be received by the Licensing Board and parties no later than midnight Eastern Time on the date due, unless otherwise designated by the Licensing Board), followed by conforming hard copies that may be sent by regular mail. If participants do not have access to electronic mail, the Licensing Board should adopt other expedited methods of service, such as express mail, which would ensure receipt on the due date ("in-hand"). If pleadings are filed by electronic mail, or other expedited methods of service which would ensure receipt on the due date, the additional period provided in our regulations for responding to filings served by first-class mail or express delivery shall not be applicable. *See* 10 CFR 2.306.

In addition, to avoid unnecessary delays in the proceeding, the Licensing Board should not grant requests for extensions of time absent unavoidable and extreme circumstances. Although summary disposition motions are included in the schedule above, the Licensing Board shall not entertain motions for summary disposition under 10 CFR. 2.710, unless the Licensing Board finds that such motions are likely to expedite the proceeding. Unless otherwise justified, the Licensing Board shall provide for the simultaneous filing of answers to proposed contentions, responsive pleadings, proposed findings of fact, and other similar submittals.

(5) Parties are obligated in their filings before the Licensing Board and the Commission to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citation to the record. Failure to do so may result in material being stricken from the record or, in extreme circumstances, in a party being dismissed from the proceeding.

(6) The Commission directs the Licensing Board to inform the Commission promptly, in writing, if the Licensing Board determines that any single milestone could be missed by more than 30 days. The Licensing Board must include an explanation of why the milestone cannot be met and the measures the Licensing Board will take to mitigate the failure to achieve the milestone and restore the proceeding to the overall schedule.

F. Commission Oversight

As in any proceeding, the Commission retains its inherent supervisory authority over the proceeding to provide additional guidance to the Licensing Board and participants and to resolve any matter in controversy itself.

IV. Applicable Requirements

A. The Commission will license and regulate byproduct, source, and special nuclear material at the National Enrichment Facility in accordance with the Atomic Energy Act of 1954, as amended. Section 274c.(1) of the Act was amended by Public Law 102–486 (October 24, 1992) to require the Commission to retain authority and responsibility for the regulation of uranium enrichment facilities. Therefore, in compliance with law, the Commission will be the sole licensing and regulatory agency with respect to byproduct, source, and special nuclear material for the National Enrichment Facility, and with respect to the control and use of any equipment or device in connection therewith.

Many rules and regulations in 10 CFR chapter I are applicable to the licensing of a person to receive, possess, use, transfer, deliver, and process byproduct, source and special nuclear material in the quantities that would be possessed at the National Enrichment Facility. These include 10 CFR parts 19, 20, 21, 25, 30, 40, 51, 70, 71, 73, 74 , 95, 140, 170, and 171 for the licensing and regulation of byproduct, source, and special nuclear material, including requirements for notices to workers, reporting of defects, radiation protection, waste disposal, decommissioning funding, and insurance.

With respect to these regulations, the Commission notes that this is the second proceeding involving the licensing of an enrichment facility. The Commission issued a number of decisions in an earlier proceeding regarding a proposed site in Homer, Louisiana. These final decisions, *Louisiana Energy Services* (Claiborne Enrichment Center), CLI–92–7, 35 NRC 93 (1992); *Louisiana Energy Services* (Claiborne Enrichment Center), CLI–97–15, 46 NRC 294 (1997); and *Louisiana Energy Services* (Claiborne Enrichment Center), CLI–98–3, 47 NRC 77 (1998), resolve a number of issues concerning uranium enrichment licensing and may be relied upon as precedent.

Consistent with the Atomic Energy Act of 1954, as amended, and the Commission's regulations, the Commission is providing the following direction for licensing uranium enrichment facilities:

1. Environmental Issues

(a) General: 10 CFR part 51 governs the preparation of an environmental report and an environmental impact statement (EIS) for a materials license. LES's environmental report and the NRC staff's associated EIS are to include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative.

(b) Treatment of depleted uranium hexafluoride tails: As to the treatment of the disposition of depleted uranium hexafluoride tails (depleted tails) in these environmental documents, unless LES demonstrates a use for the uranium in the depleted tails as a potential resource, the depleted tails may be considered waste. In addition, if such waste meets the definition of "waste" in 10 CFR 61.2, the depleted tails are to be considered low-level radioactive waste within the meaning of 10 CFR part 61 in which case an approach by LES to transfer to DOE for disposal by DOE of LES" depleted tails pursuant to Section 3113 of the USEC Privatization Act constitutes a "plausible strategy" for dispositioning the LES depleted tails. The NRC staff may consider the DOE EIS in preparing the staff's EIS. Alternatives for the disposition of depleted uranium tails will need to be addressed in these documents. As part of the licensing process, LES must also address the health, safety, and security issues associated with the storage of depleted uranium tails on site pending removal of the tails from the site for disposal or DOE dispositioning.

(c) Environmental Justice: As to environmental justice matters, past Commission decisions are relevant precedent. These include *Louisiana Energy Services* (Claiborne Enrichment center), CLI–98–3, 47 NRC 77 (1998) and *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI–02–20, 56 NRC 147 (2002) that limit treatment of certain issues in NRC proceedings. In addition, the Commission notes that it recently issued for comment a draft Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 68 FR 62642 (November 5, 2003). As noted above in Section III, the admissibility of proffered environmental justice contentions will be determined by the Commission.

2. Financial Qualifications

Review of financial qualifications for enrichment facility license applications is governed by 10 CFR part 70. In *Louisiana Energy Services* (Claiborne Enrichment Center), CLI–97–15, 46 NRC

294, 309 (1997), the Commission held that the part 70 financial criteria, 10 CFR 70.22(a)(8) and 70.23(a)(5), could be met by conditioning the LES license to require funding commitments to be in place prior to construction and operation. The specific license condition approved in that proceeding, which addressed a minimum equity contribution of 30% from the parents and affiliates of LES partners prior to construction of the associated capacity and having in place long term enrichment contracts with prices sufficient to cover both construction and operating costs, including a return on investment, for the entire term of the contracts prior to constructing or operating the facility, is one way to satisfy the requirements of part 70.

3. Antitrust Review

The LES enrichment facility is subject to licensing pursuant to sections 53 and 63 of the Atomic Energy Act (Act), and is not a production and utilization facility licensed under section 103. Consequently the NRC does not have antitrust responsibilities for LES similar to the antitrust responsibilities under section 105 of the Act. The NRC will not entertain or consider antitrust issues in connection with the LES application in this proceeding.

4. Foreign Ownership

The LES application is governed by sections 53 and 63 of the Act, and consequently issues of foreign involvement shall be determined pursuant to section 57 and not section 103, 104 or 193(f). Section 57 of the Act requires, among other things, an affirmative finding by the Commission that issuance of a license for NEF will not be "inimical to the common defense and security."

5. Creditor Requirements

Pursuant to section 184 of the Act, the creditor regulations in 10 CFR 50.81 shall apply to the creation of creditor interests in equipment, devices, or important component parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U^{235}. In addition, the creditor regulations in 10 CFR 70.44 shall apply to the creation of creditor interests in special nuclear material. These creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements (such as sale and leaseback) not covered by 10 CFR 50.81, provided it can be found that such arrangements are not inimical to the common defense and security of the United States.

6. Classified Information

All matters of classification of information related to the design, construction, operation, and safeguarding of the NEF shall be governed by classification guidance in "Joint NRC/DOE Classification Guide for Louisiana Energy Services Gas Centrifuge Plant (CG–LCP–1)" (1992) (Confidential—Restricted data) and any later versions. Any person producing such information must adhere to the criteria in CG–LCP–1. All decisions on questions of classification or declassification of information shall be made by appropriate classification officials in the NRC and are not subject to de novo review in this proceeding.

7. Access to Classified Information Pursuant to 10 CFR Part 25

Portions of LES' application for a license are classified Restricted Data or National Security Information. Persons needing access to those portions of the application will be required to have the appropriate security clearance for the level of classified information to which access is required. Access to certain classified Third Agency or Foreign Government Information may be subject to special controls and require the prior approval of the Director, Division of Nuclear Security, NSIR. Access requirements apply equally to intervenors, their witnesses and counsel, employees of the applicant, its witnesses and counsel, NRC personnel, and others. Any person who believes that he or she will have a need for access to classified information for the purpose of this licensing proceeding, including the hearing, should immediately contact the U.S. Nuclear Regulatory Commission, Division of Facilities and Security, ADM, Washington, DC 20555, for information on the clearance process. Telephone calls may be made to Cheryl M. Stone, Chief, Security Branch. Telephone: (301) 415–7404.

8. Obtaining NRC Security Facility Approval and for Safeguarding Classified Information Received or Developed Pursuant to 10 CFR Part 95

Any person who requires possession of classified information in connection with the licensing proceeding may process, store, reproduce, transmit, or handle classified information only in a location for which facility security approval has been obtained from the NRC's Division of Nuclear Security, NSIR, Washington, DC 20555. Telephone calls may be made to A. Lynn Silvious, Chief, Information Security Section. Telephone: (301) 415–2214.

B. *Reconsideration:* The above guidance does not foreclose the applicant, any person admitted as a party to the hearing, or an entity participating under 10 CFR 2.315(c) from litigating material factual issues necessary for resolution of contentions in this proceeding. Persons found by the Commission to have standing and entities participating under 10 CFR 2.315(c) as of the date of the Commission's order on standing may also move the Commission to reconsider any portion of Section IV of this Notice and Commission Order where there is no clear Commission precedent or unambiguously governing statutes or regulations. Any motion to reconsider must be filed within 10 days after the Commission's order on standing. The motion must contain all technical or other arguments to support the motion. Other persons granted standing and entities participating under 10 CFR 2.315(c), including the applicant and the NRC staff, may respond to motions for reconsideration within 20 days of the Commission's Order. Motions will be ruled upon by the Commission. A motion for reconsideration does not stay the schedule set out above in section III.E.(4). However, if the Commission grants a motion for reconsideration, it will, as necessary, provide direction on adjusting the hearing schedule.

V. Pending Energy Legislation

The Energy Policy Act of 2003, H.R. 6, is currently pending in Congress. H.R. 6, as currently constituted, contains provisions that address the manner in which certain issues are to be dealt with and a schedule for overall Commission consideration of an application for licensing a uranium enrichment facility. In the event that H.R. 6 is enacted, the Commission may need to issue an additional order to conform guidance and schedules for the LES application to any new statutory requirements.

VI. Notice of Intent Regarding Classified Information

As noted above, a hearing on this application will be governed by the new 10 CFR part 2, Subparts A, C, G, and to the extent classified material becomes involved, Subpart I. Subpart I requires in accordance with 10 CFR 2.907 that the NRC staff file a notice of intent if, at the time of publication of Notice of Hearing, it appears that it will be impracticable for the staff to avoid the introduction of Restricted Data or National Security Information into a proceeding. The applicant has submitted portions of its application

that are classified. The Commission notes that, since the entire application becomes part of the record of the proceeding, the NRC staff has found it impracticable for it to avoid the introduction of Restricted Data or National Security Information into the proceeding.

It is so ordered.

Dated at Rockville, Maryland, this 30th day of January, 2004.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–2550 Filed 2–5–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03754]

Notice of Consideration of Amendment Request for Decommissioning the ABB Prospects, Inc. Site in Windsor, Connecticut and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for decommissioning and opportunity to request a hearing.

FOR FURTHER INFORMATION CONTACT: Randolph C. Ragland, Jr., Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5083; by facsimile transmission to (610) 337–5269; or by e-mail to *rcr1@nrc.gov*.

DATES: The agency must receive requests for a hearing on or before March 8, 2004.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Materials License No. 06–00217–06, to authorize the decommissioning of the ABB Prospects, Inc. site in Windsor, Connecticut, for unrestricted use. The current license expires April 30, 2011.

By letter dated October 15, 2003, ABB Prospects, Inc. submitted an application for a license amendment, specifically the CE Windsor Site Decommissioning Plan (DP), which included a report entitled, "Derivation of the Site-Specific Soil DCGLs." The licensee has been performing limited decommissioning of Building Complexes 2, 5, and 17 at the CE Windsor site in accordance with the conditions described in License No. 06–00217–06. Although certain buildings and areas on the site are being addressed by the U.S. Army Corps of Engineers (USACE) under the Formerly Utilized Sites Remedial Action Program (FUSRAP), the proposed DP is intended to provide the decommissioning information necessary for site-wide license termination and unrestricted release.

The NRC staff has completed its initial expanded acceptance review and has determined that the licensee's submission is sufficiently complete for the NRC staff to initiate a detailed technical review of the DP.

If the NRC approves the DP, the approval will be documented in an amendment to License No. 06–00217–06. However, before approving the DP, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity for a Hearing

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with 10 CFR 2.1205(e). A request for hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** Notice.

The request for the hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, MD 20852–2738, between the hours of 7:45 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government Offices, hearing requests 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 *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, ABB Prospects, Inc., CEP 880–1403, 2000 Day Hill Road, Windsor, CT 06095–0500, Attention: John Conant; and

(2) The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between the hours of 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail, addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government Offices, hearing requests should also be transmitted to the Office of General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How the interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is subject matter of the proceedings; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(d).

III. Further Information

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," details with respect to this action, including the application for amendment, the proposed DP, and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (Accession Number ML040300149). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at King of Prussia, Pennsylvania, this 30th day of January, 2004.

For the Nuclear Regulatory Commission.

Ronald R. Bellamy,

Chief, Decommissioning & Laboratory Branch, Division of Nuclear Materials Safety, RI.

[FR Doc. 04–2619 Filed 2–5–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Indiana Michigan Power Company (I&M) has submitted an application for renewal of Facility Operating Licenses, DPR–58 and DPR–74 for an additional 20 years of operation at the Donald C. Cook Nuclear Plant (Cook), Units 1 and 2 (CNP). CNP is located in Berrien County, Michigan, about 55 miles east of Chicago, Illinois. The operating licenses for Cook Nuclear Plant, Units 1 and 2, expire on October 25, 2014, and December 23, 2017, respectively. The application for renewal was received on November 3, 2003, pursuant to 10 CFR part 54. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on November 10, 2003 (68 FR 63824). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on December 10, 2003 (68 FR 68956). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," the NRC plans to coordinate compliance with section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, I&M submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Electronic Reading Room link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/cook.html*. In addition, the Bridgman Public Library, 4460 Lake Street, Bridgman, Michigan and the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan have agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) in support of the review of the application for renewal of the CNP operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act of 1969 (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Indiana Michigan Power Company.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the CNP license renewal supplement to the GEIS. The scoping meetings will be held at the Lake Charter Township Hall, 3220 Shawnee Road, Bridgman, Michigan, on Monday, March 8, 2004. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include (1) an overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies,

organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at the Lake Charter Township Hall. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Robert Schaaf, by telephone at 1–800–368–5642, extension 1312, or by Internet to the NRC at *CookEIS@nrc.gov* no later than March 3, 2004. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Schaaf will need to be contacted no later than March 1, 2004, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the CNP license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by April 6, 2004. Electronic comments may be sent by the Internet to the NRC at *CookEIS@nrc.gov* and should be sent no later than April 6, 2004, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice (68 FR 62640). Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://www.nrc.gov/reading-rm/adams.html*. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Schaaf at the aforementioned telephone number or e-mail address.

Dated in Rockville, Maryland, this 29th day of January, 2004.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–2620 Filed 2–5–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49156; File No. SR–MBSCC–2001–06]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Approval of a Proposed Rule Change Regarding the Monitoring of MBSCC Participants' Financial Condition and Activities

January 30, 2004.

I. Introduction

On November 27, 2001, MBS Clearing Corporation ("MBSCC") [1] filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-MBSCC–2001–06 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] On December 26, 2001, MBSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on March 27, 2002.[3] On August 21, 2002,[4] October 22, 2002,[5] February 25, 2003,[6] April 10, 2003,[7] and October 10, 2003,[8] MBSCC filed amendments to the proposed rule change.[9] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

To strengthen MBSCC's monitoring of participants' financial condition and activities, as well as to conform its rules to its standard practices, MBSCC is amending its rules to (i) add a requirement that registered brokers and dealers submit copies to MBSCC of supplemental reports filed with the Commission pursuant to Rule 17a–11 and that all participants submit to MBSCC copies of any similar types of regulatory notifications and (ii) expand the financial criteria used by MBSCC for

[1] On January 1, 2003, MBSCC was merged into the Government Securities Clearing Corporation ("GSCC") and GSCC was renamed the Fixed Income Clearing Corporation. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) (File Nos. SR–GSCC–2002–10 and MBSCC–2002–01).

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 45604 (March 20, 2002), 67 FR 14755.

[4] The August 21, 2002, amendment modified the proposed rule change with respect to MBSCC's acceptance of financial statements prepared in accordance with a non-domestic participant's home country generally accepted accounting principles. This portion of the proposed rule change was subsequently withdrawn. *See supra* note 7.

[5] The October 22, 2002, amendment made it clear that the requirement for participants to submit regulatory notices relating to declines in capital applies to all MBSCC members.

[6] The proposed rule change as originally filed established a formal surveillance status mechanism. The amendment filed on February 25, 2003, withdrew that portion of the proposed rule change.

[7] The amendment filed on April 10, 2003, withdrew the portion of the proposed rule change that would have allowed non-domestic participants to submit financial statements prepared in accordance with their home country generally accepted accounting principles.

[8] In the amendment filed on October 10, 2003, MBSCC corrected the date the proposed rule change was approved by MBSCC's board of directors and changed the person to contact regarding questions and comments about the proposed rule change.

[9] Republication of the notice is not necessary because the August 21, 2002, amendment made a change to the proposed rule change that was later withdrawn, the February 25, 2003, and April 10, 2003, amendments withdrew portions of the proposed rule change, the October 22, 2003, amendment made a change to clarify a portion of the proposed rule change, and the October 10, 2003, amendment made technical changes to the proposed rule change.

calculating a participant's financial ability.

The first modification to the rules requires broker-dealer participants to submit copies of supplemental reports filed pursuant to Rule 17a–11 to MBSCC concurrently with their submission to the Commission. Rule 17a–11 requires registered broker-dealers to notify the Commission of a decline in net capital below minimum requirements. In addition, MBSCC's participants may have other similar regulatory notification requirements imposed by the SEC, another regulator, or other similar authority when their capital levels or other financial requirements fall below certain levels. This rule change also requires participants to submit such notifications to MBSCC concurrently with their submission to the relevant regulatory authority. Such notices should provide MBSCC with an early warning of potential financial problems with respect to its participants.

The second modification allows MBSCC to use net asset value or other applicable indicia in calculating a participant's financial ability. MBSCC's rules do not currently specify the types of financial indicia that MBSCC may use to calculate a participant's net worth for determining whether the participant meets MBSCC's minimum financial requirements. MBSCC's analysts currently use the appropriate financial indicia for each type of participant. For example, shareholders equity is used to determine the financial ability of a bank whereas net asset value is more appropriate for determining the financial ability of certain types of funds, such as most registered investment companies. This rule change will expand the language in MBSCC's rules to permit use of the appropriate financial indicia.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of MBSCC.[10] The rule change should help MBSCC to reduce risk by improving MBSCC's ability to monitor and assess the financial condition of its participants. Accordingly, the proposed rule change should help MBSCC to protect the securities and funds in its possession or control or for which it is responsible. Therefore, the Commission finds that the rule change is consistent with section 17A(b)(3)(F).

[10] 15 U.S.C. 78q–1(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–2001–06) as amended be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–2555 Filed 2–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49164; File No. SR–PCX–2004–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Extension of a Linkage Fee Pilot Program

January 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2004, the Pacific Exchange, Inc. ("Exchange" or "PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 30, 2004, the PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX to Nancy Sanow, Assistant Director, Commission, dated January 29, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to make technical corrections to the Schedule of Fees and Charges for Exchange Services, originally submitted as Exhibit A to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Fees and Charges For Exchange Services to extend until July 31, 2004 the current pilot program regarding transaction fees charged for trades executed through the options intermarket linkage ("Linkage").[4]

The proposed fee schedule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend for six months the pilot program establishing PCX fees for Principal ("P") Orders and Principal Acting as Agent ("P/A") Orders executed through Linkage. The fees currently are effective for a pilot program scheduled to expire on January 31, 2004, and this filing would extend the fees through July 31, 2004. The two fees the PCX charges for P and P/A Orders are: the $.21 per contract side basic execution fees for trading on the PCX and a $.05 comparison fee per contract side. These are the same fees that all Exchange Members pay for non-customer transactions executed on the PCX. The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[5] in general, and Section 6(b)(4)[6], in particular, in that it provides for the equitable allocation of dues, fees

[4] *See* Securities Exchange Act Release No. 47786 (May 2, 2003), 68 FR 24779 (May 8, 2003) (SR–PCX–2003–08) (order approving pilot program).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

and other charges among its members and other persons using its facilities for the purpose of executing P/A Orders or P Orders that are routed to the Exchange from other market centers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR-PCX–2004–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should be submitted by February 26, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[7] and, in particular, with the requirements of section 6(b) of the Act[8] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Exchange's Linkage fee pilot program until July 31, 2004 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change, as amended, will preserve the Exchange's existing pilot program for Linkage fees without interruption as the PCX and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR-PCX–2004–03), as amended, is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–2554 Filed 2–5–04; 8:45 am]

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[7] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49157; File No. SR–Phlx–2004–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Post-Demutualization Fees

January 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which the Phlx has prepared. On January 20, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to adopt permit fees in connection with the Exchange's proposed demutualization.[4] The fees relating to the issuance of Series A–1 Permits will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Edith Hallhan, Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 16, 2004 ("Amendment No. 1"). In Amendment No. 1, the Phlx made minor changes to the section of the proposed rule change describing its text to clarify the fee obligations for members associated with more than one member organization.

[4] In its proposed demutualization, the Phlx is seeking to convert from a non-stock corporation into a stock corporation. The Exchange has submitted a separate proposed rule change relating to the proposed demutualization. *See* Securities Exchange Act Release No. 48847 (November 26, 2003), 68 FR 67720 (December 3, 2003) (SR–Phlx–2003–73). The Commission notes that it approved the demutualization in Securities Exchange Act Release No. 49098 (January 16, 2004) (SR–Phlx 2003–73). As part of the demutualization, the Exchange intends to eliminate existing Exchange memberships; following demutualization, access to trading on the Exchange will be pursuant to permits rather than by ownership or leasing of Phlx memberships. The only class or series of permits to be outstanding initially will be denominated as "Series A–1 Permits." Until such time (if ever) as additional classes or series of permits are issued, the Series A–1 Permits will be referred to as "permits" on the Exchange's fee schedule.

be assessed based on how each permit is used.

The Exchange proposes the following fees:

Order Flow Provider Permit Fee[5]

a. Permits used only to submit orders to the equity, foreign currency options or options trading floor (one floor only)—$200 per month.

b. Permits used only to submit orders to more than one trading floor—$300 per month.

Floor Broker, Specialist or ROT (on any trading floor) or Off-Floor Trader Permit Fee

a. First permit—$1,200 per month.
b. Additional permits for members in the same organization—$1,000 per month.

Any member who is associated with one or more member organizations and uses a permit in more than one category will pay the higher of the applicable fees for such permit.[6]

In light of the proposed demutualization, the Exchange also proposes to make other necessary changes to Appendix A of the fee schedule.[7] Specifically, the following charges will be deleted from Appendix A: (1) Membership dues;[8] (2) charges relating to equity trading permits ("ETPs");[9] (3) the Foreign Currency Options Participations ("FCOP") Fee of $166.67 per month; (4) the technology fee for Exchange members;[10] (5) the Technology Fee of $150 per month assessed on Foreign Currency Options Participants who do not hold legal title to a Phlx membership; and (6) the capital funding fee of $1500 per month. Also, the notation "I," which appears on the Exchange's fee schedule, including Appendix A, and denotes that a fee qualified for a monthly credit of up to $1,000, will be deleted.[11] In addition, the following changes will be made to Appendix A: (1) The Foreign Currency User Fee will increase from $166.67 per month to $1,200 per month; and (2) the Transfer Fee of $500 will be clarified to reflect that FCOP[12] transfers will continue to be charged a Transfer Fee of $500.[13]

The Exchange also intends to make other minor technical amendments to its fee schedule relating to the renumbering of its footnotes to reflect that certain footnotes marked as "reserved" have now been deleted.

The proposed changes are to become effective upon the issuance of permits when the Exchange's proposed demutualization becomes effective.[14]

The text of the proposed rule change is available at the Commission and at the Phlx.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Appendix A of the Exchange's schedule of dues, fees, and charges to incorporate changes that are to become effective in connection with the Exchange's proposed demutualization. Specifically, the Exchange is adopting a permit fee structure and deleting certain other fees discussed above to accommodate trading on the Exchange post-demutualization. The Exchange also intends to make changes to its fees relating to FCOPs to generate revenue for the Exchange in order to enable it to continue to provide a marketplace for its foreign currency options and to simplify and clarify the billing for FCOPs. In addition, the Exchange proposes to delete the capital funding fee, which appears in Appendix A, and the references to the monthly credit of up to $1,000 that appear throughout the Exchange's schedule of dues, fees, and charges, as this fee is no longer imposed and the credit is no longer offered, by the Exchange.[15] The Exchange intends to renumber the footnotes that appear on its schedule of dues, fees, and charges to reflect that certain footnotes designated as "reserved" have now been deleted to avoid member confusion.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(4) of the Act[17] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes that the proposed permit fee structure is reasonable, because $1,000–$1,200 per month per permit holder approximates the membership-related fees currently charged by the Exchange for most members ($950 technology fee

[5] This fee applies to a permit held by a permit holder who does not have physical access to the Exchange's trading floor, is not registered as a Floor Broker, Specialist or ROT (on any trading floor) or Off-Floor Trader, and whose member organization submits orders to the Exchange. *See* Phlx Rule 620.

[6] For example, if a member organization with only one permit was an order flow provider and the permit holder associated with the member organization then registered as a floor broker on the Exchange for that or another member organization, that permit would be subject to a permit fee of $1,200 (the higher of $200 and $1,200, but not both fees).

[7] The other sections of the fee schedule will continue to apply, including transaction fees.

[8] Currently, Membership Dues are $166.67 per month.

[9] The Exchange intends to terminate ETPs at the time of the demutualization. *See* Securities Exchange Act Release No. 48847 (November 26, 2003), 68 FR 67720 (December 3, 2003).

[10] Currently, members are assessed a technology fee of $950. *See* Securities Exchange Act Release No. 48034 (June 16, 2003), 68 FR 37192 (June 23, 2003) (SR–Phlx–2003–41).

[11] The monthly capital funding fee and monthly credit were previously in effect for an aggregate period of 36 months, which expired in May 2003. *See* Securities Exchange Act Release Nos. 42993 (June 29, 2000), 65 FR 42415 (July 10, 2001) (SR–Phlx–99–51); and 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[12] *See* current Phlx By-Law Article I, Section 1–1(m).

[13] Pursuant to the Exchange's proposed demutualization, permits may not be transferred from one Exchange member organization to another, thus a Transfer Fee is inapplicable for permits. In addition, the Exchange does not intend, at this time, to charge a Transfer Fee for permit transfers *within* a member organization under the limited circumstances under which such transfers will be permitted under the Exchange's proposed rules.

[14] The Exchange anticipates that this will occur in mid to late January 2004. However, should the closing occur other than on the last day of a month, in order to avoid double charging then current members and member organizations or increasing fees for foreign currency option participants ("participants") and participant organizations (collectively referred to as "current members"), mid-month for membership/participant-related fees that are currently in effect, permit fees, as well as other fees that take effect post-demutualization, the demutualization fee changes scheduled to be implemented for then current members upon the issuance of permits will be implemented the first day of the next full calendar month after the closing of the demutualization occurs (and permits are issued). Therefore, if permits are issued in mid-January, the post-demutualization fee changes for then current members will be implemented beginning February 2004. That is, current membership/participant-related fees, dues, and other charges will remain in effect for the full month in which closing occurs and permit fees and other post-demutualization fee changes will take effect as of the first day of the following month. Similarly, in this example, if demutualization becomes effective in January, permit fees will be assessed that month for anyone who is not a current member prior to demutualization.

[15] *See supra* note 11.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

plus approximately $167 for membership dues). Moreover, the Exchange believes that charging $200 more for the first permit in each member organization is reasonable and equitable, in light of the administration of a member organization's registration; the first "membership" or permit qualifies a member organization, which requires certain registration, filing and processing by the Exchange.[18] The Exchange believes that the $200–$300 monthly fee for order flow providers should attract order flow providers as well as reflect their limited, order entry access.[19] Order flow providers will not take up space and resources on the Phlx trading floor or use floor services to the same extent as Phlx floor-based members. The Exchange believes that this proposal to impose permit fees depending on how a permit is used is both reasonable and equitable, similar to its current ETP structure.[20] The Exchange also believes that the proposed increased Foreign Currency User Fee is reasonable and equitable because, although the fee will increase substantially from current membership fees for FCOPs who do not also hold legal title to a Phlx membership,[21] it will be more closely aligned with permit fees, such that access to Phlx products will be similarly priced.[22]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx neither solicited nor received written comments on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[23] and Rule 19b–4(f)(2) thereunder.[24] Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Phlx–2004–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2004–02, and should be submitted by February 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

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[18] Similarly, the Exchange's current fee schedule reflects that ETP fees are discounted for multiple memberships: The fee respecting ETPs is $3,500 per month per ETP ("Regular ETP"), however a Regular ETP 3-Seat Fee of $1,350 per month per ETP is charged for Regular ETP holders and ETP organizations in lieu of the Regular ETP Fee if the ETP organization has at all times at least three associated persons who are members of the Exchange by virtue of a membership, whether owned or leased. *See* Securities Exchange Act Release No. 45480 (February 26, 2002), 67 FR 10029 (March 5, 2002) (SR–Phlx–2002–10).

[19] This is similar to the current Off-Floor ETP fee of $500 per month per ETP, which is charged to Off-Floor ETP holders, while Regular ETPs are $3,500 per month per ETP, the Regular ETP 3-Seat Fee is $1,350 per month per ETP and the Regular ETP RS Fee is $1,000 per month per ETP. *See* Securities Exchange Act Release Nos. 45480 (February 26, 2002), 67 FR 10029 (March 5, 2002) (SR–Phlx–2002–10) and 48925 (December 15, 2003), 68 FR 70855 (December 19, 2003) (SR–Phlx–2003–78).

[20] *Id.*

[21] In terms of membership-type fees, currently, FCOPs who do not hold legal title to a Phlx membership are assessed a technology fee of $150 monthly in lieu of the $950 monthly technology fee. In addition, they are assessed a Foreign Currency User fee of $166.67 and a FCOP fee of $166.67 per month. Of course, as stated above, other non-membership fees, such as transaction fees, may apply to FCOPs.

[22] FCOPs may, of course, determine to dispose of their FCOP and apply for a permit instead.

[23] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[24] 17 CFR 240.19b–4(f)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49163; File No. SR–Phlx–2003–89]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Extension of a Linkage Fee Pilot Program

January 30, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 31, 2003, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 26, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On January 29, 2004, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Angela Saccomandi Dunn, Counsel, Phlx to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 23, 2004. ("Amendment No. 1"). Amendment No. 1 replaced and superceded the original proposed rule change in its entirety.

[4] *See* letter from Angela Saccomandi Dunn, Counsel, Phlx to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 29, 2004. ("Amendment No. 2"). Amendment No. 2 replaced and superceded Amendment No. 1 in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend the Exchange's current one-year pilot program until July 31, 2004, in order to continue to impose its current schedule of dues, fees and charges applicable to execution of Principal Orders ("P Orders")[5] sent via the Intermarket Options Linkage (the "Linkage") under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage (the "Plan").[6]

The proposed fee schedule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Exchange's current pilot program until July 31, 2004, so that the Phlx may continue to impose the transaction charges to Eligible Market Makers[7] who send inbound P Orders to the Exchange pursuant to the Plan.[8] The Commission previously approved such charges, on a pilot basis, scheduled to expire on January 31, 2004.[9]

The fee schedule is intended to provide that execution of inbound P Orders routed through Linkage would be subject to the same fees as non-Linkage broker-dealer orders that are not subject to automatic execution ("AUTO–X").[10] The Exchange will not assess any charges for P/A Orders and Satisfaction Orders.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Eligible Market Makers who submit P Orders to the Exchange through the Linkage.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Phlx -2003–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should be submitted by February 27, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[13] and, in particular, with the requirements of Section 6(b) of the Act[14] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,[15] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Phlx's Linkage fee pilot until July

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[5] *See infra* note 8.

[6] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving the Plan submitted by American Stock Exchange LLC, Chicago Board Options Exchange, Inc. and International Securities Exchange, Inc.); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as participant in the Plan).

[7] Eligible Market Maker is defined, with respect to an Eligible Options Class, as a Market Maker that:

(a) Is assigned to, and is providing two-sided quotations in, the Eligible Option Class;

(b) is participating in its market's automatic execution system in such Eligible Option Class; and

(c) is not prohibited from sending Principal Orders in such Eligible Option Class through the Linkage pursuant to Section 8(b)(iii) of the Plan.

See Section 2(7) of the Plan.

[8] Under the Plan and Exchange Rule 1083(k), which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "Principal ("P") Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[9] *See* Securities Exchange Act Release No. 47953 (May 30, 2003), 68 FR 34027 (June 6. 2003) (SR-Phlx-2003–16).

[10] Currently, for non-Linkage off-floor broker-dealer orders sent via the Philadelphia Stock Exchange Automated Options Market ("AUTOM"), which is the Exchange's electronic order delivery, routing, execution and reporting system, the Exchange charges $.45 per contract for trades executed by AUTO–X, the automatic execution feature of AUTOM, and $.35 per contract up to 2,000 contracts, $.25 per contract for 2,001 to 3,000 contracts, and $.20 per contract above 3,000 contracts (with the first 3,000 contracts charged $.25 per contract) to the sending off-floor broker-dealer for non–AUTO–X trades.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

31, 2004 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[16] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Phlx and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change, as amended, (SR–Phlx–2003–89) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–2553 Filed 2–5–04; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4616]

Culturally Significant Objects Imported for Exhibition; Determinations: "The Drawings of Jim Dine"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition "The Drawings of Jim Dine," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about March 21, 2004, to on or about August 1, 2004, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 28, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–2617 Filed 2–5–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4617]

The Department of State on Behalf of Millennium Challenge Corporation Section 608(a), Pub. L. 108–199 (Division D) FR 04–02; Notice of Countries That are Candidates for Millennium Challenge Account Eligibility in FY 2004 and of Countries That are Not Candidates Because of Legal Prohibitions

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Act of 2003 (the "Act") authorizes the provision of assistance to countries that enter into compacts with the United States to support policies and programs that advance the prospects of such countries achieving lasting economic growth and poverty reduction. The Act requires the Millennium Challenge Corporation to take a number of steps in determining the countries that, based on their demonstrated commitment to just and democratic governance, economic freedom and investing in their people, will be eligible countries for Millennium Challenge Account ("MCA") assistance during Fiscal Year 2004. These steps include the publication of Notices in the **Federal Register** that identify:

1. The "candidate countries" for MCA assistance (Section 606(a)(1) of the Act);

2. the eligibility criteria and methodology that will be used to choose "eligible countries" from among the "candidate countries" (Section 608(b) of the Act); and

3. the countries determined by the Board of Directors of the Millennium Challenge Corporation to be "eligible countries" for Fiscal Year 2004 and identify the countries on the list of eligible countries with which the Board will seek to enter into compacts (Section 608 (d) of the Act).

This Notice is the first of the three required Notices listed above.

Candidate Countries

The Act requires the identification of all countries that are candidates to receive MCA assistance in FY 2004 and the identification of all countries that would be candidate countries but for legal prohibitions. Section 606(a)(1) of the Act provides that, during FY 2004, countries shall be candidate countries for the MCA if they:

- are eligible for assistance from the International Development Association;
- have a per capita income equal to or less than the historic ceiling of the International Development Association (or $1415 for FY 2004);
- and are not subject to legal provisions that prohibit them from receiving United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended.

Pursuant to Section 606(c) of the Act, the Board of Directors of the Millennium Challenge Corporation has identified the following countries as candidate countries under the Act for FY 2004:

1. Afghanistan
2. Albania
3. Angola
4. Armenia
5. Azerbaijan
6. Bangladesh
7. Benin
8. Bhutan
9. Bolivia
10. Bosnia and Herzegovina
11. Burkina Faso
12. Cameroon
13. Cape Verde
14. Chad
15. Comoros
16. Congo, Dem. Rep.
17. Congo, Rep. (Brazzaville)
18. Djibouti
19. East Timor
20. Eritrea
21. Ethiopia
22. Gambia
23. Georgia
24. Ghana
25. Guinea
26. Guyana
27. Haiti
28. Honduras
29. India

[16] 15 U.S.C. 78s(b)(2).

[17] *Id.*

[18] 17 CFR 200.30–3(a)(12).

30. Indonesia
31. Kenya
32. Kiribati
33. Kyrgyz Republic
34. Lao PDR
35. Lesotho
36. Madagascar
37. Malawi
38. Mali
39. Mauritania
40. Moldova
41. Mongolia
42. Mozambique
43. Nepal
44. Nicaragua
45. Niger
46. Nigeria
47. Pakistan
48. Papua New Guinea
49. Rwanda
50. Sao Tome and Principe
51. Senegal
52. Sierra Leone
53. Solomon Islands
54. Sri Lanka
55. Tajikistan
56. Tanzania
57. Togo
58. Tonga
59. Uganda
60. Vanuatu
61. Vietnam
62. Yemen, Rep.
63. Zambia

Countries that would be considered candidate countries but are subject to legal provisions that prohibit them from receiving U.S. economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (the "Foreign Assistance Act"):

1. Burma. Sanctions bar assistance to the government. Burma has been identified as a major drug-transit or major illicit drug producing country for 2004 (Presidential Determination No. 2003–38, dated 9/15/03) and designated as having "failed demonstrably" to adhere to its international obligations and take the measures required by Section 489(a)(1) of the Foreign Assistance Act, thus making Burma ineligible for assistance. Burma is listed as a Tier III country under the Trafficking Victims Protection Act for not complying with minimum standards for eliminating trafficking and not making significant efforts to comply (Presidential Determination No. 2003–35, 9/9/03).

2. Burundi is subject to Section 508 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 ("FY 2004 Appropriations Act"), which prohibits assistance to the government of a country whose duly elected head of government has been deposed by a military coup.

3. Cambodia is subject to Section 561(b) of the FY 2004 Appropriations Act, which prohibits assistance to the central government of Cambodia, except in specified circumstances.

4. Central African Republic is subject to Section 508 of the FY 2004 Appropriations Act.

5. Cote d'Ivoire is subject Section 508 of the FY 2004 Appropriations Act.

6. Guinea-Bissau is subject to Section 508 of the FY 2004 Appropriations Act.

7. Liberia is subject to Section 620(q) of the Foreign Assistance Act and Section 512 of the FY 2004 Appropriations Act, both of which prohibit assistance under Part I of the Foreign Assistance Act based on past due indebtedness to the United States.

8. Serbia is subject to Section 572 of the FY 2004 Appropriations Act, which requires that, after March 31, 2004, the availability of funds for assistance for Serbia requires the President to make a specified determination.

9. Somalia is subject to Section 620(q) of the Foreign Assistance Act and Section 512 of the FY 2004 Appropriations Act.

10. Sudan is subject to: Section 620(q) of the Foreign Assistance Act and Section 512 of the FY 2004 Appropriations Act. Sudan also is subject to Section 508 of the FY 2004 Appropriations Act and Section 620A of the Foreign Assistance Act.

11. Uzbekistan is subject to Section 568 of the FY 2004 Appropriations Act, which requires that funds appropriated for assistance to the central Government of Uzbekistan may be made available only if the Secretary of State determines and reports to the Congress that the government is making substantial and continuing progress in meeting its commitments under a framework agreement with the United States.

12. Zimbabwe is subject to Section 620(q) of the Foreign Assistance Act and Section 512 of the FY 2004 Appropriations Act.

Countries identified above as candidate countries, as well as countries that would be considered candidate countries but for the applicability of legal provisions that prohibit U. S. economic assistance, may be the subject of future statutory restrictions or determinations, or changed country circumstances, that affect their legal eligibility for assistance under Part I of the Foreign Assistance Act during FY 2004. The Millennium Challenge Corporation will include any required updates on such statutory eligibility that affect countries' identification as candidate countries, at such time as it publishes the Notices required by Sections 608(b) and 608(d) of the Act or at other appropriate times. Any such updates with regard to the legal eligibility of countries will not alter the date on which the Board of Directors will be authorized to determine eligible countries from among candidate countries which, in accordance with Section 608(a) of the Act, shall be at least 90 days from the date of publication of this Notice.

Dated: February 3, 2004.

Alan Larson,

Interim Chief Executive Officer, Millennium Challenge Corporation, Department of State.

[FR Doc. 04–2618 Filed 2–5–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: San Juan County, WA

AGENCY: Federal Highway Administration (FHWA), DOT; National Park Service (NPS), DOI.

ACTION: Notice of Intent.

SUMMARY: The FHWA and NPS are issuing this notice to advise the public, interested groups, and affected agencies that an environmental impact statement will be prepared for a proposed road project in San Juan Island National Historical Park (Park), San Juan County, Washington.

FOR FURTHER INFORMATION CONTACT: Andrew Rasmussen [E-mail: *Andrew.Rasmussen@fhwa.dot.gov*], Staff Environmental Engineer, FHWA, 610 East Fifth Street, Vancouver, Washington 98661. Telephone: (360)–619–7899, or Peter Dederich [E-mail: *peter_dederich@nps.gov*], Park Superintendent, P.O. Box 429, 125 Spring Street, Friday Harbor, WA 98250.

SUPPLEMENTARY INFORMATION: The FHWA and NPS will prepare an environmental impact statement (EIS) on a proposal to address on-going and potentially catastrophic road failure on Cattle Point Road. The FHWA and NPS will work in cooperation with San Juan County (County) and the Washington State Department of Natural Resources (DNR) as the road is currently maintained by the County and the DNR manages a Natural Resource Conservation Area (NRCA) in the proposed project vicinity.

The proposed project is located at the American Camp unit of San Juan Island National Historic Park in San Juan County, WA. The American Camp unit encompasses much of the southern tip of San Juan Island, known as Cattle

Point. The area of concern is within the Park, where a portion of Cattle Point Road is located on top of a steep bluff along the shore of the Strait of Juan de Fuca.

The purpose of this project is to ensure that vehicular and pedestrian access to the San Juan Island National Historical Park and land outside the Park on Cattle Point will continue in a manner that provides a safe and pleasurable experience for the public yet minimizes or avoids impacts to the Park, NRCA, and the island environment.

Coastal wind and wave action are eroding the base of the slope that supports the Cattle Point Road. If erosion continues unabated, the roadway may fail and severely impact vehicular and non-motorized access to the Cattle Point area of San Juan Island. Alternative road alignments and various engineering concepts need to be explored to address these road integrity and resource protection problems. Design concepts need to be measured against environmental concerns so as to articulate the natural, cultural, scenic and socio-economic effects for implementing any one of the alternatives to be studied. The preferred alternative must also be consistent with the adopted land management plans of the Park and NRCA, if nearby Washington State Department of Natural Resource lands are affected. As required in the National Environmental Policy Act (NEPA), a No Action alternative will also be identified and evaluated.

The proposed project could involve reconstruction of the existing road and, in some areas, possibly construction on new alignment. Alternatives that may address the potential failure include the following: (1) Address slope stability for the road on or near the existing alignment, possibly through the use of extensive retaining walls, though this may not provide a long-term solution; (2) Realign the road to the north of the existing road which would move the road away from the shoreline (this includes options of moving the roadway part-way up the slope, to the crest of the hill, or to the protected north slope of the hill); or (3) Use a tunnel into the hill or bridging system near the current alignment, but moving into the slope to provide a long-term solution. Alternative 1 may not address the problem for the long term, while 2 and 3 would. Variations of grade and alignment will be evaluated for adequacy in meeting Park design and transportation needs, public concerns, and protect the area's cultural resources, natural and social environment.

Announcements describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. These will also be sent to private organizations and citizens who have previously expressed or are known to have interest in this proposal, as well as to local and regional press media.

The County initiated scoping in a previous effort, including studies, a public meeting, and report. In the past year, this proposed project has been reclassified and is now being developed as part of the Park Roads and Parkways category of the FHWA Federal Lands Highway Program (FLHP), which is financed by the Federal Highway Trust Fund. Owing to the changed status of the proposed project, broadened scope, and subsequent resource protection concerns, the agencies determined that the initial scoping effort was inadequate. Future public scoping will incorporate the results of the County's past scoping efforts, including public feedback from the public meeting previously held. A subequent public scoping meeting will be held February 18th, 2004 on San Juan Island, with follow up meetings as necessary. Public notices will be issued announcing the time(s) and location(s) of the meeting(s).

Comments: It is important that the full range of issues related to this proposed action are addressed and that all significant issues are identified. To ensure this, comments and suggestions are invited from all interested parties. Comments and questions regarding the proposal or scoping sessions should be addressed to: Andrew Rasmussen [E-mail: *Andrew.Rasmussen@fhwa.dot.gov*], Staff Environmental Engineer, FHWA, 610 East Fifth Street, Vancouver, Washington 98661. Telephone: (360)–619–7899.

All previous responses are maintained in the project administrative files and will continue to be considered. Persons wishing to express any new concerns about management issues and future land management direction are encouraged to address these to: Peter Dederich [E-mail: *peter_dederich@nps.gov*], Park Superintendent, P.O. Box 429, 125 Spring Street, Friday Harbor, WA 98250. Telephone: (360)–378–2240.

All comments must be postmarked or transmitted no later than March 19, 2004. A public workshop to hear comments and suggestions will be conducted at the San Juan Senior Center, in Mullis Center, 589 Nash Street, Friday Harbor, WA on February 18, 2004 from 1–3 p.m. and 7–9 p.m.

If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the FHWA or Park will withhold a respondent's identity as allowable by law.

The Federal Highway Administration and National Park Service will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses. Anonymous comments may not be considered.

Decision: Officials responsible for the final decision are Jonathan B. Jarvis, Regional Director, Pacific West Region, National Park Service, and Ronald W. Carmichael, Division Engineer, Western Federal Lands Highway Division, Federal Highway Administration.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48

Issued on: January 29, 2004.
Dated: January 29, 2004.

Arthur E. Eck,

Deputy Regional Director, Pacific West Region, National Park Service.

Dated: January 29, 2004.

Ricardo Suarez,

Acting Division Engineer, Western Federal Lands Highway Division, Federal Highway Administration.

[FR Doc. 04–2562 Filed 2–5–04; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6439, Notice No. 11]

RIN 2130–AA71

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of determination.

SUMMARY: FRA's Interim Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings provides for annual recalculation of the Nationwide Significant Risk Threshold (NSRT). The NSRT is a number

reflecting the measure of risk, calculated on a nationwide basis, which reflects the average level of risk to the motoring public at public highway-rail grade crossings equipped with flashing lights and gates at which locomotive horns are sounded. The newly recalculated NSRT is 16,988.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW.,Washington, DC 20590 (telephone: 202–493–6299); or Kathryn Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION: On December 18, 2003, FRA published in the **Federal Register** (68 FR 70586) an interim final rule requiring that a locomotive horn be sounded while a train is approaching and entering a public highway-rail crossing. The rules also provide for an exception to the above requirement in circumstances in which there is not a significant risk of loss of life or serious personal injury, use of the locomotive horn is impractical, or safety measures fully compensate for the absence of the warning provided by the horn.

As provided in the Interim Final Rule, the NSRT is a number reflecting the measure of risk, calculated on a nationwide basis, which reflects the average level of risk to the motoring public at public highway-rail grade crossings equipped with flashing lights and gates at which locomotive horns are sounded. This number is used in the determination of whether quiet zones may be created under the terms of the Interim Final Rule.

Although the Interim Final Rule is not effective until December 18, 2004, FRA is providing an update of the NSRT at this time to assist communities in their planning efforts. Accordingly, in accordance with the terms of the Interim Final Rule, FRA has calculated the NSRT to be 16,988.

Issued in Washington, DC on February 3, 2004.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 04–2637 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6439, Notice No. 10]

RIN 2130–AA71

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability.

SUMMARY: FRA announces that information on whether existing whistle ban jurisdictions may qualify as Pre-Rule Quiet Zones under the Interim Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings has been placed in the public docket of this proceeding and also placed on FRA's Web site.

ADDRESSES: The document entitled "Status of Existing Whistle Bans under the Train Horn Rule" is available in DOT's Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001. It is also available on the Docket Management Facility's Internet site at *http://dms.dot.gov* and on FRA's web site at *http://www.fra.dot.gov*.

SUPPLEMENTARY INFORMATION: On December 18, 2003, FRA published in the **Federal Register** (68 FR 70586) an interim final rule requiring that a locomotive horn be sounded while a train is approaching and entering a public highway-rail crossing. The rules also provide for an exception to the above requirement in circumstances in which there is not a significant risk of loss of life or serious personal injury, use of the locomotive horn is impractical, or safety measures fully compensate for the absence of the warning provided by the horn.

FRA has placed in the public docket (Docket No. FRA–1999–6439, Document No. 2509) and on FRA's Web site (*http://www.fra.dot.gov*), a document entitled "Status of Existing Whistle Bans under the Train Horn Rule." This document provides FRA's best estimate at the present time as to whether specific existing whistle ban jurisdictions may qualify as Pre-Rule Quiet Zones under the Interim Final Rule without taking additional steps to reduce risk.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6299); or Kathryn Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6038).

Issued in Washington, DC, on February 3, 2004.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 04–2636 Filed 2–5–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34457]

Utah Central Railway Company—Acquisition and Operation Exemption—Boyer BDO, L.C. and City of Ogden, UT

Utah Central Railway Company (UCRC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.* to acquire from Boyer BDO, L.C. and the City of Ogden, UT, the right to operate over approximately 15 miles of trackage in Ogden. The tracks are located within an industrial area known as the Business Depot Ogden (BDO) and are known as the BDO Industrial Tracks. The tracks extend west from Union Pacific Railroad Company's (UP) mainline tracks at milepost UN 04.7.[1]

UCRC certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier, and will not result in the creation of a Class II or Class I rail carrier.

Consummation of the transaction was scheduled to take place on January 20, 2004, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34457, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Dennis C. Farley, 299 South Main, Suite 2200, Wells Fargo Center, Salt Lake City, UT 84111.

[1] UCRC currently operates over certain portions of UP's rail line in Ogden. *See Utah Central Railway Company—Lease and Operation Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 34051 (STB served Aug. 22, 2001).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 27, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–2129 Filed 2–5–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the regulations governing payments by the automated clearing house method on account of United States securities.

DATES: Written comments should be received on or before April 6, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Payments by the Automated Clearing House Method on Account of United States Securities.

OMB Number: 1535–0094.

Abstract: The regulations authorize payment to investors in United States securities by the Automated Clearing House (ACH Method).

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals, businesses or other for-profit, and State or local governments.

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB 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 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: February 2, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–2564 Filed 2–5–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Regulations Governing United States Savings Bonds Series E/EE and H/HH.

DATES: Written comments should be received on or before April 6, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing United States Savings Bonds Series E/EE and H/HH.

OMB Number: 1535–0095.

Abstract: The regulations mandate the payment of H/HH interest by Direct Deposit (ACH Method).

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals, businesses or other for-profit, and state or local governments.

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB 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 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: February 2, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–2565 Filed 2–5–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the transaction request for U.S. Treasury Securities State and Local Government Series and Early Redemption Request for U.S. Treasury Securities State and Local Government Series.

DATES: Written comments should be received on or before April 6, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or Vicki.Thorpe@bpd.treas.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Transaction Request For U.S. Treasury Securities State and Local Government Series and Early Redemption Request for U.S. Treasury Securities State and Local Government Series.

OMB Number: 1535–0121.

Form Numbers: PD F 5376 and PD F 5377.

Abstract: The information is requested to process accounts for the owners of securities of State and Local Government Series.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or local government.

Estimated Number of Respondents: 3,350.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,675.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB 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 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: February 2, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–2566 Filed 2–5–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the request for reissue of Series I United States Savings Bonds.

DATES: Written comments should be received on or before April 6, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request for Reissue of Series I United States Savings Bonds.

OMB Number: 1535–0130.

Form Number: PD F 5387.

Abstract: The information is requested to support a request for reissue and to indicate the new registration.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB 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 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: February 2, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–2567 Filed 2–5–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the application for disposition of savings bonds after the death of the registered owner(s).

DATES: Written comments should be received on or before April 6, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Disposition of Series I Savings Bonds After The Death of the Registered Owner(s).

OMB Number: 1535–0131.

Form Number: PD F 5394.

Abstract: The information is requested to request payment or reissue of savings bonds belonging to a deceased owner.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 750.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB 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 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: February 2, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–2568 Filed 2–5–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the request for reissue of savings bonds by the representative of the estate of an incompetent or minor.

DATES: Written comments should be received on or before April 6, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request for Reissue of Series I Bonds by the Representative of the Estate of an Incompetent or Minor.

OMB Number: 1535–013.2.

Form Number: PD F 5386.

Abstract: The information is requested to establish representative's authority to act and request reissue of savings bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 330.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB 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 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: February 2, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–2569 Filed 2–5–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the request for payment of savings bonds by the representative of the estate of an incompetent or minor.

DATES: Written comments should be received on or before April 6, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request for Payment of Series I Savings Bonds by the Representative of the Estate of An Incompetent or Minor.

OMB Number: 1535–0133.

Form Number: PD F 5385.

Abstract: The information is requested to establish representative's authority to act and request payment of savings bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 330.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB 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 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: February 2, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–2570 Filed 2–5–04; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Friday,
February 6, 2004

Part II

The President

Executive Order 13327—Federal Real Property Asset Management

Federal Register
Vol. 69, No. 25
Friday, February 6, 2004

Presidential Documents

Title 3—

The President

Executive Order 13327 of February 4, 2004

Federal Real Property Asset Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 121(a) of title 40, United States Code, and in order to promote the efficient and economical use of Federal real property resources in accordance with their value as national assets and in the best interests of the Nation, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to promote the efficient and economical use of America's real property assets and to assure management accountability for implementing Federal real property management reforms. Based on this policy, executive branch departments and agencies shall recognize the importance of real property resources through increased management attention, the establishment of clear goals and objectives, improved policies and levels of accountability, and other appropriate action.

Sec. 2. *Definition and Scope.* (a) For the purpose of this executive order, Federal real property is defined as any real property owned, leased, or otherwise managed by the Federal Government, both within and outside the United States, and improvements on Federal lands. For the purpose of this order, Federal real property shall exclude: interests in real property assets that have been disposed of for public benefit purposes pursuant to section 484 of title 40, United States Code, and are now held in private ownership; land easements or rights-of-way held by the Federal Government; public domain land (including lands withdrawn for military purposes) or land reserved or dedicated for national forest, national park, or national wildlife refuge purposes except for improvements on those lands; land held in trust or restricted fee status for individual Indians or Indian tribes; and land and interests in land that are withheld from the scope of this order by agency heads for reasons of national security, foreign policy, or public safety.

(b) This order shall not be interpreted to supersede any existing authority under law or by executive order for real property asset management, with the exception of the revocation of Executive Order 12512 of April 29, 1985, in section 8 of this order.

Sec. 3. *Establishment and Responsibilities of Agency Senior Real Property Officer.* (a) The heads of all executive branch departments and agencies cited in sections 901(b)(1) and (b)(2) of title 31, United States Code, and the Secretary of Homeland Security, shall designate among their senior management officials, a Senior Real Property Officer. Such officer shall have the education, training, and experience required to administer the necessary functions of the position for the particular agency.

(b) The Senior Real Property Officer shall develop and implement an agency asset management planning process that meets the form, content, and other requirements established by the Federal Real Property Council established in section 4 of this order. The initial agency asset management plan will be submitted to the Office of Management and Budget on a date determined by the Director of the Office of Management and Budget. In developing this plan, the Senior Real Property Officer shall:

(i) identify and categorize all real property owned, leased, or otherwise managed by the agency, including, where applicable, those properties outside the United States in which the lease agreements and arrangements reflect the host country currency or involve alternative lease plans or rental agreements;

(ii) prioritize actions to be taken to improve the operational and financial management of the agency's real property inventory;

(iii) make life-cycle cost estimations associated with the prioritized actions;

(iv) identify legislative authorities that are required to address these priorities;

(v) identify and pursue goals, with appropriate deadlines, consistent with and supportive of the agency's asset management plan and measure progress against such goals;

(vi) incorporate planning and management requirements for historic property under Executive Order 13287 of March 3, 2003, and for environmental management under Executive Order 13148 of April 21, 2000; and

(vii) identify any other information and pursue any other actions necessary to the appropriate development and implementation of the agency asset management plan.

(c) The Senior Real Property Officer shall be responsible, on an ongoing basis, for monitoring the real property assets of the agency so that agency assets are managed in a manner that is:

(i) consistent with, and supportive of, the goals and objectives set forth in the agency's overall strategic plan under section 306 of title 5, United States Code;

(ii) consistent with the real property asset management principles developed by the Federal Real Property Council established in section 4 of this order; and

(iii) reflected in the agency asset management plan.

(d) The Senior Real Property Officer shall, on an annual basis, provide to the Director of the Office of Management and Budget and the Administrator of General Services:

(i) information that lists and describes real property assets under the jurisdiction, custody, or control of that agency, except for classified information; and

(ii) any other relevant information the Director of the Office of Management and Budget or the Administrator of General Services may request for inclusion in the Government-wide listing of all Federal real property assets and leased property.

(e) The designation of the Senior Real Property Officer shall be made by agencies within 30 days after the date of this order.

Sec. 4. *Establishment of a Federal Real Property Council.* (a) A Federal Real Property Council (Council) is established, within the Office of Management and Budget for administrative purposes, to develop guidance for, and facilitate the success of, each agency's asset management plan. The Council shall be composed exclusively of all agency Senior Real Property Officers, the Controller of the Office of Management and Budget, the Administrator of General Services, and any other full-time or permanent part-time Federal officials or employees as deemed necessary by the Chairman of the Council. The Deputy Director for Management of the Office of Management and Budget shall also be a member and shall chair the Council. The Office of Management and Budget shall provide funding and administrative support for the Council, as appropriate.

(b) The Council shall provide a venue for assisting the Senior Real Property Officers in the development and implementation of the agency asset management plans. The Council shall work with the Administrator of General Services to establish appropriate performance measures to determine the effectiveness of Federal real property management. Such performance measures shall include, but are not limited to, evaluating the costs and benefits

involved with acquiring, repairing, maintaining, operating, managing, and disposing of Federal real properties at particular agencies. Specifically, the Council shall consider, as appropriate, the following performance measures:

(i) life-cycle cost estimations associated with the agency's prioritized actions;

(ii) the costs relating to the acquisition of real property assets by purchase, condemnation, exchange, lease, or otherwise;

(iii) the cost and time required to dispose of Federal real property assets and the financial recovery of the Federal investment resulting from the disposal;

(iv) the operating, maintenance, and security costs at Federal properties, including but not limited to the costs of utility services at unoccupied properties;

(v) the environmental costs associated with ownership of property, including the costs of environmental restoration and compliance activities;

(vi) changes in the amounts of vacant Federal space;

(vii) the realization of equity value in Federal real property assets;

(viii) opportunities for cooperative arrangements with the commercial real estate community; and

(ix) the enhancement of Federal agency productivity through an improved working environment. The performance measures shall be designed to enable the heads of executive branch agencies to track progress in the achievement of Government-wide property management objectives, as well as allow for comparing the performance of executive branch agencies against industry and other public sector agencies.

(c) The Council shall serve as a clearinghouse for executive agencies for best practices in evaluating actual progress in the implementation of real property enhancements. The Council shall also work in conjunction with the President's Management Council to assist the efforts of the Senior Real Property Officials and the implementation of agency asset management plans.

(d) The Council shall be organized and hold its first meeting within 60 days of the date of this order. The Council shall hold meetings not less often than once a quarter each fiscal year.

Sec. 5. *Role of the General Services Administration.* (a) The Administrator of General Services shall, to the extent permitted by law and in consultation with the Federal Real Property Council, provide policy oversight and guidance for executive agencies for Federal real property management; manage selected properties for an agency at the request of that agency and with the consent of the Administrator; delegate operational responsibilities to an agency where the Administrator determines it will promote efficiency and economy, and where the receiving agency has demonstrated the ability and willingness to assume such responsibilities; and provide necessary leadership in the development and maintenance of needed property management information systems.

(b) The Administrator of General Services shall publish common performance measures and standards adopted by the Council.

(c) The Administrator of General Services, in consultation with the Federal Real Property Council, shall establish and maintain a single, comprehensive, and descriptive database of all real property under the custody and control of all executive branch agencies, except when otherwise required for reasons of national security. The Administrator shall collect from each executive branch agency such descriptive information, except for classified information, as the Administrator considers will best describe the nature, use, and extent of the real property holdings of the Federal Government.

(d) The Administrator of General Services, in consultation with the Federal Real Property Council, may establish data and other information technology (IT) standards for use by Federal agencies in developing or upgrading Federal

agency real property information systems in order to facilitate reporting on a uniform basis. Those agencies with particular IT standards and systems in place and in use shall be allowed to continue with such use to the extent that they are compatible with the standards issued by the Administrator.

Sec. 6. *General Provisions.* (a) The Director of the Office of Management and Budget shall review, through the management and budget review processes, the efforts of departments and agencies in implementing their asset management plans and achieving the Government-wide property management policies established pursuant to this order.

(b) The Office of Management and Budget and the General Services Administration shall, in consultation with the landholding agencies, develop legislative initiatives that seek to improve Federal real property management through the adoption of appropriate industry management techniques and the establishment of managerial accountability for implementing effective and efficient real property management practices.

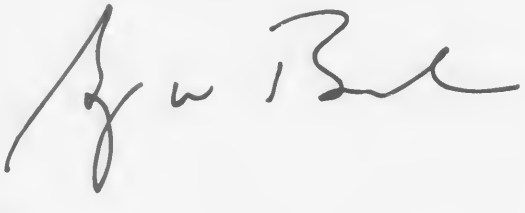
(c) Nothing in this order shall be construed to impair or otherwise affect the authority of the Director of the Office of Management and Budget with respect to budget, administrative, or legislative proposals.

(d) Nothing in this order shall be construed to affect real property for the use of the President, Vice President, or, for protective purposes, the United States Secret Service.

Sec. 7. *Public Lands.* In order to ensure that Federally owned lands, other than the real property covered by this order, are managed in the most effective and economic manner, the Departments of Agriculture and the Interior shall take such steps as are appropriate to improve their management of public lands and National Forest System lands and shall develop appropriate legislative proposals necessary to facilitate that result.

Sec. 8. Executive Order 12512 of April 29, 1985, is hereby revoked.

Sec. 9. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.



THE WHITE HOUSE,
February 4, 2004.

[FR Doc. 04–2773
Filed 2–5–04; 9:19 am]
Billing code 3195–01–P

Federal Register

Friday,
February 6, 2004

Part III

The President

Proclamation 7756—National African American History Month, 2004

Federal Register
Vol. 69, No. 25
Friday, February 6, 2004

Presidential Documents

Title 3—

The President

Proclamation 7756 of February 3, 2004

National African American History Month, 2004

By the President of the United States of America

A Proclamation

During National African American History Month, we honor the heritage and accomplishments of African Americans and recognize their extraordinary contributions to the United States.

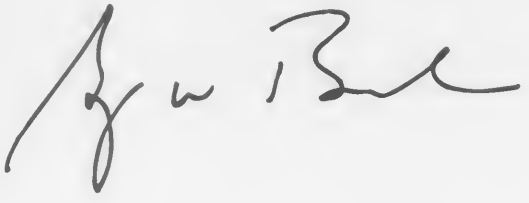
African Americans have upheld the ideals of America, defended our homeland, and enriched American culture and society. Brave leaders such as Sojourner Truth, Harriet Tubman, Booker T. Washington, Martin Luther King, Jr., and Leon Sullivan caused America to examine its heart and to respect the dignity and equality of all people, regardless of race. Today, African Americans are leaders at the highest levels of the military, business, education, law, government, the arts, sports, and religion.

To help share the stories of the millions of African Americans who have strengthened our country, I recently signed legislation establishing the National Museum of African American History and Culture as a part of the Smithsonian Institution. This museum will commemorate the triumphs of African Americans—their determination in overcoming the evil of slavery and discrimination and their many achievements and contributions to our Nation.

This year's National African American History Month celebrates the 50th anniversary of the Supreme Court's 1954 decision in Brown v. Board of Education. In that landmark decision, the Supreme Court declared an end to the shameful and unconstitutional practice of legal segregation in schools, ruling unanimously that the Constitution requires all Americans to be treated equally without regard to the color of their skin. The Brown decision transformed America and fulfilled the principles of our Constitution. This year, we remember the brave schoolchildren and parents who challenged segregation. We recognize the legal and moral advocates who paved the way for this decision, including Thurgood Marshall, the heroic lawyer who represented Linda Brown and fought for her rights and the rights of all African Americans. We remember the nine justices of the Supreme Court who helped America begin to make equal justice under law a reality for African Americans. Nearly 50 years after Brown, we are grateful for the progress America has made, but we also recognize that there is still work to be done to ensure that our country lives up to the founding principle that all of God's children are created equal.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 2004 as National African American History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate programs and activities that highlight and honor the contributions African Americans have made to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–2790
Filed 2–5–04; 10:58 am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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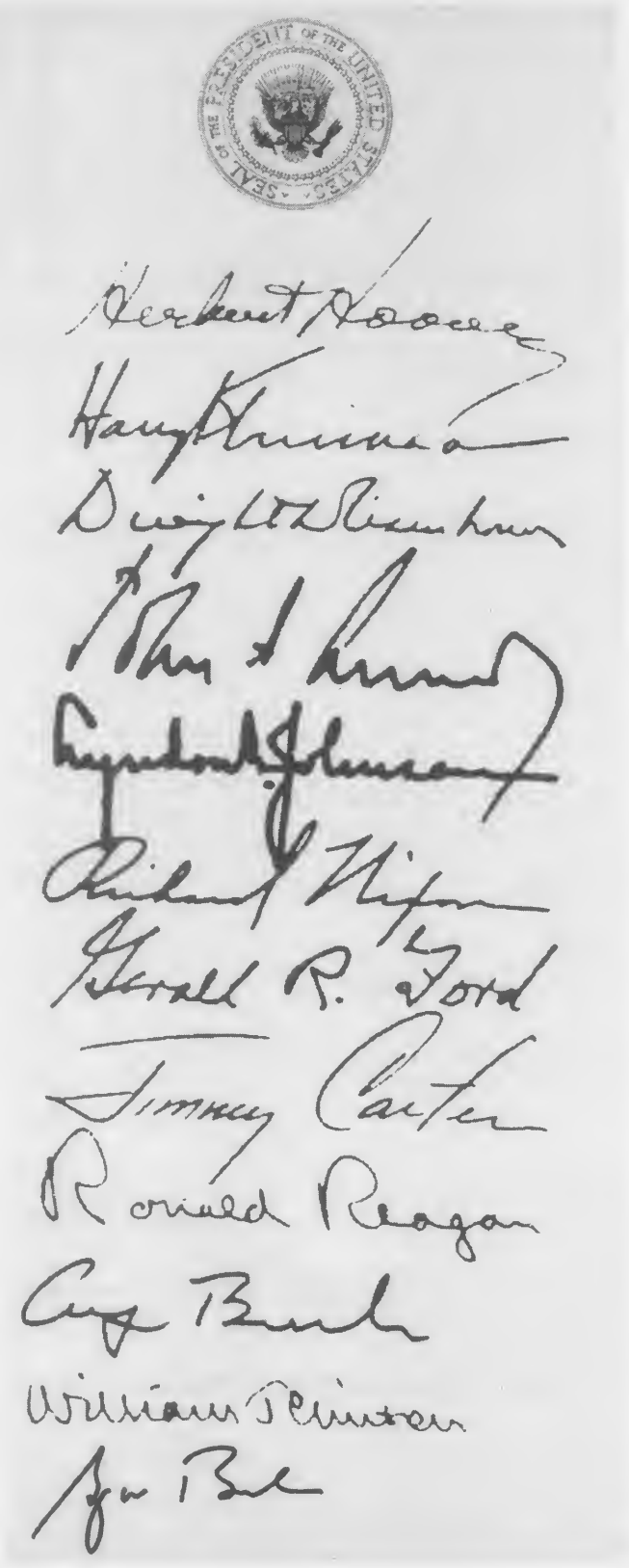

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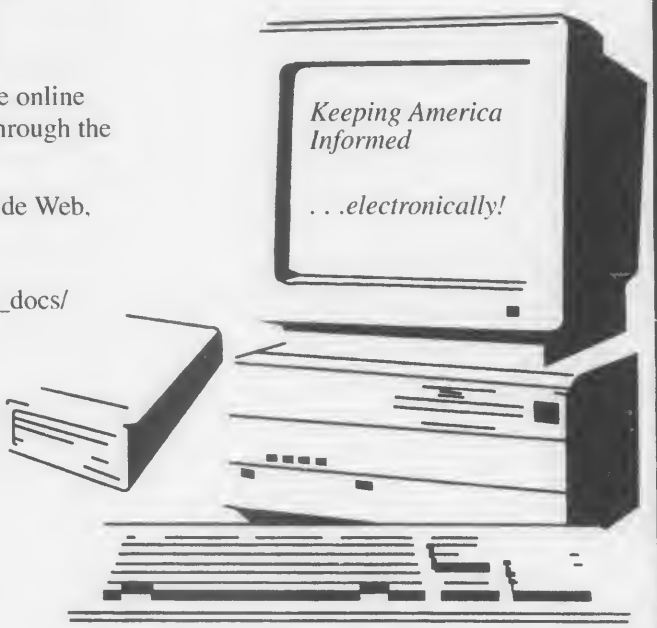

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