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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 576

RIN 3206–AJ76

Voluntary Separation Incentive Payments

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations on voluntary separation incentive payments (*i.e.*, ''buyouts''). These regulations implement the voluntary separation incentive payment provisions of the Homeland Security Act of 2002, Public Law 107–296, which apply to most executive branch agencies.

These interim regulations explain how an agency requests authority from OPM to offer voluntary separation incentive payments. They also explain how in exceptional circumstances an agency that is hiring a former employee who previously received a voluntary separation incentive payment may request that OPM waive the general requirement that the individual repay the incentive.

DATES: These regulations are effective February 4, 2003. OPM will consider written comments if received no later than April 7, 2003.

ADDRESSES: Send written comments to Ellen E. Tunstall, Assistant Director for Employment Policy, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Charles W. Gray at 202–606–0960, FAX at 202–606–2329, TDDY at 202–418–3134, or e-mail at *cwgray@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 1313(a) of the ''Homeland Security Act of 2002'' (Public Law 107–296, 116 Stat. 2135) amends chapter 35 of title 5, United States Code, to allow executive branch agencies, at their option, to offer voluntary separation incentive payments to surplus or displaced employees who separate by voluntary retirement or by resignation. To offer buyouts, an agency must submit a plan for OPM approval. The plan must describe how the agency will use voluntary separation incentive payments as a tool to facilitate its restructuring goals. OPM will review each agency's plan and, in consultation with the Director of the Office of Management and Budget, may make any appropriate modifications to the agency's plan for voluntary separation incentive payments. The agency must have OPM approval before using this flexibility.

New subpart A of 5 CFR part 576 implements these new voluntary separation incentive payment provisions, which are codified in sections 3521 through 3523 of title 5, United States Code.

A former employee who accepts any employment with the Government of the United States for compensation within 5 years after the date of separating for a voluntary separation incentive payment must repay the entire amount of the incentive payment before the first day of reemployment in the Federal service. Under exceptional circumstances, the OPM Director may, at the request of the hiring agency, waive the repayment requirement for former executive branch employees.

New subpart B of 5 CFR part 576 covers both the general repayment requirement and the limited waiver provision of the Act, which are codified in section 3524 of title 5, United States Code.

OPM is continuing to collect data related to this program, both for oversight purposes and to evaluate the effectiveness of the program.

These regulations are published in response to the amendment of chapter 35 of title 5, United States Code, which relates to voluntary separation incentive payments. They are effective on January 24, 2003, as provided in section 1313(a)(4) of Public Law 107–296.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay implementing management flexibilities which are provided by law. Section 1313(a)(4) of Public Law 107–296 provides that all of the provisions in the Department of Homeland Security Act of 2002 relating to voluntary separation incentive payments are effective 60 days from the date of enactment of the law. The law was enacted November 25, 2002.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 576

Government employees, wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is revising part 576 of title 5, Code of Federal Regulations, to read as follows:

PART 576—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

Subpart A—Voluntary Separation Incentive Payments

Sec.

576.101 Definitions.
576.102 Voluntary separation incentive payment implementation plans.
576.103 Offering voluntary separation incentive payments to employees.
576.104 Additional agency requirements.
576.105 Existing voluntary separation incentive payment authorities.

Subpart B—Waiver of Repayment of Voluntary Separation Incentive Payments

Sec.

576.201 Definitions.
576.202 Repayment requirement.
576.203 Waivers of the voluntary separation incentive repayment requirement.

Authority: 5 U.S.C. 3521, 3522, 3523, 3524, and 3525.

Subpart A—Voluntary Separation Incentive Payments.

§ 576.101 Definitions.

Section 3521(1) of title 5, United States Code, contains the definition of *Agency,* and section 3521(2) of title 5, United States Code, contains the definition of *Employee,* as used in this subpart.

§ 576.102 Voluntary separation incentive payment implementation plans.

(a) Section 3522 of title 5, United States Code, specifies the information that the head of an agency must submit to the Office of Personnel Management (OPM). OPM will consult with the Office of Management and Budget (OMB) regarding the plan and will notify the agency head in writing when the plan is approved. The agency must have OPM approval before offering incentives under this authority.

(b) In submitting a plan to OPM under section 3522(a) of title 5, United States Code, the head of an agency may submit:

(1) A specific voluntary separation incentive payment implementation plan outlining the intended use of the incentive payments, or

(2) The agency's human capital plan, which outlines the intended use of the incentive payments and the expected changes in the agency's organizational structure after the agency has completed the incentive payments.

(c) In either case, the plan must include:

(1) Identification of the specific positions and functions to be reduced or eliminated, identified by organizational unit, geographic location, occupational category, grade level and any other factors related to the position, such as skills and knowledge;

(2) A description of the categories of employees who will be offered incentives identified by organizational unit, geographic location, occupational category, grade level and any other factors, such as skills, knowledge, or retirement eligibility;

(3) The time period during which incentives may be paid;

(4) The number and maximum amounts of voluntary separation incentive payments to be offered;

(5) A description of how the agency will operate without the eliminated or restructured positions and functions;

(6) A proposed organizational chart displaying the expected changes in the agency's organizational structure after the agency has completed the incentive payments; and

(7) If the agency has requested, or will request Voluntary Early Retirement Authority, a description of how that authority will be used in conjunction with separation incentives;

(8) If the agency is offering separation incentives under any other statutory authority, a description of how that authority is being used.

§ 576.103 Offering voluntary separation incentive payments to employees.

Section 3523 of title 5, United States Code, covers:

(a) The basis for an agency to offer a voluntary separation incentive payment;

(b) The computation of a voluntary separation incentive payment; and

(c) The appropriations or funds that the agency uses to pay the voluntary separation incentive payment.

§ 576.104 Additional agency requirements.

(a) After OPM approves an agency's plan for voluntary separation incentive payments, the agency is required to immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary separation incentive payments. OPM will consult with OMB and notify the agency in writing if there are changes in the OPM approval of the agency plan.

(b) Agencies are required to provide OPM with interim and final voluntary separation incentive payment reports, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a voluntary separation incentive payment authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's letter approving that authority.

§ 576.105 Existing voluntary separation incentive payment authorities.

As provided in section 1313(a)(3) of Public Law 107–296, any agency exercising voluntary separation incentive authority in effect on January 24, 2003, may continue to offer voluntary separation incentives consistent with that authority until that authority expires. An agency that is eligible to offer voluntary separation incentive payments under this authority and under any other statutory authority may choose which authority it wishes to use, or offer incentives under both.

Subpart B—Waiver of Repayment of Voluntary Separation Incentive Payments

§ 576.201 Definitions.

Section 3524(a) of title 5, United States Code, contains the definition of *Employment* as used in this subpart.

§ 576.202 Repayment requirement.

(a) Section 3524(b) of title 5, United States Code, contains the repayment requirement that applies if an executive branch employee who received a voluntary separation incentive payment as described in subpart A of this part, and accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based. The individual must repay the entire amount of the voluntary separation incentive payment to the agency that paid the voluntary separation incentive payment before the individual's first day of reemployment.

(b) An executive branch employee who received a voluntary separation incentive payment on or after March 30, 1994, under statutory authority other than subpart A of this part, and who accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based, may be required by the authorizing statute to repay the entire amount.

§ 576.203 Waivers of the voluntary separation incentive repayment requirement.

(a)(1) Section 3524(c)(1) of title 5, United States Code, covers the conditions under which the Director of OPM may, at the request of the head of the hiring agency, waive the repayment required in § 576.202.

(2) Section 3524(a)(2) of title 5, United States Code, provides that the waiver provision under section 3524(c)(1) of title 5, United States Code, does not extend to a repayment obligation resulting from employment under a personal services contract or other direct contract.

(b) For a voluntary separation incentive payment made under statutory authority other than subpart A of this part, the agency should review the authorizing statute and, if a waiver is permitted, submit a request as specified by that statute.

[FR Doc. 03–2766 Filed 1–31–03; 2:50 pm]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 875

RIN 3206–AJ71

Federal Long Term Care Insurance Regulation

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: In compliance with the Long-Term Care Security Act, the Office of Personnel Management (OPM) is issuing interim regulations that set forth rules for the administration of the Federal Long Term Care Insurance Program (FLTCIP).

DATES: *Effective Date:* February 4, 2003.

Comment Date: Comments due on or before April 7, 2003.

ADDRESSES: Send or deliver written comments to Frank D. Titus, Assistant Director for Long Term Care, Office of Personnel Management, Room 2H24, 1900 E Street NW., Washington DC 20415, or by fax to (202) 606–2023. You may send comments electronically to *ltc@opm.gov,* using the subject line ''Comments on Proposed Regulations.''

FOR FURTHER INFORMATION CONTACT: Terry Schleicher, (202) 606–0417, or *tlschlei@opm.gov.*

SUPPLEMENTARY INFORMATION: On September 19, 2000, the Long-Term Care Security Act (Pub. L. 106–265) became law. The Act directs OPM to prescribe regulations necessary to carry out the law.

In new part 875, subpart A provides definitions, methods for contract and claims dispute resolution, and the authority for OPM to order correction of errors. It also sets out agency and OPM responsibilities under this Program.

The Act provides preemption of State insurance laws that relate to the nature, provision, or extent of coverage or benefits under FLTCIP. The regulations specify OPM's authority to act as the regulator for FLTCIP in accordance with the Act and the consumer protection provisions of the Health Insurance Portability and Accountability Act of 1996.

OPM has determined that the enrollee's proof of insurance will consist of a benefit booklet prepared by OPM and the Carrier, together with the schedule of benefits. The enrollee will also receive a copy of the approved application for coverage. The booklet will provide general FLTCIP provisions, definitions, exclusions, and limitations. The schedule of benefits will specify the coverage purchased (*e.g.*, waiting period, daily benefit amount, benefit period, type of inflation protection, and either a comprehensive package or a facilities only package). The approved application will show the specific information that provided the basis for issuing the coverage. This will help to reduce Program costs by eliminating the expense of preparing a customized certificate of insurance for each enrollee.

Subpart B specifies eligibility requirements for, and exclusions from, participation in the FLTCIP for Federal civilian employees, Postal employees, members of the uniformed services, civilian annuitants, retired members of the uniformed services, and their qualified relatives.

The FLTCIP law defines an eligible Federal or Postal employee as someone also eligible for Federal Employees Health Benefits (FEHB) participation. Therefore, Federal civilian and Postal eligibility for and exclusions from coverage are tied to FEHB regulations found in part 890 of this chapter. There are 2 exceptions, however. The FLTCIP law specifically excludes all District of Columbia employees from participation, even though some are eligible for FEHB coverage. The regulations make this exclusion clear. Also, Tennessee Valley Authority employees are eligible for FLTCIP participation, even though by law they may not be eligible for FEHB.

Civilian annuitants eligible to apply for coverage under the FLTCIP law include those who have retired on an immediate annuity, deferred annuitants when they begin to receive an annuity, and survivor annuitants.

The regulations specify that if an employee has separated from service under the Federal Employees Retirement System (FERS) Minimum Retirement Age (MRA) + 10 provision (5 U.S.C. 8412(g)), but has not begun drawing an annuity, he or she can apply for coverage under the FLTCIP. He or she will be considered an annuitant for underwriting purposes.

A retired member of the uniformed services is eligible to apply for coverage if he or she is entitled to retired or retainer pay, even if that member is receiving disability retirement pay. However, the FLTCIP law specifies that a former member of the uniformed services retired under chapter 1223 of title 10, United States Code, (a ''gray reservist'') is not eligible to apply for coverage until he or she starts receiving retirement pay at age 60.

If an individual applies as a qualified relative, the regulations specify that the workforce member (Federal civilian or Postal employee, Federal annuitant, member of the uniformed services, or retired member of the uniformed services) on whom the applicant bases the qualified relative status must be alive at the time the applicant applies for coverage. There is 1 exception to this rule. If the applicant is receiving an annuity as the spouse of a deceased workforce member, then he or she may apply for coverage.

A new employee or member of the uniformed services and his or her spouse will have a 60-day period after becoming eligible to apply for coverage with the same underwriting requirements provided to that eligible group during the most recent open season.

If a Federal civilian or Postal employee or member of the uniformed services held a position that did not convey eligibility for FLTCIP coverage, and then enters into a position that conveys eligibility, he or she also has a 60-day period to apply for coverage with the same underwriting requirements provided to that eligible group during the most recent open season, as well as his or her spouse, if any. For example, if an employee was not eligible because he or she was a temporary employee who had worked less than 1 year, and then took a permanent position, he or she would now be eligible to apply for FLTCIP coverage.

If a Federal civilian or Postal employee or member of the uniformed services is returning from a break in service of 180 days or more, he or she may apply for coverage with the same underwriting requirements provided to that eligible group during the most recent open season, as may his or her spouse, if any.

Other qualified relatives may apply for enrollment at any time with full underwriting.

If a Federal civilian or Postal employee or member of the uniformed services returns from nonpay status during an open season, he or she can apply for coverage within 60 days from return to pay status, or by the end of the open season, whichever provides more time. For example, if the open season runs from July 1 through December 31, and an individual returns on October 15, he or she still gets until December 31 to apply with the open season underwriting requirements for his or her eligibility group. If he or she returns on November 15, he or she will have until January 14 to apply. If he or she returns after the open season has ended, he or she can apply with the open season underwriting requirements of his or her eligibility group within 60 days from his or her return. This section only applies when the applicant is in nonpay status for more than one-half of the scheduled open season, unless he or she went into nonpay status for a reason beyond his or her control. If the applicant has been actively at work for at least one-half of the open season, he or she has already had ample opportunity to get information and apply for coverage without the need for the special provisions of this section.

The regulations prescribe that an applicant must state his or her employment/retirement status or relationship as a qualified relative when applying for coverage. If the applicant misrepresents his or her eligibility, he or she may lose his or her coverage or it may never become effective.

The applicant must remain a member of an eligible group for coverage to take effect. If he or she becomes ineligible between the date that the application is submitted and the coverage effective date, he or she will no longer be eligible for coverage. This may happen when the applicant separates from service without retiring or when he or she loses qualified relative status, such as through divorce. There are 2 exceptions to this rule, explained below.

If the separation from service is involuntary, such as through a reduction in force, the application (and the application of any qualified relatives) will proceed. If the application is approved, the applicant will be enrolled for coverage. However, if the individual had not applied for coverage before separation, he or she is no longer eligible at separation. Qualified relatives also lose their eligibility at the same time.

If an applicant's involuntary separation is due to misconduct or a dishonorable discharge, then he or she immediately becomes ineligible, regardless of whether the applicant had applied for coverage prior to separation. This is consistent with temporary continuation of coverage requirements under the FEHB Program, which do not allow for continued enrollment if the separation is due to misconduct.

The second exception is when an applicant loses qualified relative status through the death of a workforce member. If the person through whom the applicant is qualified for coverage dies after the applicant has submitted an application but before the application is approved, he or she does not lose eligibility. If the application is approved, he or she will be enrolled for coverage.

Eligibility status may change between the time of application for coverage and the coverage effective date. The applicant may have retired or separated from service under FERS MRA +10 provisions. Or, the applicant may have separated from service but still may be eligible because he or she is the qualified relative of an employee or annuitant. The applicant must reapply for coverage in these instances, submitting to the underwriting requirements specified for the eligible group of which he or she is now a part. For example, if an applicant separates from active service, but is also the spouse of an employee, he or she remains eligible for coverage. But, he or she will have to resubmit the application with the additional underwriting required of employees' spouses.

Subpart C addresses payment issues under the FLTCIP. As specified in the FLTCIP law, there is no Government contribution toward premiums for long term care insurance. The enrollee pays the entire cost.

If the enrollee underpays premiums, he or she must pay retroactive premiums to the Carrier. If he or she does not repay such premiums, the Carrier may cancel coverage. Conversely, if the enrollee has overpaid premiums, the Carrier will either reimburse the enrollee or apply the overpayment toward future premium payments due.

The regulations specify that an enrollee will not receive a refund of premiums if he or she decreases coverage, cancels coverage, or dies. The enrollee must pay for the coverage agreed to for the period that it was in effect. The enrollee is not entitled to a refund just because coverage was not used. This is consistent with Federal Employees' Group Life Insurance (FEGLI) Program rules, where there is no provision for the refund of premiums when an enrollee decides to reduce or cancel coverage. There are some exceptions for FLTCIP. Premiums paid in advance for the period beyond the date of death or for any period following the effective date of cancellation will be refunded. Any premiums paid will be returned if the enrollee cancels coverage within the ''free look'' period specified in the benefit booklet.

A requirement of the FLTCIP law is for the Carrier to account for FLTCIP funds separately from all other funds. This requirement, which is also found in FEHB and FEGLI regulations, ensures that Program funds can be traced and examined for accounting and audit purposes. The Carrier is also required to only use FLTCIP funds for purposes related specifically to the FLTCIP, such as administering the Program and paying claims.

Subpart D describes coverage requirements. Before the first open season for enrollment, OPM will determine the ways in which applicants can apply for coverage. OPM may allow enrollment on paper and various electronic formats. However, OPM does not believe it necessary to specify in regulation the different formats of enrollment applications. OPM believes FLTCIP is best served by using the most current technology available at any time without going through a regulatory process to do so.

It is not necessary for the workforce member to apply for coverage in order for his or her qualified relatives to be able to apply for coverage. For example, the parents of an employee may submit applications even if the employee decides not to apply. OPM wants each qualified relative to have maximum flexibility and unrestricted opportunity to apply for and select the coverage or cost that works best for him or her.

OPM does not plan to have regularly scheduled open seasons. There may be open seasons with abbreviated underwriting requirements for some eligible groups when OPM determines it is in the best interest of the FLTCIP. OPM will specify open season beginning and ending dates, as well as the requirements for applicants during the open season, in **Federal Register** Notices.

The FLTCIP Carrier will accept applications for coverage at any time. Any workforce member or qualified relative may apply, subject to full underwriting requirements. (OPM may or may not reduce underwriting requirements during an open season.)

In order to prevent adverse selection and thus keep the FLTCIP viable, OPM must require full underwriting outside of an open season even for Federal civilian and Postal employees and members of the uniformed services. Adverse selection occurs when someone enrolls only when it is apparent that he or she will need access to benefits. By deferring enrollment until benefits are needed, such individuals likely would not pay their fair share of overall premiums.

OPM will announce effective dates of coverage for open season enrollments in a **Federal Register** Notice. The effective date will be different for each open season. At any time outside of an open season, an applicant's coverage effective date is the first day of the month after the approval date of the application. For example, if an application is approved on November 1, then the coverage effective date is the first day of the next month, December 1.

There are some situations in addition to open season in which Federal civilian and Postal employees and members of the uniformed services will be eligible for abbreviated underwriting, such as when they become newly eligible for FLTCIP (see § 875.206). In such situations, the applicant must also be actively at work on the coverage effective date for coverage to actually go into effect. This requirement protects FLTCIP's stability. With abbreviated underwriting, only a few questions are

asked about the applicant's health status. If an employee is actively at work, he or she is less likely to go into claims status shortly. As discussed previously, it is important to protect the FLTCIP against adverse selection.

If an applicant is not actively at work on the coverage effective date, he or she must inform the Carrier. He or she will get a revised coverage effective date, which will be the first day of the month after his or her return to active work. But, he or she must also be actively at work on the revised coverage effective date for coverage to take effect. If that is not the case, then the applicant must inform the Carrier, and the process of issuing a revised effective date will begin again.

A newly married spouse of a Federal civilian or Postal employee or member of the uniformed services may apply for coverage within 60 days of marriage with the same underwriting requirements provided to this group during the most recent open season. However, if the employee or member of the uniformed services is not already enrolled, and wants to apply for coverage at the same time, then he or she must apply with full underwriting. This person already had the opportunity to apply with abbreviated underwriting and does not get another opportunity outside of an open season.

The regulations specify that an enrollee may upgrade coverage at any time, with full underwriting. An enrollee may also upgrade coverage during an open season with the underwriting requirements and coverage rules specified for that open season.

If an enrollee upgrades coverage by adding to the daily benefit amount other than through the automatic compound inflation option, he or she will then pay a ''blended'' premium, where the premium for that amount of increased daily benefit is based on his or her age and premium rates at the time of the purchase of the increased benefit (also called the attained age), while the premium for the base insurance purchased is still based on the enrollee's age and rates when the base insurance was purchased. For example, if an enrollee chose at age 55 a $125 daily benefit amount, he or she can decide at age 65 to increase that coverage to $150. He or she will pay age 65-based premiums for the additional $25 in coverage, but will continue to pay age 55-based premiums for the initial $125 coverage. For other types of coverage upgrades, premiums will be based on the enrollee's attained age and the prevailing rate at the time of purchase.

An enrollee may also decrease or cancel coverage at any time. There will be no refund of premiums paid for the portion of insurance cancelled, unless he or she cancels during the ''free look'' period specified in the benefit booklet. Any increase or decrease is subject to the Program options available at the time of the change.

The Carrier will make insurability decisions for all applicants, and these decisions are not appealable to OPM. This rule is identical to the FEGLI Program rule, which vests all insurability decisions with the Carrier. This requirement has worked very well for many years in the FEGLI Program, and OPM expects the same outcome for the FLTCIP.

A standard feature of life and long term care insurance policies is an incontestability clause, which allows for erroneous enrollments to remain in effect under certain conditions. The FEGLI Program regulations contain such a clause, and OPM is providing similar protections under the FLTCIP.

However, it will be important for each applicant to complete the enrollment application accurately and thoroughly. If the Carrier finds that the applicant omitted, misstated, or misrepresented information on the application, the Carrier may rescind coverage. This provision is meant to protect the integrity of the FLTCIP, in terms of both premium sufficiency and fairness to all applicants.

An enrollee must authorize the release of his or her medical information within 3 weeks of the Carrier's request (4 weeks if he or she is outside the United States). It is in an enrollee's best interest to get the authorization to the Carrier as quickly as possible. Without access to medical records, the Carrier cannot determine whether an enrollee is eligible for benefits. If the enrollee does not provide the authorization within this time period, the Carrier has the right to deny claims for benefits or, as a last resort, void coverage.

The FLTCIP law provides for portability of coverage. Federal civilian or Postal employees and members of the uniformed services and their qualified relatives may maintain coverage if the employee or member of the uniformed services transfers, retires, or separates from service, so long as the Carrier continues to receive the premiums. The premiums do not change because of these events. Once the employee or member of the uniformed services leaves active service, however, he or she is no longer eligible for any abbreviated underwriting provided during an open season or other qualifying event. The portability feature of the FLTCIP also extends to other individuals who separate under the FERS MRA+10 provision. Enrolled qualified relatives may also keep FLTCIP coverage when they lose qualified relative status, such as upon divorce.

Coverage will terminate when the enrollee exhausts the benefits available, does not timely pay the required premiums, or dies. If an enrollee does not pay a premium on time, he or she will have a grace period of 30 days in which he or she can bring payments up to date before the Carrier may terminate coverage.

If an enrollee's coverage ends because he or she did not pay the required premium, the Carrier will reinstate coverage if the Carrier receives proof within 6 months of the date coverage ended that the enrollee suffered a cognitive impairment such as Alzheimer's disease or loss of functional capacity before the premium payment grace period ended. In such an instance, the enrollee does not need to submit to any further underwriting to restore the earlier coverage.

The Carrier may reinstate an enrollee's coverage for other reasons within 12 months from the date coverage terminated. This provision applies when an enrollee voluntarily cancels coverage or does not pay the required premium. However, the enrollee must submit to full underwriting and the Carrier will determine whether he or she is still insurable. Coverage will be reinstated retroactively to the termination date and he or she must pay back premiums for that period. The enrollee's premium will be the same as it was prior to termination.

Lastly, FLTCIP benefits will be coordinated, according to National Association of Insurance Commissioners (NAIC) guidelines, with other government programs, group medical benefits, and other employer-sponsored long term care insurance coverage so that benefit payments are not duplicated. Coordination of benefits is a standard feature of health and long term care insurance policies, and helps to keep costs down by ensuring that payments do not exceed 100 percent of charges.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees, annuitants, members of the uniformed services, retired members of

the uniformed services, their qualified relatives, and the FLTCIP Carrier(s).

List of Subjects in 5 CFR Part 875

Administrative practices and procedures, Government contracts, Government employees, Employee benefit plans, Health insurance, Military personnel, Organization and functions, Retirement.

Office of Personnel Management.

Kay Coles James,

Director.

For the reasons stated in the preamble, the Office of Personnel Management amends title 5, Code of Federal Regulations, by adding part 875 as follows:

PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

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Authority: 5 U.S.C. 9008.

Subpart A—Administration and General Provisions

§ 875.101 Definitions.

This part is written as if the reader were an applicant or enrollee. Accordingly, the terms ''you,'' ''your,'' etc., refer, as appropriate, to the applicant or enrollee.

In this part, the terms *annuitant, employee, member of the uniformed services, retired member of the uniformed services*, and *qualified relative* have the meanings set forth in section 9001 of title 5, United States Code, and supplement the following definitions:

Abbreviated underwriting is a type of underwriting that asks fewer questions about your health status than with full underwriting to enable the Carrier to determine whether your application for coverage will be approved. The Carrier may also require review of your medical records, a phone interview, or an in-home interview.

Actively at work means:

(1) For a Federal civilian or Postal employee, that you meet all of the following conditions:

(i) You are reporting for work at your usual place of employment or other location to which Government business requires you to travel;

(ii) You are able to perform all the usual and customary duties of your employment on your regular work-schedule; and

(iii) You are not absent from work due to sickness, injury, annual leave, sick leave or any other leave. (You are not considered to be on leave on your alternate work schedule's scheduled day off.)

(2) For a member of the uniformed services, that you are on active duty and are physically able to perform the duties of your position.

Carrier means a qualified carrier as defined in section 9001 of title 5, United States Code, with which OPM has contracted to provide long term care insurance coverage under this section. A Carrier may designate 1 or more administrators to perform some of its obligations.

Eligible individual means an annuitant, Federal civilian or Postal employee, member of the uniformed services, retired member of the uniformed services or qualified relative, as defined in section 9001 of title 5, United States Code.

Enrollee means an eligible individual whose application for coverage the Carrier has approved and whose coverage is in effect.

FLTCIP means the Federal Long Term Care Insurance Program.

Free look means that within 30 days after you receive the Benefit Booklet, you may cancel your coverage if you are not satisfied with it and receive a refund of any premium you paid. It will be as if the coverage was never issued.

Full underwriting is the more comprehensive type of underwriting under the FLTCIP, which requires that you answer many questions about your health status to enable the Carrier to determine whether your application for coverage will be approved. The Carrier may also require review of your medical records, a phone interview, or an in-home interview.

Stepparent means any person, other than your mother or father, who is currently married to one of your parents, or, if one of your parents is dead, a person who was married to that parent at the time of that parent's death.

Underwriting requirements means the information about your current health status and history and other information that you must provide to the Carrier with your application for coverage to enable the Carrier to determine your insurability.

Workforce member means a Federal civilian or Postal employee, member of the uniformed services, Federal annuitant, or a retired member of the uniformed services, as defined in

section 9001 of title 5, United States Code.

§ 875.102 Where do I send benefit claims?

You must submit your benefit claims to the FLTCIP Carrier or its designee.

§ 875.103 Do I need to authorize release of my medical records when I file a claim?

Yes, if you file a claim for benefits, the Carrier needs to have a valid authorization from you to release your medical records.

§ 875.104 What are the steps required to resolve a dispute involving benefit eligibility or payment of a claim?

(a) If you dispute the Carrier's denial of your eligibility for benefits or your claim for payment of benefits, you must first send a written request for reconsideration to the Carrier no later than 60 days from the date of its decision.

(b) The Carrier must provide you with written notice of its review decision no later than 60 days after the date it receives your reconsideration request.

(c) If the Carrier upholds its denial (or does not respond within 60 days), you have the right to appeal its reconsideration decision. You must make this appeal in writing within 60 days from the date of the Carrier's notice upholding its decision. You will be notified of the decision on your appeal in writing no later than 60 days from receipt of your appeal request.

(d) If a denial of your eligibility for benefits or a denial of your claim is upheld upon appeal due to the evaluation of your medical condition/functional capacity, the Carrier will inform you that you may request that an independent third party, mutually agreed to by OPM and the Carrier, review the decision. You must make this request in writing within 60 days from the date of the notice informing you of the appeal decision. The independent third party must notify you in writing of its decision no later than 60 days from the Carrier's or its designee's receipt of your request for appeal to the third party. This is the final administrative remedy available to you. The decision of the independent third party is final and binding on the Carrier.

(e) You may seek judicial review of the final administrative denial of a claim. Such action may not be brought prior to exhaustion of the administrative process provided in this section. To pursue such judicial review, you must bring legal action against the Carrier in an appropriate United States district court within 2 years from the date of the final decision. You may not sue OPM, the independent reviewer, or any other entity. If you prevail in court, your recovery is limited to the amount of benefits payable under your benefit booklet and schedule of benefits.

§ 875.105 May OPM correct errors?

OPM may order correction of administrative errors after reviewing evidence and finding that it would be against equity and good conscience not to do so.

§ 875.106 What responsibilities do agencies have under this Program?

Federal agencies and uniformed services establishments are responsible for:

(a) Providing access to information about the FLTCIP to eligible individuals;

(b) Responding to questions from the Carrier, including questions on the employment status of an applicant or enrollee;

(c) Providing reports as OPM requires;

(d) Complying with Benefits Administration Letters and other OPM issuances/instructions; and

(e) Deducting premiums as authorized by a workforce member and as requested by the Carrier, when possible.

§ 875.107 What are OPM's responsibilities as regulator under this Program?

Consistent with the authority and discretion given to OPM by the FLTCIP law, OPM's responsibilities include those functions typically associated with, and preemptive of, State insurance regulatory authorities such as:

(a) Reviewing and approving the content and format of materials associated with the FLTCIP pursuant to section 9008(d) of title 5, United States Code;

(b) Reviewing and approving rates, forms, and marketing materials; and

(c) Determining the qualifications of enrollment personnel and the Program administrator(s).

§ 875.108 If the Carrier approves my application, will I get a certificate of insurance?

If the Carrier approves your application for coverage, OPM and/or the Carrier will make available to you a benefit booklet and schedule of benefits with complete coverage information, which will serve as your proof of insurance. You will also get a copy of your approved application for coverage.

§ 875.109 Is there a delegation of authority for resolving contract disputes between OPM and the Carrier?

For the purpose of making findings of fact and to the extent that conclusions of law may be required under any proceeding conducted in accordance with the provisions of the disputes clause included in the FLTCIP master contract, OPM delegates this function to the Armed Services Board of Contract Appeals.

Subpart B—Eligibility

§ 875.201 Am I eligible as a Federal civilian or Postal employee?

(a) If you are a Federal civilian or Postal employee whose current position conveys eligibility for Federal Employees Health Benefits under part 890 of this chapter, you are also eligible to apply for coverage, with the following exceptions:

(1) If you are a District of Columbia employee or retiree, you are not eligible to apply for coverage, regardless of whether you are eligible for Federal Employees Health Benefits coverage.

(2) If you are a Tennessee Valley Authority employee or retiree, you are eligible to apply for coverage, even though you may not be eligible for Federal Employees Health Benefits coverage.

(b) If you are a Federal civilian or Postal employee whose current position is excluded from Federal Employees Health Benefits eligibility under § 890.102 of this chapter, you are excluded from applying for coverage unless paragraph (a)(2) of this section applies.

(c) If you are an annuitant reemployed by the Federal Government, you may apply for coverage as an employee.

§ 875.202 Am I eligible as a Federal annuitant?

If you are a Federal annuitant, including a survivor annuitant, a deferred annuitant, or a compensationer, you are eligible to apply for coverage. If you are a deferred annuitant, you may apply for coverage only after you begin receiving your annuity.

§ 875.203 Am I eligible if I separated under the FERS MRA+10 provision?

If you have separated from service under the FERS Minimum Retirement Age and 10 years of service (MRA+10) provision of 5 U.S.C. 8412(g), and have postponed receiving an annuity under that provision, you are eligible to apply for coverage under this part. For underwriting purposes, you will be considered an annuitant.

§ 875.204 Am I eligible as a member of the uniformed services?

(a) You are eligible to apply for coverage if you are on active duty or full-time National Guard duty for more than a 30-day period.

(b) You are eligible to apply for coverage if you are a member of the Selected Reserve, which consists of:

(1) Drilling Reservists and Guardsmembers assigned to Reserve Component Units;

(2) Individual Mobilization Augmentees who are Reservists assigned to Reserve Component billets in Active Component units (you may be performing duty in a pay or non-pay status); and

(3) Active Guard and Reserve members who are full-time Reserve members on full-time National Guard duty or active duty in support of the National Guard or Reserves.

(c) You are not eligible to apply for coverage if you belong to the Individual Ready Reserve. The Individual Ready Reserves includes Reservists who are assigned to a Voluntary Training Unit in the Naval Reserve and Category E in the Air Force Reserve.

§ 875.205 Am I eligible as a retired member of the uniformed services?

(a) You are eligible to apply for coverage if you are a retired member of the uniformed services entitled to retired or retainer pay (including disability retirement pay).

(b) You are eligible to apply for coverage if you are a retired reservist who is currently receiving retirement pay.

§ 875.206 As a new Federal civilian or Postal employee or member of the uniformed services, when may I apply?

(a) As a new, newly eligible, or returning Federal civilian or Postal employee or member of the uniformed services, you may apply as follows:

(1) If you are a new Federal civilian or Postal employee or member of the uniformed services entering a position that conveys eligibility, you may apply for coverage within 60 days after becoming eligible.

(2) If you are entering a position that conveys eligibility as a Federal civilian or Postal employee or member of the uniformed services from a position that did not convey eligibility, you may apply for coverage within 60 days after becoming eligible.

(3) If you return to Federal civilian or Postal service or the uniformed services after a break in service of 180 days or more to a position that conveys eligibility, you may apply for coverage within 60 days after becoming eligible.

(b) Your spouse may also apply during that 60-day period after you become eligible.

(c) The underwriting requirements that will be applicable will be those required of Federal civilian and Postal employees and members of the uniformed services and their spouses during the last open season for enrollment before the date of your application.

(d) After the 60-day period ends, you may still apply for coverage, as may your spouse, but full underwriting requirements will apply.

(e) If your employing office determines that you were unable, for a cause beyond your control, to submit an application during the initial 60-day period, you may submit an application within 60 days after your employing office advises you of that determination. Similarly, your employing office may make this determination if your spouse is unable to submit an application during the same time period for a cause beyond his/her control. This employing office authority only applies within 6 months after the beginning date of the initial eligibility period. The underwriting requirements will be as specified in paragraph (c) of this section.

(f) Your other qualified relatives may apply for coverage at any time. They will be subject to full underwriting requirements.

§ 875.207 What happens if I am in nonpay status during an open season?

(a) If you return to a pay status from nonpay status during the open season, you have 60 days from the date of your return, or until the end of the open season, whichever gives you more time, to apply for coverage pursuant to the open season underwriting requirements for Federal civilian or Postal employees and members of the uniformed services.

(b) If you return to pay status from nonpay status after the open season, you have 60 days from the date of your return to apply for coverage pursuant to the underwriting requirements specified for Federal civilian or Postal employees and members of the uniformed services in the immediately preceding open season.

(c) Paragraphs (a) and (b) of this section apply only when you have been in nonpay status for more than one-half of an open season, unless you went into nonpay status for a reason beyond your control.

§ 875.208 May I apply as a qualified relative if the person on whom I am basing my eligibility status has died?

You may not apply as a qualified relative if the workforce member on whom you are basing your qualified relative status died prior to the time you apply for coverage, unless you are receiving a survivor annuity as the spouse of a deceased workforce member.

§ 875.209 How do I demonstrate that I am eligible to apply for coverage?

(a) When you submit your application for coverage, you must make known your status as a member of an eligible group.

(b) If the Carrier finds that you misrepresented your eligibility status, the Carrier has the right to void your coverage and return to you any premiums you paid, without interest. The incontestability provisions in § 875.409 do not apply to this section.

§ 875.210 What happens if I become ineligible after I submit an application?

(a) You must be eligible at the time of your application and at the time your coverage is scheduled to go into effect. Except as noted in paragraph (b) of this section, if you lose your status as part of an eligible group before your coverage goes into effect, you are no longer eligible for FLTCIP coverage. You are required to inform the Carrier that you are no longer eligible.

(b) In two instances, you will continue to be eligible for coverage even if you lose your status as part of an eligible group after you submit an application for coverage, but before your coverage becomes effective. The two instances are:

(1) When you are involuntarily separated from Federal civilian service (except for misconduct) or from the uniformed services (except for a dishonorable discharge). In either of these events, your qualified relatives will continue to be eligible.

(2) When you are the qualified relative of a workforce member who dies.

§ 875.211 What happens if my eligibility status changes after I submit an application?

(a) If you applied as a Federal civilian or Postal employee or member of the uniformed services, and separate from service under the MRA+10 provisions of 5 U.S.C. 8412(g), or retire after you submit an application for coverage, but before your coverage becomes effective, you must reapply as an annuitant and submit to full underwriting requirements.

(b) If you applied as a Federal civilian or Postal employee or member of the uniformed services, and otherwise separate from service, but you are a qualified relative of another workforce member, you must reapply based on the additional underwriting requirements specified for that type of qualified relative.

§ 875.212 Is there a minimum application age?

Yes, there is a minimum application age. You must be at least 18 years old at the time you submit an application for coverage.

Subpart C—Cost

§ 875.301 Is there a Government contribution toward premiums?

There is no Government premium contribution toward the cost of long term care insurance.

§ 875.302 What are the options for making premium payments?

(a) Premium payments may be made by Federal payroll or annuity deduction, uniformed services retirement pay deduction, by pre-authorized debit, or by direct billing.

(b) You must continue to make premium payments when they are due for your coverage to stay in effect.

§ 875.303 How are premium payment errors corrected?

(a) If the Carrier finds that you have underpaid the premium rate for your age and/or level of coverage, you must pay retroactive premiums to the Carrier for the amount due. If you fail to pay back premiums within the time provided by the Carrier to correct the error, the Carrier may terminate your coverage.

(b) If the Carrier finds that you have overpaid premiums, the Carrier will either reimburse you or reduce a future premium payment(s) by the amount of the overpayment.

(c) If you die while you have coverage, any premiums paid for the period beyond the date of your death will be refunded to your estate or to an alternate payee. If there is no estate, the Carrier will determine whether to pay the refund to an alternate payee. If you cancel your coverage, any premiums paid in advance for the period following the effective date of your cancellation will be refunded to you.

(d) Any premiums you paid will be returned if you cancel coverage within the ''free look'' period specified in the benefit booklet.

§ 875.304 How does the Carrier account for FLTCIP funds?

The Carrier must keep account of all funds received under this section separate from all other funds. The Carrier may use FLTCIP funds only for purposes specifically related to the FLTCIP.

Subpart D—Coverage

§ 875.401 How do I apply for coverage?

(a) To apply for coverage, you must complete the application in a form appropriate for your eligibility status as prescribed by the Carrier and approved by OPM.

(b) If you are the qualified relative of a workforce member, you may apply for coverage even if the workforce member does not apply for coverage.

§ 875.402 When will open seasons be held?

(a) The first open season for enrollment under this section began July 1, 2002, as described in a **Federal Register** Notice (67 FR 43691, June 28, 2002), including the open season ending date(s) and which eligible individuals may apply based on abbreviated underwriting.

(b) There are no regularly scheduled open seasons for long term care insurance. OPM will announce any subsequent open seasons via a **Federal Register** Notice. The Notice will include the requirements for applicants during the open season.

§ 875.403 May I apply for coverage outside of an open season?

If you are eligible for coverage, you may submit an application at any time outside of an open season. You will be subject to full underwriting requirements.

§ 875.404 What is the effective date of coverage?

(a) The effective dates of coverage under open season enrollments will be announced in a **Federal Register** Notice that announces open season dates.

(b)(1) If you enroll at any time outside of an open season, your coverage effective date is the 1st day of the month after the date your application is approved.

(2) If you are a Federal civilian or Postal employee or member of the uniformed services and you are applying for coverage under abbreviated underwriting, you also must be actively at work on your coverage effective date for your coverage to become effective. If your coverage effective date falls on a weekend or holiday, you must be actively at work on the last workday before that date for coverage to become effective. You must inform the Carrier if you are not actively at work on your coverage effective date. In that event, the Carrier will issue you a revised effective date, which will be the 1st day of the month after the date you return to being actively at work. You also must be actively at work on any revised effective date for coverage to become effective, or you will be issued another revised effective date in the same manner.

§ 875.405 If I marry, may my new spouse apply for coverage?

(a)(1) If you are a Federal civilian or Postal employee or member of the uniformed services and you have married, your spouse is eligible to submit an application for coverage under this section within 60 days from the date of your marriage, and will be subject to the underwriting requirements in force for the spouses of civilian employees and members of the uniformed services during the most recent open season. You, however, are not eligible for abbreviated underwriting because of your marriage. You may apply for coverage along with your spouse, but full underwriting will be required for you.

(2) After 60 days, your spouse may still apply for coverage but will be subject to full underwriting. Your new qualified relatives (such as parents-in-law) may apply for coverage with full underwriting at any time following the marriage.

(b) The new spouse and other qualified relatives of an annuitant or retired member of the uniformed services may apply for coverage with full underwriting at any time following the marriage.

§ 875.406 May I change my coverage?

(a) You may make the following changes to your coverage:

(1) You may apply to increase your coverage at any time. Full underwriting is required, except when an open season allows abbreviated underwriting.

(2) If you increase your coverage by adding to your daily benefit amount, the premiums for the additional coverage will be based on your age, prevailing premium rates, and coverage rules in effect at the time you purchase the additional coverage.

(3) For other types of coverage increases, your entire premium will be based on your age, prevailing premium rates, and coverage rules in effect at the time you purchase the increased coverage. Any increase in coverage will take effect on the 1st day of the month following the date the Carrier approves your request for an increase.

(b) You may decrease your coverage at any time, although any decrease will be subject to coverage rules at the time of the decrease. Decreased coverage takes effect on the 1st day of the month after the Carrier receives your request. You will not receive any refund of premiums paid for coverage you held before the decrease; however, your subsequent

premiums will be reduced based on your new, lower level of coverage. The Carrier will refund or credit any portion of premium paid in advance for the period following the date on which you decrease your coverage.

(c) You may cancel your coverage at any time.

(1) If you cancel during the free look period, your premiums will be refunded to you.

(2) If you cancel your coverage at any time other than during the free look period, cancellation will take effect on your requested cancellation date or at the end of the period covered by your last premium payment, whichever occurs first. You will not receive any refund of premiums paid, other than any premiums paid in advance for the period following the effective date of your cancellation of coverage, and you will not have to pay any more premiums unless you owed retroactive premiums.

§ 875.407 Who makes insurability decisions?

The Carrier determines the insurability of all applicants. The Carrier's decision may not be appealed to OPM.

§ 875.408 What is the significance of incontestability?

(a) *Incontestability* means coverage issued based on an erroneous application may remain in effect. Such coverage will not remain in effect, and your claim may be denied, under any of the following conditions:

(1) If your coverage has been in force for less than 6 months, the Carrier may void your coverage or deny a claim upon a showing that information on your signed application that was material to your approval for coverage is different than what is shown in your medical records.

(2) If your coverage has been in force for at least 6 months but less than 2 years, the Carrier may void your coverage or deny a claim upon a showing that information on your signed application that was material to your approval for coverage is different than what is shown in your medical records, and pertains to the condition for which benefits are sought.

(3) After your coverage has been in effect for 2 years, the Carrier may void your coverage only upon a showing that you knowingly and intentionally made a false or misleading statement or omitted information in your signed application for coverage regarding your health status.

(b) Your coverage can be contested at any time when the Carrier finds that you were not an eligible individual at the time you applied and were approved for coverage.

(c) If the Carrier voids coverage after it has paid benefits, it cannot recover the benefits already paid.

(d) Incontestability does not apply when you have not paid your premiums on a timely basis.

§ 875.409 Must I provide an authorization to release medical information?

You must provide the Carrier with an authorization to release medical information when requested. The Carrier may deny a claim for benefits or void your coverage if the Carrier does not receive an authorization to release medical information within 3 weeks after its request (4 weeks for those outside the United States).

§ 875.410 May I continue my coverage when I leave Federal or military service?

If you are a Federal civilian or Postal employee or member of the uniformed services, your coverage will automatically continue when you leave active service, as long as the Carrier continues to receive the required premium when due. However, once you leave active service, you are no longer eligible for any abbreviated underwriting provided during any future open season.

§ 875.411 May I continue my coverage when I am no longer a qualified relative?

If you are already enrolled as a qualified relative, you may continue your FLTCIP coverage if you subsequently lose qualified relative status (such as upon divorce), as long as the Carrier receives the required premium when due.

§ 875.412 When will my coverage terminate?

Your coverage will terminate on the earliest of the following dates:

(a) The date you specify to the Carrier that you wish your coverage to end;

(b) The date of your death;

(c) The end of the period covered by your last premium payment if you do not pay the required premiums when due, after a grace period of 30 days; or

(d) The date you have exhausted your maximum lifetime benefit. (However, in this event, care coordination services will continue.)

§ 875.413 Is it possible to have coverage reinstated?

(a) Under certain circumstances, your coverage can be reinstated. The Carrier will reinstate your coverage if it receives proof satisfactory to it, within 6 months from the termination date, that you suffered from a cognitive impairment or loss of functional capacity, before the grace period ended, that caused you to miss making premium payments. In that event, you will not be required to submit to underwriting. Your coverage will be reinstated retroactively to the termination date but you must pay back premiums for that period. The premium will be the same as it was prior to termination.

(b) If your coverage has terminated because you did not pay premiums or because you requested cancellation, the Carrier may reinstate your coverage within 12 months from the termination date at your request. You will be required to reapply based on full underwriting, and the Carrier will determine whether you are still insurable. If you are insurable, your coverage will be reinstated retroactively to the termination date and you must pay back premiums for that period. The premium will be the same as it was prior to termination.

§ 875.414 Will benefits be coordinated with other coverage?

Yes, benefits will be coordinated with other plans, following the coordination of benefits (COB) guidelines set by the National Association of Insurance Commissioners. The total benefits from all plans that pay a long term care benefit to you should not exceed the actual costs you incur. The other plans that are considered for COB purposes include government programs, group medical benefits, and other employer-sponsored long term care insurance plans. Medicaid, individual insurance policies, and association group insurance policies are not taken into consideration under this provision.

[FR Doc. 03–2463 Filed 2–3–03; 8:45 am]

BILLING CODE 6325–50–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE194, Special Condition 23–134–SC]

Special Conditions; Cirrus Design Corporation SR22; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811, for a Type Design Change for the

Cirrus Design Corporation Model SR22 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model 700–00006–XXX–( ) manufactured by Avidyne Corporation for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is January 24, 2003. Comments must be received on or before March 6, 2003.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE194, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE194. 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: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE194.'' The postcard will be date stamped and returned to the commenter.

Background

On July 8, 2002, Cirrus Design Corporation , 4515 Taylor Circle, Duluth, Minnesota 55811, made an application to the FAA for a Type Design Change for the Cirrus Design Corporation Model SR22 airplane. The Model SR22 is currently approved under TC No. A00009CH. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Cirrus Design Corporation must show that the Cirrus Design Corporation Model SR22 aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Cirrus Design Corporation Model SR22: Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–53, except as follows: § 23.301 through Amendment 47; §§ 23.855, 23.1326, 23.1359, not applicable. 14 CFR 36 dated December 1, 1969, as amended by current amendment as of the date of type Certification.

Equivalent Levels of Safety finding (ACE–96–5) made per the provisions of 14 CFR part 23, § 23.221; Refer to FAA ELOS letter dated June 10, 1998 for models SR20, SR22. Equivalent Levels Of Safety finding (ACE–00–09) made per the provisions of 14 CFR part 23, §§ 23.1143(g) and 23.1147(b); Refer to FAA ELOS letter dated September 11, 2000 for model SR22.

Special Condition (23–ACE–88) for ballistic parachute; Refer to FAA letter November 25, 1997 for models SR20, SR22.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101 (b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Cirrus Design Corporation plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe

shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz– 700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

Note.—The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Cirrus Design Corporation Model SR22 airplane. Should Cirrus Design Corporation apply at a later date for a type design change to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior

opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cirrus Design Corporation SR22 airplane modified by Cirrus Design Corporation to add an EFIS.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on January 24, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2524 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–48–AD; Amendment 39–13045; AD 2003–03–20]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc., Model HC–C2YR–4CF Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Hartzell Propeller Inc. model HC–C2YR–4CF propellers. This amendment requires the reduction of the original hub and blades certified service (fatigue) life from unlimited hours to 2,000 hours. This amendment is prompted by a reevaluation by Hartzell Propeller Inc. of the original hub and blades service life certification calculations. The actions specified by this AD are intended to prevent fatigue failure of the original propeller hub and blades which may result in loss of airplane control.

DATES: Effective March 11, 2003.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone (847) 294–7031; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Hartzell Propeller Inc. model HC–C2YR–4CF propellers was published in the **Federal Register** on September 19, 2002 (67 FR 59026). That action proposed to require the reduction of the propeller hubs part number (P/N) D–6522–1 or D–2201–16 and blades P/N FC8477A–4 certified service (fatigue) life from unlimited hours to 2,000 hours. The FAA and Hartzell Propeller Inc. have received reports of several engine crankshaft failures on Sky International Inc. (Pitts) S–2S and S–2B airplanes, which are manufactured by Aviat Aircraft Inc. of Afton, WY. Hartzell Propeller Inc. reevaluated the service (fatigue) life of the original propeller hubs P/N D–6522–1 or D–2201–16 and blades P/N FC8477A–4 installed in the model HC–C2YR–4CF propellers. Hartzell has reduced the certified service (fatigue) life of these original propeller hubs and blades from unlimited hours to 2,000 hours. Exceeding these life limits could result in fatigue failure of the hubs or blades which may result in loss of airplane control. The 2,000-hour life limit is documented in the Airworthiness Limitations section of Hartzell Manual 113B.

Comments

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

Risk if Life of a Component Is Not Known

One commenter states that the proposal introduces a life limit where there was none previously required. The commenter also states that there is a risk that operators or maintenance organizations may not know the current life of the applicable parts, and that the NPRM does not include any proposal to estimate usage or factoring where the life of a component is not known.

The FAA does not agree. Under 14 CFR 91.417(a)(2)(i), each registered owner or operator must keep records of the total time in service of each propeller. The propellers affected by this AD are flown on aircraft used in part 91 operations. Moreover, 14 CFR 91.417(b)(2) requires that the records must denote the total time, must be retained for an unlimited time, and must be transferred with the aircraft. Therefore, if a propeller's total time is unknown, then the propeller and the registered owner or operator are not in compliance with the regulations. Presently, the FAA will not pursue policy to approve a general formula for calculating total time on propellers with unknown total times. Please note that the final rule allows for the submittal of data to request and to justify an alternate method of compliance to the AD or an adjustment of the compliance time in the AD.

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

Economic Analysis

There are approximately 377 propellers of the affected design in the worldwide fleet. The FAA estimates that 300 propellers installed on airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 work hours per propeller to do the actions, and that the average labor rate is $60 per work hour. The approximate cost of a new hub and blades is $9,000. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $2,808,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) Is not a ''significant rule'' under 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. A final evaluation has been prepared for this action and it 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–03–20 Hartzell Propeller Inc.: Amendment 39–13045. Docket No. 2001–NE–48–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HC–C2YR–4CF propellers with propeller hubs part number (P/N) D–6522–1 or D–2201–16 and propeller blades P/N FC8477A–4, installed on Sky International Inc. (Pitts) S–2S and S–2B airplanes with Textron Lycoming model AEIO–540–D4A5 engines.

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

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent fatigue failure of Hartzell propeller hubs P/N D–6522–1 or D–2201–16 and blades P/N FC8477A–4 which may result in loss of airplane control, do the following:

(a) Remove from service Hartzell propeller hubs P/N D–6522–1 or D–2201–16 and blades P/N FC8477A–4 before exceeding 2,000 flight hours and replace with serviceable hubs and blades.

(b) After the effective date of this AD, do not install any Hartzell propeller hubs P/N D–6522–1 or D–2201–16 and blades P/N FC8477A–4 that have accumulated 2,000 hours.

(c) A propeller hub or blade from an airplane that is identified in the applicability section of this AD may not be removed and reused on an airplane for which this AD is not applicable.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

Special Flight Permits

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

Effective Date

(f) This amendment becomes effective on March 11, 2003.

Issued in Burlington, Massachusetts, on January 28, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–2464 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2016

Establishment of a Petition Process To Review Eligibility of Countries for the Benefits of the Andean Trade Preference Act, as Amended by the Andean Trade Promotion and Drug Eradication Act

AGENCY: Office of the United States Trade Representative.

ACTION: Interim rule with request for comments.

SUMMARY: This rule, on an interim final and emergency basis, provides for the establishment of a petition process to review the eligibility of countries for the benefits of the Andean Trade Preference Act, as amended by the Andean Trade Promotion and Drug Eradication Act.

ADDRESSES: Submit written comments to Bennett M. Harman, Office of the Americas, Office of the United States Trade Representative, 600 17th Street, NW., Room 523, Washington DC 20508.

DATES: Interim rule effective February 4, 2003. Comments must be received on or before April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Office of the Americas, Office of the United States Trade Representative. The telephone number is (202) 395–5190.

SUPPLEMENTARY INFORMATION: Signed into law on August 6, 2002, the Trade Act of 2002 (Pub. L. 107–210) contains, in title XXXI, provisions for enhanced trade benefits for eligible Andean countries. Titled the ''Andean Trade Promotion and Drug Eradication Act'' (ATPDEA), title XXXI renews and amends the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201, *et seq.*). Section 3103(d) of the ATPDEA requires the President to promulgate regulations regarding the review of eligibility of countries for benefits of the ATPA, consistent with section 203(e) of the ATPA, amended by the ATPDEA, not later than 180 days after the date of enactment of the Trade Act of 2002. This authority was delegated to the U.S. Trade Representative (USTR) pursuant to Executive Order 13277 on November 19, 2002.

Section 203(e) of the ATPA, as amended, gives the President the authority to withdraw or suspend the designation of any ATPA or ATPDEA beneficiary country, or withdraw, suspend, or limit the application of preferential treatment under the ATPA, as amended by the ATPDEA, to any article of any such country, if the President determines that, as a result of

changed circumstances, the country is not meeting the respective eligibility criteria of the ATPA and ATPDEA. Section 203(e) also establishes certain procedural guidelines for taking any of the actions described above. Presidential Proclamation 7616 of October 31, 2002, delegated to the USTR the functions of the President under section 203(e)(2)(A) of the ATPA with respect to publishing notice of an action he proposes to take under section 203(e).

In accordance with section 3103(d)(2) of the ATPDEA, the interim rule is similar to the regulations governing the annual review used to modify the U.S. Generalized System of Preferences, which is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended. The interim rule establishes an annual review that allows for public input, and includes procedures for requesting the withdrawal, suspension, or limitation of preferential duty treatment under the ATPA, as amended, and for reviewing such requests and implementing granted requests.

Emergency Action

This rulemaking is necessary on an emergency basis to meet the statutory deadline. Under these circumstances, USTR has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments that are timely submitted to USTR. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation. After the comment period closes, USTR will publish in the **Federal Register** a final rule on this subject, together with a discussion of comments received and any amendments made to the interim rule as a result of the comments.

In order to facilitate prompt consideration of submissions, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. The e-mail address is *FR0065@ustr.gov.* It is strongly recommended that comments submitted by mail or express delivery service to the address for Mr. Harman listed above also be sent by e-mail. Persons making submissions by e-mail should use the following subject line: ''ATPA Petition Process.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential versions should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Persons submitting written comments by mail or express delivery service should provide 20 copies. All submissions should be in English.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186.

The Regulatory Flexibility Act and Executive Order 12866

Under the Regulatory Flexibility Act, a Regulatory Flexibility Analysis is not required under sections 603 or 604 because USTR is not publishing a Notice of Proposed Rulemaking. This interim rule is significant under Executive Order 12866 of September 30, 1993, and has been reviewed by the Office of Management and Budget.

List of Subjects in 15 CFR Part 2016

Administrative practice and procedure, Confidential business information, Foreign trade.

For the reasons set out in the ''Supplementary Information'' section of this notice, 15 CFR is amended by adding the following new part 2016 to read as follows:

PART 2016—ESTABLISHMENT OF A PETITION PROCESS TO REVIEW ELIGIBILITY OF COUNTRIES FOR THE BENEFITS OF THE ANDEAN TRADE PREFERENCE ACT (ATPA), AS AMENDED BY THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT (ATPDEA)

Sec.

2016.0 Requests for reviews.
2016.1 Action following receipt of petitions.
2016.2 Timetable for reviews.
2016.3 Publication regarding requests.
2016.4 Information open to public inspection.
2016.5 Information exempt from public inspection.

Authority: 19 U.S.C. 3201, *et seq.*; Sec. 3103(d), Pub. L. 107–210, 116 Stat. 933 E.O. 13277, 67 FR 70303.

§ 2016.0 Requests for reviews.

(a) Any person may submit a request (hereinafter ''petition'') that the designation of a country as an Andean Trade Preference Act (ATPA) beneficiary country be withdrawn or suspended, or the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country be withdrawn, suspended, or limited. Such petitions must specify the name of the person or the group requesting the review. The Office of the United States Trade Representative (USTR) suggests that, in addition, such petitions identify the ATPA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or articles were selected; indicate the specific section 203(e) or (d) (19 U.S.C. 3202(c), (d)) eligibility criterion or criteria that the petitioner believes warrants review; and include all available supporting information. The Andean Subcommittee of the Trade Policy Staff Committee (TPSC) may also request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the Andean Subcommittee would be interested in any new information related to the issue provided by the petitioner.

(b) Any party may submit a petition that the designation of a country as an Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary

country be withdrawn or suspended, or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3) or (4)) be withdrawn, suspended, or limited. Such petitions must specify the name of the person or the group requesting the review. USTR suggests that, in addition, such petitions: Identify the ATPDEA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or articles were selected; indicate the specific section 204(b)(6)(B) (19 U.S.C. 3203(b)(6)(B)) eligibility criterion or criteria that the petitioner believes warrants review; and include all available supporting information. The Andean Subcommittee may also request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the Andean Subcommittee would be interested in any new information related to the issue provided by the petitioner.

(c) All petitions and other submissions should be submitted in accordance with the schedule (*see* § 2016.2) and requirements for submission that will be published annually in the **Federal Register** in advance of each review. Foreign governments may make submissions in the form of diplomatic correspondence and should observe the deadlines for each annual review published in the **Federal Register**.

(d) The TPSC may at any time, on its own motion, initiate a review to determine whether the designation of a country as an ATPA beneficiary country should be withdrawn or suspended; the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country should be withdrawn, suspended, or limited; the designation of a country as an ATPDEA beneficiary country should be withdrawn or suspended; or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), or (4)) should be withdrawn, suspended, or limited.

(e) Petitions requesting the actions described in paragraph (a) or (b) of this section that indicate the existence of exceptional circumstances warranting an immediate review may be considered outside of the schedule for the annual review announced in the **Federal Register**. Requests for such urgent consideration should contain a statement of reasons indicating why an expedited review is warranted.

§ 2016.1 Action following receipt of petitions.

(a) USTR shall publish in the **Federal Register** a list of petitions filed in response to the announcement of the annual review, including the subject matter of the request and, where appropriate, the description of the article or articles covered by the request.

(b) Thereafter, the Andean Subcommittee shall conduct a preliminary review of the petitions, and shall submit the results of its preliminary review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the USTR on any proposed action to modify the ATPA. The Chairman of the TPSC shall report the results of the TPSC's review to the USTR, who may convene the Trade Policy Review Group (TPRG), or refer the matter to the National Security Council (NSC) committee process for further review of recommendations and decisions as necessary.

(c) The USTR, after receiving the advice of the TPSC, TPRG or the NSC committee process, shall announce in the **Federal Register** notice of the results of the preliminary review, together with proposed action or actions and a schedule for receiving public input consistent with section 203(e) of the ATPA, as amended (19 U.S.C. 3202(e)).

(1) The schedule shall include the deadline and guidelines for any party to submit written comments supporting, opposing or otherwise commencing on any proposed action.

(2) The schedule shall also include the time and place of the public hearing, as well as the deadline and guidelines for submitting requests to present oral testimony.

(d) After receiving and considering public input, the Andean Subcommittee shall submit the results of the final review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the President on any proposed action to modify the ATPA. The Chairman of the TPSC shall report the results of the TPSC's review to the USTR, who may convene the TPRG, or refer the matter to the NSC committee process for further review of recommendations and decisions as necessary. The USTR, after receiving the advice of the TPSC, TPRG or the NSC committee process, shall make recommendations to the President on any proposed action to modify the ATPA, including recommendations that no action be taken. The USTR shall also forward to the President any documentation necessary to implement the recommended proposed action or actions to modify the ATPA.

(e) In considering whether to recommend any proposed action to modify the ATPA, the Andean Subcommittee, on behalf of the TPSC, TPRG, or the NSC committee process, shall review all relevant information submitted in connection with a petition or otherwise available.

§ 2016.2 Timetable for reviews.

Beginning in calendar year 2003, reviews of pending petitions shall be conducted at least once each year, according to the following schedule, unless otherwise specified by **Federal Register** notice:

(a) September 15: Deadline for submission of petitions for review;

(b) On or about December 1: **Federal Register** announcement of the results of the preliminary review;

(c) December/January: Written comments submitted and a public hearing held on any proposed actions;

(d) February/March: Preparation of recommendations to the President, Presidential decision, and implementation of Presidential decision.

§ 2016.3 Publication regarding requests.

Following the Presidential decision and, where required, the publication of a Presidential proclamation modifying the ATPA in the **Federal Register**, USTR will publish a summary of the decisions made in the **Federal Register**, including:

(a) For petitions upon which decisions were made, a description of the outcome of the review; and

(b) A list of petitions upon which no decision was made, and thus which are pending further review.

§ 2016.4 Information open to public inspection.

With the exception of information subject to § 2016.5, any person may, upon request, inspect in the USTR Reading Room:

(a) Any written petition, comments, or similar submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings held pursuant to this part.

§ 2016.5 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if it is determined that the

disclosure of such information is not required by law.

(b) A party requesting an exemption from public inspection for information submitted in writing shall clearly mark each page ''BUSINESS CONFIDENTIAL'' at the top, and shall submit a non-confidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

Bennett M. Harman,

Acting Assistant United States Trade Representative for the Americas.

[FR Doc. 03–2705 Filed 2–3–03; 8:45 am]

BILLING CODE 3190–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, and 190

RIN 3038–AB31

Denomination of Customer Funds and Location of Depositories

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting a new Rule 1.49 that permits futures commission merchants and derivatives clearing organizations, under certain conditions, to deposit customer funds in foreign depositories and in certain currencies other than United States dollars. The Commission is also adopting an amendment to Appendix B of its bankruptcy rules that governs the distribution of property where the bankrupt futures commission merchant or derivatives clearing organization maintains customer property in depositories outside the United States or in a foreign currency. This new distributional framework is intended to assure that customers whose funds are held in a United States depository will not be adversely affected by a shortfall in the pool of funds held in a depository outside the United States that is due to the sovereign action of a foreign government or court. The rule replaces Financial and Segregation Interpretation No. 12.

EFFECTIVE DATE: March 6, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, Compliance and Registration Section, or Michael A. Piracci, Attorney-Advisor, Division of Clearing and Intermediary Oversight, and for further information regarding amendments to appendix B of part 190, contact Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

One of the most important functions of the Commodity Exchange Act (the ''Act'')[1] and the rules thereunder is the protection of customer funds. Section 4d(a)(2) of the Act requires that every futures commission merchant (''FCM''):

> Treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held.

Prior to 1988, the Commission, and its predecessor agency, the Commodity Exchange Authority, had construed this provision to require that customer funds deposited with an FCM relating to trading on a domestic exchange be held in the United States (''U.S.''), unless the funds were being held for a foreign-domiciled customer.[2] In light of the growing internationalization of the futures and options markets, the Commission in 1988 issued Financial and Segregation Interpretation No. 12 (''Interp. 12''),[3] which provided that, under certain conditions, an FCM may deposit segregated funds of customers domiciled in the U.S. in foreign depositories.

As stated above, when the Commission issued Interp. 12, it noted that the change in the Commission's interpretation concerning appropriate depositories for segregated customer funds was appropriate ''in light of the growing internationalization of the futures and option markets.''[4] In the more than 14 years since Interp. 12 was issued, the futures and options markets, along with almost all other segments of the business world, have seen greater internationalization. As a result, there is an increased need and desire of certain customers to be able to more easily conduct business in currencies other than the U.S. dollar.

In the Commodity Futures Modernization Act of 2000 (the ''CFMA''),[5] Congress noted that ''regulatory impediments to the operation of global interests can compromise the competitiveness of [U.S.] business'' and that regulatory policy should be ''flexible to account for rapidly changing derivatives industry practices.''[6] Due to restrictions placed on holding segregated funds offshore, U.S. markets and futures professionals may find themselves at a disadvantage to their foreign competitors. One of the purposes of the CFMA is to ''enhance the competitive position of [U.S.] financial institutions and financial markets.''[7]

Based upon the foregoing, on August 7, 2002, the Commission proposed the rule being adopted herein.[8] The Commission received two comment letters on the proposed rule. The commenters were the National Futures Association (''NFA''), a registered futures association, and the Futures Industry Association (''FIA''), an industry trade association. Both commenters stated that they supported the proposed rule and amendments, but each suggested certain changes and clarifications that they believed would be appropriate. These suggestions, along with the Commission's assessment of these suggestions, are discussed more fully in conjunction with the discussion of the appropriate section of the rule and amendments.

[1] 7 U.S.C. 1 *et seq* (2000).

[2] *See* Commodity Exchange Authority Administrative Determination No. 238 (Sep. 4, 1974); *see also* Foreign Options and Foreign Futures Transactions, 51 FR 12104, note 36 (Apr. 8, 1986); Leverage Transactions, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. ¶ 21,742 at p. 26,952, note 52 (May 25, 1983).

[3] Financial and Segregation Interpretation No. 12—Deposit of Customer Funds in Foreign Depositories, 53 FR 46911 (Nov. 21, 1988). The document was published in the **Federal Register** as a Statement of Agency Interpretation. It was also published in the Commodity Futures Law Reporter at ¶ 7122 together with a series of Financial and Segregation Interpretations issued by the Commission's Division of Trading and Markets.

[4] *Id.* at 46912.

[5] Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[6] Section 126(a) of the CFMA.

[7] Section 2(8) of the CFMA.

[8] 67 FR 52641 (Aug. 13, 2002).

II. The New Rule and Amendments

A. New Rule 1.49

1. Definitions

In the proposed rule, the Commission had defined the terms ''non-money center country'' and ''non-money center currency.'' These terms, however, were not used elsewhere in Rule 1.49. Accordingly, the Commission is not including these definitions in the final rule.

2. Permissible Currencies

The Commission is adopting Rule 1.49 to provide that FCM obligations owed to customers shall be held in: (1) U.S. dollars; (2) a currency in which funds were deposited by the customer, or converted to at the request of the customer, to the extent of such deposits and conversions; or (3) a currency in which funds have accrued to the customer as a result of trading on a designated contract market or registered derivatives transaction execution facility (''DTF''). Any customer may deposit foreign currency with an FCM if the FCM permits it, not just those customers trading contracts priced and settled in a foreign currency.

As noted above, the internationalization of the futures markets has resulted in customers who, for many different reasons, want funds denominated in currencies other than the U.S. dollar. If a customer or prospective customer of an FCM prefers to deposit funds with an FCM in a currency other than the U.S. dollar, or to convert funds from one currency to another, the FCM should not be prevented from accepting or holding funds in the preferred currency of the customer or prospective customer.

An FCM may not convert customer funds from one currency to another without customer authorization. An account agreement could provide, however, that by placing an order in a contract settled in a particular currency, a customer agrees to convert to the appropriate currency funds sufficient to meet the applicable margin requirement. Under Rule 1.49(b)(2), an FCM is required to prepare and maintain a written record each time customer funds are converted from one currency to another. The record must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount. The FCM is also required to make the information contained in this record available to the customer upon the customer's request. Additionally, the Commission noted in the proposing release that, pursuant to Rule 1.33(a), the FCM must include this information in the monthly statements provided to the customer.

FIA noted that FCMs frequently execute multiple transactions on behalf of a customer throughout a trading day. NFA noted that FCMs will often execute foreign currency transactions using bunched orders that combine orders involving multiple customers, multiple counterparties, and multiple transactions. To provide detailed information regarding each transaction on the customer's monthly statement would impose a significant burden on the FCM. FIA asked that the Commission confirm its view that providing the required information on the monthly statement in the aggregate rather than with respect to each transaction would be sufficient to meet the FCM's obligation under Rule 1.33. The Commission concurs that such a procedure would fulfill the FCM's obligation under Rule 1.33. As noted in the FIA comment letter, to be in compliance with Rule 1.49(b)(2), an FCM must be able to prepare a report that provides the details of individual transactions upon a customer's request.

Another aspect of the internationalization of the futures and options markets is the increasing number of contracts offered on foreign financial instruments and indices. These contracts are priced and settled in the currency of the underlying instrument or index. Accordingly, accruals resulting from trading in such instruments will be in currency other than U.S. dollars. Under the rule, such accruals may be held in the applicable currency. A customer, of course, may request that such accruals be converted to U.S. dollars.

Pursuant to Interp. 12, customers had to authorize the deposit of foreign currency funds into foreign depositories as part of a subordination agreement. The Commission is eliminating this written authorization requirement. If a customer deposits funds with an FCM in a currency other than U.S. dollars, or requests a conversion of funds to a non-U.S. dollar currency, the customer will be aware of the fact that the funds are being held in a currency other than U.S. dollars. With regard to funds other than U.S. dollars that are held for margin or have accrued to the customer as a result of trading in contracts priced and settled in a non-U.S. currency, the Commission notes that the specifications for contracts traded on designated contract markets are widely known and generally available.[9] Accordingly, when a customer trades in a futures or options contract that is priced and settled in a currency other than U.S. dollars, a customer should be aware that the margin for and accruals from such trading may be held in the applicable currency.

In the proposing release, the Commission noted ''that if a customer has previously not traded in contracts that are priced and settled in a currency other than U.S. dollars, a firm *should* inform the customer if the accruals from the trades will be held in a currency other than U.S. dollars.''[10] NFA and FIA both objected to this statement, as they believed it seemed to impose disclosure obligations beyond those under Commission Rule 1.55.[11] It was not the Commission's intention to impose a disclosure obligation with respect to such customers and such contracts. Rather, as suggested by FIA in its letter, the Commission ''intended solely to caution FCMs to consider whether they should make such disclosure'' by taking into consideration the facts and circumstances of the particular customer.

3. Location of Depositories

The rule permits an FCM or derivatives clearing organization (''DCO'') to hold customer funds of any denomination in the U.S. or in any money center country (Canada, France, Italy, Germany, Japan, and the United Kingdom). Hence, customer funds of any denomination could be held in any of the Group of Seven (''G7'') countries. The G7 countries represent the world's largest industrial democracies. Representatives from these countries meet several times a year to coordinate their cooperation on issues of economic policy. In this regard, the U.S. and its financial regulatory agencies have had successful cooperation with the respective financial regulatory agencies of these countries.

Both NFA and FIA indicated a desire to have the definition of a money center country expanded. NFA suggested that the definition include ''other locations with stable currencies and other indicia that customer funds will be relatively secure.'' The Commission has decided not to expand the definition in this manner. The Commission believes that the establishment of a broad and

[9] Section 5(b)(7) of the Act and Section 5a(d)(4) of the Act require contract markets and derivatives transaction execution facilities, respectively, to make contract specifications publicly available. For example, the specifications for contracts traded on the Chicago Mercantile Exchange are available on its Web site at: *http://www.cme.com.*

[10] 67 FR at 52643. (Emphasis added).

[11] Rule 1.55 permits FCMs to open an account for an ''institutional customer'' without first furnishing the customer with a disclosure statement.

subjective standard, as suggested by NFA, would be unwieldy in practice and could require the Commission to expend significant resources. To make a determination as suggested by NFA would require the Commission to conduct a broad evaluation of, among other things, a country's banking, monetary, and economic policies and systems.

FIA suggested that the Commission expand the definition to include any country with which the Commission has an information sharing arrangement. When the Commission enters into an information sharing arrangement with another country, it does not undertake a complete analysis of the country's laws, policies, and systems, as they would pertain to the holding of customer funds. Moreover, a country may deny sharing information with the Commission under these arrangements if, among other things, it would constitute a violation of applicable laws. Accordingly, the Commission has decided not to extend the definition of money center country as suggested by FIA.

In addition to the money center countries, an FCM or DCO also could hold any particular currency in the country of origin of that currency,[12] except that customer funds may not be held in any of the restricted countries subject to sanctions by the Office of Foreign Assets Control (''OFAC'') of the U.S. Department of Treasury.[13]

Proposed Rule 1.49(c)(3) provided that funds could be held outside the U.S. only to the extent specifically authorized by the customer. It further required the FCM to make and maintain a written record detailing the terms and conditions of any such authorization. For the reasons explained below, the Commission has significantly revised paragraph (c). As revised, paragraph (c) makes clear that customer consent will be required only when customer funds are held outside of the U.S. in a jurisdiction other than a money center country or the country of origin of the currency.

As discussed above, an FCM or DCO may hold customer segregated funds in the following denominations: (1) In U.S. dollars; (2) in the currency deposited by the customer or converted at the customer's request; or (3) in the currency in which funds have accrued to the customer as the result of trading on a U.S. contract market or registered DTF. In the absence of customer instructions to the contrary, the Commission believes that a customer that deposits funds with an FCM or DCO in a foreign currency or requests that the funds on deposit be converted to a foreign currency should assume that the currency will be held in an account outside of the U.S. in the currency's country of origin. Similarly, accruals in a foreign currency should also be deemed to be held in the country of origin.[14] Consequently, the Commission has concluded that requiring an FCM or DCO to obtain a customer's consent to hold a foreign currency in the currency's country of origin is unnecessary.

With respect to money center countries, the Commission has previously determined that customer segregated funds denominated in a foreign currency may be held in a money center country. As the Commission noted in proposing Rule 1.49:

> The G7 countries represent the world's largest industrial democracies. Furthermore, representatives from these countries meet several times a year to coordinate their cooperation on issues of economic policy. In this regard, the United States and its financial regulatory agencies have had successful cooperation with the respective financial regulatory agencies of these countries.

In these circumstances and in the absence of customer instructions to the contrary, the Commission believes that it would be appropriate for an FCM or DCO to hold customer funds denominated in a foreign currency in a money center country without receiving the customer's prior consent.

Because funds held outside of the U.S. other than in the currency's country of origin or a money center country might pose different risks and different operational costs and benefits, the Commission believes that the customer must be able to choose whether, and to what extent, to incur such risks and costs. The Commission, however, is not establishing a particular format that a customer authorization must follow. A customer may authorize the holding of funds outside the U.S., a money center country, or in a country other than the currency's country of origin, in writing or orally.[15] Authorization may be satisfied where a customer fails to object when informed that the customer's funds will be held outside the U.S., a money center country, or in a country other than the currency's country of origin. Moreover, the Commission notes that, just as under Rule 1.49(b)(1)(ii) regarding the conversion of customer funds, authorization may be obtained as part of the account agreement.

The rule does not require that a separate customer signature be obtained. Rule 1.49(c) simply requires that an FCM make and maintain a contemporaneous written record of any customer authorization to hold funds outside the U.S. in a country other than the currency's country of origin or a money center country. An FCM may choose to comply with this requirement in whatever manner it finds easiest. An FCM, if it chooses, may comply with this requirement as part of the account opening documents or, if done orally, by making a written memorandum or notation to be placed in the customer's file. The confirmation statement required pursuant to Commission Rule 1.33(b) may serve the purpose of meeting the requirement of a written record under Rule 1.49(c). If, after receiving the confirmation statement, the customer objects to the transaction, the FCM must, of course, take steps to address the customer's concerns.

FCMs and DCOs should also be aware that the Financial Action Task Force (''FATF'') of the Organization for Economic Co-Operation and Development maintains a list of non-cooperative countries or territories with respect to anti-money laundering programs and that the Secretary of the Treasury may designate, in accordance with Section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (''USA PATRIOT'') Act of 2001,[16] certain countries as areas of primary money laundering concern.[17] Before holding any customer funds in a depository in any of these countries or territories, FCMs and DCOs should undertake due diligence to assure themselves that the depository is reputable, has appropriate operational systems to safeguard customer funds, and has an adequate program to deter money laundering. [18]

[12] For the Euro, the country of origin includes any country that is a member of the European Union and has recognized the Euro as its official currency.

[13] The list of restricted countries may be viewed on OFAC's Web site at *http://www.ustreas.gov/ofac.*

[14] As noted earlier, a customer may request that any such accruals be converted to U.S. dollars.

[15] *See Peltz* v. *SHB Commodities, Inc.,* 115 F.3d 1082 (2d Cir. 1997); [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,052.

[16] Pub. L. 107–56; 115 Stat. 272 (2001).

[17] The list of non-cooperative countries and territories may be viewed on FATF's Web site at: *http://www1.oecd.org/fatf/.* Countries that have been designated by the Secretary of the Treasury as being of primary money laundering concern may be viewed on the Department of Treasury Web site at: *http://www.ustreas.gov.*

[18] On April 23, 2002, the Commission approved NFA Compliance Rule 2–9(c) and a related Interpretive Notice that set forth minimum standards for anti-money laundering programs of NFA FCM members.

4. Qualifications of Depositories

The Commission proposed that, if the depository is located in the U.S., it must be: (1) A bank or trust company; (2) an FCM registered with the Commission; or (3) a DCO. The Commission also proposed that, if the depository is located outside the U.S., it must be: (1) A bank or trust company that has (a) in excess of $1 billion in regulatory capital, or (b) commercial paper or long-term debt rated in the highest rating category by at least one nationally recognized statistical rating organization (where the bank or trust company is part of a holding company system, the holding company may satisfy the rating criterion); (2) an FCM registered with the Commission; or (3) a DCO.

Both NFA and FIA noted that, under Commission Rule 30.7, a bank located outside the U.S. is recognized as a permitted depository if its commercial paper or long-term debt is rated in one of the two highest rating categories.[19] NFA and FIA urged the Commission to make Rule 1.49 consistent with Rule 30.7. The Commission has determined that this is appropriate. Accordingly, the final rule will permit the use of a bank outside the U.S. whose commercial paper or long-term debt is rated in one of the two highest rating categories of a nationally recognized statistical rating organization. The term ''nationally recognized statistical rating organization'' as used in this release refers to those rating organizations designated as such by the Securities and Exchange Commission (''SEC'').[20] Although the Commission did not receive any comments on this point, in order to avoid any possible confusion, the Commission wishes to make clear that when using the term ''nationally recognized statistical rating organization'' in Rules 1.49 and 30.7, it refers to a rating organization designated as a ''nationally recognized statistical rating organization'' by the SEC.

NFA asked the Commission to confirm that, under Rule 1.49, funds for the trading of security futures could be deposited with an FCM registered pursuant to Section 4f(a)(2) of the Act.[21] The Commission confirms that an FCM registered pursuant to Section 4f(a)(2) would be a qualified depository for security futures funds under Rule 1.49.[22]

Only depositories that provide the FCM or DCO with the written acknowledgment required under Commission Rules 1.20 or 1.26 may hold customer funds required to be segregated.[23] However, a DCO acting as a depository does not need to provide an acknowledgment letter to an FCM where the DCO's rules provide for the segregation of funds held on behalf of customers.[24]

5. Segregation Requirements

As noted above, protection of customer funds is one of the most important purposes of the Act and the Commission's regulations. Customer funds must be segregated so as to assure that the obligations owed to customers will be met. Through segregation, customer funds are readily identifiable in the event that a registrant becomes insolvent. Accordingly, Rule 1.49 requires that the FCM or DCO, at the close of each business day, have in segregated accounts on behalf of its customers sufficient U.S. dollars held in the U.S. to meet all U.S. dollar obligations and sufficient funds in each other currency to meet obligations in such currency with certain permitted substitutions. The segregation requirements of the rule are meant to ensure that FCMs and DCOs maintain enough funds, and in the appropriate currency, to meet the obligations owed to customers.

As noted, the rule permits limited substitutions among currencies. U.S. dollars held in the U.S. may be used to meet obligations denominated in any other currency. Money center currencies and U.S. dollars held in money center countries may be held to meet obligations denominated in currencies other than the U.S. dollar. In essence, three tiers of currencies have been established, U.S. dollars held in the U.S. (''Tier I''), U.S. dollars and money center currencies held in money center countries or money center currencies held in the U.S. (''Tier II''), and currencies other than U.S. dollars and money-center currencies (''Tier III''). Tier I currency could be used for any obligation. For U.S. dollar obligations to customers, only Tier I currency could be used. Tier II currencies could be used for any obligation except U.S. dollars. Tier III currencies could only be used for obligations denominated in that particular currency.

B. Recordkeeping

The Commission is also amending Rule 1.32 to require FCMs to compute segregated funds on a currency-by-currency basis if they are held in other than U.S. dollars, in accordance with new Rule 1.49. Under Rule 1.49, customer funds may be held in the U.S., a money center country, or the country of origin of the currency. Rule 1.49 also would require FCMs and DCOs that hold funds in foreign currency or offshore to maintain records sufficient to demonstrate compliance with the additional segregation requirements set forth in Rule 1.49(e).

C. Bankruptcy

In Interp. 12, the Commission noted two types of risk associated with holding funds offshore that might result in customers failing to fully recover segregated funds, either upon demand or in a bankruptcy or receivership, (1) currency risk and (2) location risk.[25]

Currency risk is the risk of currency exchange rate fluctuations. This can be a concern where an FCM is in bankruptcy or receivership and it holds deposits denominated in currencies other than U.S. dollars. Due to changes in currency exchange rates, the size of the pool of funds available for distribution to customers and the size of claims against the funds may vary from day to day while the bankruptcy is pending, thereby exposing customers with U.S. dollar-denominated claims to currency risk.[26]

Location risk is the risk that funds held in a foreign depository might not be fully recoverable by a customer upon demand or in the event of bankruptcy or receivership. It includes the risk that foreign depositories may not be cooperative with the Commission concerning questions of compliance with segregation requirements, or that a foreign court might refuse to enforce

[19] *See* CFTC Advisory 87–5, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,997 (Dec. 3, 1987).

[20] *See, e.g.,* 17 CFR 240.15c3–1; *see also* 17 CFR § 270.2a–7(a)(17).

[21] Section 4f(a)(2) of the Act provides for notice-registration of securities broker-dealers whose only futures-related activity involves security futures products. *See also,* 66 FR 43080 (Aug. 17, 2001).

[22] The Commission notes that FCMs registered pursuant to Section 4f(a)(2) may only accept such funds in accordance with any applicable rules promulgated by the SEC.

[23] Commission Rule 1.20 provides that, when an FCM or DCO deposits customer funds with a depository, the FCM or DCO must obtain and retain a written acknowledgement from the depository that it was informed that the funds are subject to the provisions of the Act and Commission regulations. Rule 1.26 requires an FCM or DCO to obtain such an acknowledgment in regard to the deposit of instruments purchased with customer funds as described under Rule 1.25.

[24] See 65 FR 77993, 78009–13 (Dec. 13, 2000) (amending, among other things, Rules 1.20 and 1.26 to provide that a DCO acting as a depository does not need to provide an acknowledgement letter where the DCO's rules provide for the segregation of funds held on behalf of customers); 65 FR 82270 (Dec. 28, 2000) (moving forward the effective date of the amendments to Rule 1.20 and 1.26 to December 28, 2000).

[25] 53 FR at 46912.

[26] *See* 53 FR at 46915 (providing an example of currency risk).

provisions of the Commission's rules that prohibit a foreign depository from offsetting obligations of an FCM against customer funds. There is also a risk that, in the event of an FCM becoming insolvent, deposits at a foreign depository might be subject to an insolvency regime that is different from U.S. bankruptcy law. Additionally, a foreign government might limit the availability of funds by freezing or confiscating assets held within its jurisdiction or taking actions that affect its currency, even if the assets are located in the U.S.[27]

Pursuant to Interp. 12, before placing a customer's funds offshore, an FCM had to obtain from the customer a subordination agreement. In the agreement, the customer consented to the subordination of claims concerning funds held offshore or in a foreign currency to the claims of customers whose funds are held in U.S. dollars or in other currencies in the event the FCM was placed in bankruptcy or receivership and there were insufficient funds available for distribution from the funds held in that particular currency to satisfy customer claims against those funds. The subordination agreement was meant to protect customers whose funds were held in the U.S. and denominated in U.S. dollars from both currency and location risk that might result in customers receiving less than their pro-rata share of funds.

In Interp. 12, the Commission stated that ''currency risk is similar to the price risk which can occur in cases where an FCM becomes insolvent while holding customer deposits in forms which fluctuate in value,'' using the example of Treasury securities.[28] The Commission noted, however, that there were distinctions between price risk and currency risk, such that it was more equitable to spread the price risk among all customers in the event of a bankruptcy than it was the currency risk. First, the Commission indicated that all customers had the opportunity to post Treasury securities as margin, but under Interp. 12 only customers trading certain contracts could post foreign currency. Second, shortfalls in foreign currency accounts were more likely because of sovereign or location risk. Third, it would be easier and quicker for a trustee or receiver to convert Treasury securities held in the U.S. to cash than to convert foreign currency held offshore into U.S. dollars.

Under Rule 1.49, subject to exchange margin rules, any customer may deposit foreign currency with an FCM, not just those trading certain contracts, provided the FCM is willing to accept foreign currency. In effect, such deposits would be similar to a customer depositing U.S. Treasury securities, which is currently permitted. In the case of a customer who deposits U.S. Treasury securities with an FCM to satisfy margin, there exists a price and liquidity risk related to the time it would take to convert those securities into U.S. dollars. Similarly, customer funds held in a foreign currency create an exposure during the time in which it takes to convert those currencies into U.S. dollars. As with converting U.S. Treasury securities, converting foreign currency into U.S. dollars, particularly those involving money center countries, is not extremely difficult. As a result, the Commission believes spreading currency risk among all customers is no less equitable than spreading price risk among all customers. Additionally, as discussed below, the rule and the amendment to Appendix B of the Commission's bankruptcy rules limit sovereign risk and protect customers who deposit U.S. dollars from being adversely affected due to the sovereign action of a foreign government or court, including the effect of a non-U.S. insolvency regime. As a result, the Commission believes spreading currency risk among all customers is no less equitable than spreading price risk among all customers.

In adopting the new rule, the Commission has sought to address many aspects of currency and location risks through the safeguards discussed above. One aspect of location risk that remains, however, is sovereign risk. This is the risk that the actions of a foreign government or court might result in a shortfall in segregated funds.

To address sovereign risk, the Commission is amending Framework 2 of Appendix B of its bankruptcy rules to govern the distribution of customer funds segregated pursuant to the Act and Commission rules thereunder, held by an FCM or DCO in a depository outside the U.S. or in a foreign currency.[29] The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency would result, in certain circumstances, in the reduction of customer claims for such funds. For purposes of the bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency. Commission staff was asked whether the devaluation of a currency by government decree would be considered a sovereign action. The Commission believes such a decree would be a sovereign action for purposes of this bankruptcy convention. The Commission recognizes that it is impossible to envision every possible sovereign action. The Commission has purposely defined sovereign risk broadly so as to afford the bankruptcy trustee the ability to exercise its discretion and judgment to fully effectuate the purpose of this bankruptcy convention.

If an FCM filed, or had filed against it, a petition in bankruptcy and maintained customer funds in a depository located in the U.S. in a currency other than U.S. dollars, or in a depository outside the U.S., the following allocation procedure will be used to calculate the claim of each customer. After reducing each customer's claim by the percentage of the shortfall that is not attributable to sovereign action, certain customer claims will be further reduced based upon their exposure to loss attributable to sovereign action. This framework is designed to prevent a shortfall in funds held outside the U.S. or in a currency other than U.S. dollars resulting from the sovereign action of a foreign government or court from adversely affecting customers whose funds are held in U.S. dollars or in the U.S. or in a currency or a country other than the one undertaking the sovereign action resulting in the shortfall.

NFA, in its comment letter, asked what would happen if a bankruptcy proceeding is commenced while a firm is in the process of converting customer funds between currencies. As noted in the framework, the first step to be taken in the event of a bankruptcy is to convert each customer's claim in each currency to U.S. Dollars at the exchange rate in effect on the Final Net Equity Determination Date as defined in

[27] Presumably, certain sovereign action of a foreign government could affect foreign currency even if held in the U.S. Any discussion of sovereign risk herein pertains to non-U.S. currency, wherever held.

[28] 53 FR at 46915, note 22.

[29] The current Framework 2 sets forth a plan for distribution in the case of trades made on the Chicago Board of Trade-London International Financial Futures and Options Exchange Link (''Link''). Since the Link ceased operations in 1997, there is no need to maintain the existing Framework 2. Accordingly, the Commission is replacing the existing Framework 2 related to the Link with a new Framework 2 that addresses U.S. held segregated funds and non-U.S. held segregated funds.

Commission Rule 190.01(s). Customer funds will be converted to U.S. Dollars from whatever currency in which the customer's funds are denominated as of the close of business on the Final Net Equity Determination Date.

The Commission has drafted the bankruptcy convention as a means to give prospective bankruptcy trustees a certain amount of direction in the event of a bankruptcy involving customer funds denominated in currencies other than U.S. Dollars and held in depositories located throughout the world. Such a bankruptcy, however, is likely to be extremely complicated and it is impossible to anticipate every factual variant. Accordingly, the Commission, in adopting this bankruptcy convention, has endeavored to avoid undermining the ability of the trustee to use his or her own discretion and judgment as required by the particular facts of each bankruptcy.

The rule and the framework to the bankruptcy appendix address the risks associated with holding customer funds outside the U.S. or in currencies other than U.S. dollars. Accordingly, the requirement that each customer who seeks to have funds held outside the U.S. must execute a separate subordination agreement has been eliminated.

III. Comments Regarding the Location of Foreign Futures or Foreign Options Secured Amount

In the proposal, the Commission asked for comments as to whether, in light of the proposed rules, Rule 30.7 should also be amended to expand the types of depositories at which an FCM may hold the funds of foreign futures or options customers. Only NFA provided comments as to the expansion of Rule 30.7. NFA indicated its belief that Rule 30.7 should be expanded to include all depositories permitted under Rule 1.49(d)(3), as well as those already permitted under Rule 30.7. The Commission agrees. Accordingly, Rule 30.7 will be amended to provide that the funds of foreign futures or options customers may, in addition to those depositories already enumerated, be held at a bank or trust company outside the U.S. that has in excess of $1 billion of regulatory capital or whose commercial paper or long-term debt instrument, or if part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[30] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[31] The Commission has previously determined that FCMs are not small entities for the purpose of the RFA.[32] Additionally, the Commission has determined that DCOs are not small entities for purposes of the RFA.[33] The Commission notes that no comments were received from the public on the RFA and its relation to the new rule and rule amendments.

B. Paperwork Reduction Act

This rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the Commission has submitted a copy of the new rule and rule amendments to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission's invitation in the proposed rules to comment on any potential paperwork burden associated with this regulation.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The new rule and rule amendments are intended to provide greater flexibility for FCMs, DCOs, and their customers in their methods of doing business. The Commission is considering the costs and benefits of these rules in light of the specific provisions of Section 15(a) of the Act:

1. *Protection of market participants and the public.* To protect market participants and the public, the rule requires that depositories used to hold customer funds meet certain requirements to assure that customer funds are dealt with properly. Additionally, the rule includes a new framework to the bankruptcy appendix to protect customer funds held in U.S. dollars in the U.S. from being diluted if there is an insufficiency in the funds held outside the U.S. or in a currency other than U.S. dollars due to the sovereign action of a foreign government or court.

2. *Efficiency and competition.* The rules are expected to benefit competition and market efficiency. The rule will help to facilitate continued international growth of the futures industry by permitting customer funds to be denominated in currencies other than U.S. dollars and to be held in offshore depositories.

3. *Financial integrity of futures markets and price discovery.* The rule should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. *Sound risk management practices.* The Commission in adopting the rule and amendments has included risk-limiting features, such as requiring FCMs and DCOs to maintain sufficient funds to meet obligations in each currency, and requiring depositories to meet certain criteria, including signing an acknowledgment regarding the segregation requirements under the Act and Commission rules, to minimize the risks to customer funds.

5. *Other public interest considerations.* The rule and amendments contained herein offer greater opportunity for taking full advantage of contracts being offered by domestic designated contract markets and registered DTFs and the ever increasing internationalization of the futures industry, while establishing safeguards for customer funds.

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[30] 5 U.S.C. 601 *et seq.*

[31] 47 FR 18618 (April 30, 1982).

[32] 47 FR at 18619.

[33] 66 FR 45604, 45609 (Aug. 29, 2001).

After considering these factors, the Commission has determined to adopt the rule and amendments discussed above. The Commission invited public comment on its application of the cost-benefit provision. The Commission did not receive any comments regarding the application of the cost-benefit provision.

List of Subjects

17 CFR Part 1

Brokers, Commodity Futures, Consumer protection.

17 CFR Part 30

Commodity Futures, Consumer Protection

17 CFR Part 190

Bankruptcy, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 2(a)(1)(A), 4d, 8a(5), and 20, 7 U.S.C. 2(a)(1)(A), 6d, 12a(5), and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Section 1.32 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.32 Segregated account; daily computation and record.

(a) Each futures commission merchant must compute as of the close of each business day, on a currency-by-currency basis:

* * * * *

3. Section 1.49 is added to read as follows:

§ 1.49 Denomination of customer funds and location of depositories.

(a) *Definitions.* For purposes of this section:

(1) *Money center country.* This term means Canada, France, Italy, Germany, Japan, and the United Kingdom.

(2) *Money center currency.* This term means the currency of any money center country and the Euro.

(b) *Permissible denominations of obligations.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant's obligations to a customer shall be denominated:

(i) In the United States dollar;

(ii) In a currency in which funds were deposited by the customer or were converted at the request of the customer, to the extent of such deposits and conversions; or

(iii) In a currency in which funds have accrued to the customer as a result of trading conducted on a designated contract market or registered derivatives transaction execution facility, to the extent of such accruals.

(2)(i) A futures commission merchant shall prepare and maintain a written record of each transaction converting customer funds from one currency to another.

(ii) A written record prepared under paragraph (b)(2)(i) of this section must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount.

(iii) The information required under paragraph (b)(2)(ii) of this section must be provided to the customer upon the customer's request.

(c) *Permissible locations of depositories.* (1) Unless a customer provides instructions to the contrary, a futures commission merchant or a derivatives clearing organization may hold customer funds:

(i) In the United States;

(ii) In a money center country; or

(iii) In the country of origin of the currency.

(2) A futures commission merchant or derivatives clearing organization may hold customer funds outside the United States, in a jurisdiction that is not a money center country, or the country of origin of the currency only to the extent authorized by the customer, *provided,* that the futures commission merchant or derivatives clearing organization must make and maintain a written record of such authorization. Notwithstanding the foregoing, in no event shall a futures commission merchant or a derivatives clearing organization hold customer funds in a restricted country subject to sanctions by the Office of Foreign Assets Control of the U.S. Department of Treasury.

(d) *Qualifications for depositories.* (1) To hold customer funds required to be segregated pursuant to the Act and §§ 1.20 through 1.30, 1.32 and 1.36, a depository must provide the depositing futures commission merchant or derivatives clearing organization with the appropriate written acknowledgment as required under §§ 1.20 and 1.26.

(2) A depository, if located in the United States, must be:

(i) A bank or trust company;

(ii) A futures commission merchant registered as such with the Commission; or

(iii) A derivatives clearing organization.

(3) A depository, if located outside the United States, must be:

(i) A bank or trust company:

(A) That has in excess of $1 billion of regulatory capital; or

(B) Whose commercial paper or long-term debt instrument or, if a part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization;

(ii) A futures commission merchant that is registered as such with the Commission; or

(iii) A derivatives clearing organization.

(e) *Segregation requirements.* (1) Each futures commission merchant and each derivatives clearing organization must, as of the close of each business day, hold in segregated accounts on behalf of commodity or option customers:

(i) Sufficient United States dollars, held in the United States, to meet all United States dollar obligations; and

(ii) Sufficient funds in each other currency to meet obligations in such currency.

(2) Notwithstanding paragraph (e)(1)(ii) of this section, assets denominated in one currency may be held to meet obligations denominated in another currency as follows:

(i) United States dollars may be held in the United States or in money center countries to meet obligations denominated in any other currency; and

(ii) Funds in money center currencies may be held in the United States or in money center countries to meet obligations denominated in currencies other than the United States dollar.

(3) Each futures commission merchant and each derivatives clearing organization shall make and maintain records sufficient to demonstrate compliance with this paragraph (e).

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

4. The authority citation for Part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

5. Section 30.7 is amended by revising paragraph (c) to read as follows:

§ 30.7 Treatment of foreign futures or foreign options secured amount.

* * * * *

(c)(1) The separate account or accounts referred to in paragraph (a) of this section must be maintained under an account name that clearly identifies them as such, with any of the following depositories:

(i) A bank or trust company located in the United States;

(ii) A bank or trust company located outside the United States:

(A) That has in excess of $1 billion of regulatory capital; or

(B) Whose commercial paper or long-term debt instrument or, if a part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization; or

(C) As designated;

(iii) A futures commission merchant registered as such with the Commission;

(iv) A derivatives clearing organization;

(v) A member of any foreign board of trade; or

(vi) Such member or clearing organization's designated depositories.

(2) Each futures commission merchant must obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from such depository that it was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

* * * * *

PART 190—BANKRUPTCY

6. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23, and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, unless otherwise noted.

7. Part 190 is amended by revising at the end of Appendix B, Framework 2 to read as follows:

Appendix B to Part 190—Special Bankruptcy Distributions

* * * * *

Framework 2—Special Allocation of Shortfall to Customer Claims When Customer Funds are Held in a Depository Outside of the United States or in a Foreign Currency

The Commission has established the following allocation convention with respect to customer funds segregated pursuant to the Act and Commission rules thereunder held by a futures commission merchant (''FCM'') or derivatives clearing organization (''DCO'') in a depository outside the United States (''U.S.'') or in a foreign currency. The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency will result, in certain circumstances, in the reduction of customer claims for such funds. For purposes of this proposed bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency. If an FCM enters into bankruptcy and maintains customer funds in a depository located in the U.S. in a currency other than U.S. dollars or in a depository outside the U.S., the following allocation procedures shall be used to calculate the claim of each customer.

I. Reduction in Claims for General Shortfall

A. Determination of losses not attributable to sovereign action

1. Convert each customer's claim in each currency to U.S. Dollars at the exchange rate in effect on the Final Net Equity Determination Date, as defined in § 190.01(s) (the ''Exchange Rate'').

2. Determine the amount of assets available for distribution to customers. In making this calculation, *include* customer funds that would be available for distribution but for the sovereign action.

3. Convert the amount of assets available for distribution to U.S. Dollars at the Exchange Rate.

4. Determine the Shortfall Percentage that is *not* attributable to sovereign action, as follows:

$$\text{Shortfall Percentage} = \left(1 - \left[\frac{\text{Total Customer Assets}}{\text{Total Customer Claims}}\right]\right)$$

B. Allocation of Losses Not Attributable to Sovereign Action

1. Reduce each customer's claim by the Shortfall Percentage.

II. Reduction in Claims for Sovereign Loss

A. Determination of Losses Attributable to Sovereign Action (''Sovereign Loss'')

1. If any portion of a customer's claim is required to be kept in U.S. dollars in the U.S., that portion of the customer's claim is not exposed to Sovereign Loss.

2. If any portion of a customer's claim is authorized to be kept in only one location and that location is:

a. The U.S. or a location in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A location in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

3. If any portion of a customer's claim is authorized to be kept in only one currency and that currency is:

a. U.S. dollars or a currency in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A currency in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

4. If any portion of a customer's claim is authorized to be kept in more than one location and:

a. There is no Sovereign Loss in any of those locations, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those locations, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those locations, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss in each such location.

5. If any portion of a customer's claim is authorized to be kept in more than one currency and:

a. There is no Sovereign Loss in any of those currencies, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those currencies, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those currencies, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss.

B. Calculation of Sovereign Loss

1. The total Sovereign Loss for each location is the difference between:

a. The total customer funds deposited in depositories in that location and

b. The amount of funds in that location that are available to be distributed to customers, after taking into account any sovereign action.

2. The total Sovereign Loss for each currency is the difference between:

a. The value, in U.S. dollars, of the funds held in that currency on the day before the sovereign action took place and

b. The value, in U.S. dollars, of the funds held in that currency on the Final Net Equity Determination Date.

C. Allocation of Sovereign Loss

1. Each portion of a customer's claim exposed to Sovereign Loss in a location will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that location}}{\text{All portions of customer claims exposed to loss in that location}}$$

2. Each portion of a customer's claim exposed to Sovereign Loss in a currency will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that currency}}{\text{All portions of customer claims exposed to loss in that currency}}$$

3. A portion of a customer's claim exposed to Sovereign Loss in a location or currency will not be reduced below zero. (The above calculations might yield a result below zero where the FCM kept more customer funds in a location or currency than it was authorized to keep.)

4. Any amount of Sovereign Loss from a location or currency in excess of the total amount of funds authorized to be kept in that location or currency (calculated in accord with Section II.1 above) (''Total Excess Sovereign Loss'') will be divided among all customers who have authorized funds to be kept outside the U.S., or in currencies other than U.S. dollars, with each such customer claim reduced by the following amount:

$$\text{Total Excess Sovereign Loss} \times \left[\frac{\left(\begin{array}{c}\text{This customer's total claim} - \text{The portion of this Customer's claim} \\ \text{required to be kept in U.S. dollars, in the U.S.}\end{array} \right)}{\begin{array}{c}\text{Total customer claims} - \text{Total of all customer claims} \\ \text{required to be kept in U.S. dollars, in the U.S.}\end{array}} \right]$$

The following examples illustrate the operation of this convention.

Example 1. No shortfall in any location.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	50	U.K.
C	50	Germany
D	£300	U.K.

Location	Actual asset balance
U.S.	$50
U.K.	£300
U.K.	50
Germany	50

Note: Conversion Rates: 1 = $1; £1=$1.5.

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in U.S. dollars
A	$50	1.0	$50
B	50	1.0	50
C	50	1.0	50
D	£300	1.5	450
Total			600.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$50	1.0	$50			$50
U.K.	£300	1.5	450			450
U.K.	50	1.0	50			50
Germany	50	1.0	50			50
Total			600.00		0	600.00

There are no shortfalls in funds held in any location. Accordingly, there will be no reduction of customer claims.

Claims:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$50	$0	$50

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
B	50	0	50
C	50	0	50
D	450	0	450
Total	600.00	0.00	600.00

Example 2. Shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$100	U.S.
B	50	U.K.
C	100	U.K., Germany, or Japan

Location	Actual asset balance
U.S.	$50
U.K.	100
Germany	50

Note: Conversion Rates: 1=$1.

Reduction in Claims for General Shortfall

There is a shortfall in the funds held in the U.S. such that only ½ of the funds are available.
Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$100	1.0	$100
B	50	1.0	50
C	100	1.0	100
Total	.....	.....	250.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$50	1.0	$50.00	.....	.....	$50
U.K.	100	1.0	100	.....	.....	100
Germany	50	1.0	50	.....	.....	$50
Total	.....	.....	200.00	.....	.....	200.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = $(1 - 200/250) = (1 - 80\%) = 20\%$.
Reduce each customer's claim by the Shortfall Percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$100	$20.00	$80.00
B	50	10.00	40.00
C	100	20.00	80.00
Total	250.00	50.00	200.00

Reduction in Claims for Shortfall Due to Sovereign Action

There is no shortfall due to sovereign action. Accordingly, the customer claims will not be further reduced.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$80		$80.00
B	40		40.00
C	80		80.00
Total	200.00	0	200.00

Example 3. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action.

Customer	Claim	Location(s) customer has consented to having funds held
A	$150	U.S.
B	100	U.K.
C	50	Germany
D	$100	U.S.
D	100	U.K. or Germany

Location	Actual asset balance
U.S.	$250
U.K.	50
Germany	100

Note: Conversion Rates: 1=$1.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$150	1.0	$150
B	100	1.0	100
C	50	1.0	50
D	$100	1.0	100
D	100	1.0	100
Total			500.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$250	1.0	$250			$250
U.K.	50	1.0	50			50
Germany	100	1.0	100			100
Total			400.00		0	400.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1 − 400/500) = (1 − 80%) = 20%. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$150	$30.00	120.00
B	100	20.00	80.00
C	50	10.00	40.00
D	200	40.00	160.00
Total	500.00	100.00	400.00

Reduction in Claims for Shortfall Due to Sovereign Action

There is no shortfall due to sovereign action. Accordingly, the claims will not be further reduced.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$120.00	.....	$120
B	80.00	.....	80
C	40.00	.....	40
D	160.00	0	160
Total	400.00	0	400

Example 4. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action.

Customer	Claim	Location(s) where customer has consented to have funds held
A	$50	U.S.
B	50	U.K.
C	50	Germany
D	$100.	U.S.
D	100	U.K. or Germany

Location	Actual asset balance
U.S.	$150
U.K.	100
Germany	100

Notice: Conversion Rates: 1 = $1; ¥1= $0.01, £1= $1.5.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	50	1.0	50
C	50	1.0	50
D	$100	1.0	100
D	100	1.0	100
Total	.....	.....	350.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$150	1.0	$150	.....	.....	$150
U.K.	100	1.0	100	.....	.....	100
Germany	100	1.0	100	50%	50	50
Total	.....	.....	350.00	.....	50.00	300.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = $(1 - 350/350) = (1 - 100\%) = 0\%$. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	0	$50.00
B	50	0	50.00
C	50	0	50.00

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
D	200	0	200.00
Total	350.00	0.00	350.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, only ½ of the funds in Germany are available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$50	.....	.....
B	.....	$50	.....
C	.....	.....	$50
D	100	.....	100
Total	150.00	50.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$150	33.3% of $50	$16.67
D	100/$150	66.7% of $50	33.33
Total	.....	.....	50.00

Claims After Reductions:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	$50	.....	$50
B	50	.....	50
C	50	$16.67	33.33
D	200	33.33	166.67
Total	350.00	50.00	300.00

Example 5. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$100	U.S.
B	50	U.K.
C	150	Germany
D	$100	U.S.
D	£300	U.K.
D	150	U.K. or Germany

Location	Actual asset balance
U.S.	$100
U.K.	£300
U.K.	200
Germany	150

Conversion Rates: 1=$1; £1=$1.5.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$100	1.0	$100

Customer	Claim	Conversion rate	Claim in US$
B	50	1.0	50
C	150	1.0	150
D	$100	1.0	100
D	£300	1.5	450
D	150	1.0	150
Total			1000.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$100	1.0	$100			$100
U.K.	£300	1.5	450			450
U.K.	200	1.0	200			200
Germany	150	1.0	150	100%	$150	0
Total			900.00		150.00	750.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1–900/1000)= (1—90%) = 10%. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$100	$10.00	$90.00
B	50	5.00	45.00
C	150	15.00	135.00
D	700	70.00	63.00
Total	1000.00	100.00	900.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$100		
B		$50	
C			$150
D	100	450	150
Total	200.00	500.00	300.00

Calculation of the allocation of the shortfall due to sovereign action Germany ($150 shortfall to be allocated):

Customer	Allocation share	Allocation Share of actual shortfall	Actual shortfall allocated
C	$150/$300	50% of $150	$75
D	150/$300	50% of $150	75
Total			150.00

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	$90		$90
B	45		45
C	135	$75	60
D	630	75	555

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
Total	900.00	150.00	750.00

Example 6. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action, and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	50	U.K.
C	$20	U.S.
C	50	Germany
D	$100.	U.S.
D	£300	U.K.
D	100	U.K., Germany, or Japan
E	$80	U.S.
E	¥10,000	Japan

Location	Actual asset balance
U.S.	$200
U.K.	£200
U.K.	100
Germany	50
Japan	¥10,000

Conversion Rates: £1 = $1; ¥1=$0.01, £1=$1.5.

Reduction in Claims for General Shortfall

Convert each customer s claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	50	1.0	50
C	$20	1.0	20
C	50	1.0	50
D	$100.	1.0	100
D	300	1.5	450
D	£100	1.0	100
E	$80	1.0	80
E	¥10,000	0.01	100
Total			1000.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$200	1.0	$200			$200
U.K.	£200	1.5	300			300
U.K.	100	1.0	100			100
Germany	50	1.0	50	100%	$50	0
Japan	¥10,000	0.01	100	50%	50	50
Total			750		100.00	650.00

Determine the percentage of shortfall that is not attributable to sovereign action:
Shortfall Percentage = (1–750/1000) = (1–75%) = 25%.
Reduce each customer's claim by the shortfall percentage:

Customer	Claim in U.S.$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$12.50	$37.50

Customer	Claim in U.S.$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
B	50	12.50	37.50
C	70	17.50	52.50
D	650	162.50	487.50
E	180	45.00	135.00
Total	1000.00	250.00	750.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany and only ½ of the funds in Japan are available.

Customer	Presumed location of funds			
	U.S.	U.K.	Germany	Japan
A	$50			
B		$50		
C	20		$50	
D	100	450	50	$50
E	80			100
Total	250.00	500.00	100.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany ($50 shortfall to be allocated):

Customer allocation	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$100	50% of $50	$25
D	50/100	50% of 50	25
Total			50

Japan ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
D	$50/$150	33.3% of $50	$16.67
E	100/150	66.6% of 50	33.33
Total			50.00

Claims After Reductions

Customer	Claim in US dollars after allocated non-sovereign shortfall	Allocation of shortfall due to soverign action from Germany	Allocation of shortfall due to sovereign action from Japan	Claim after all reductions
A	$37.50			37.50
B	37.50			37.50
C	52.50	$25		27.50
D	487.50	25	16.67	445.83
E	135.00		33.33	101.67
Total	750.00	50.00	50.00	650.00

Example 7. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, where the FCM kept more funds than permitted in such location or currency.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	50	U.S.
B	50	U.K.
C	50	Germany.
D	100.	U.S.
D	100	U.K. or Germany.
E	50	U.S.
E	50	U.K.

Location	Actual asset balance
U.S.	$250
U.K.	50
Germany	200

Conversion Rates: 1 = $1.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	50	1.0	50
B	50	1.0	50
C	50	1.0	50
D	100.	1.0	100
D	100	1.0	100
E	50	1.0	50
E	50	1.0	50
Total			500.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$250	1.0	$250			$250
U.K.	50	1.0	50			50
Germany	200	1.0	200	100%	200	0
Total			500.00		200	300.00

Determine the percentage of shortfall that is not attributable to sovereign
Shortfall Percentage = (1–500/500) = (1–100%) = 0%.

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$0	$50.00
B	100	0	100.00
C	50	0	50.00
D	200	0	200.00
E	100	0	100.00
Total	500.00	0.00	500.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$50		
B	50	50	
C			50
D	100		100
E	50	50	
Total	250.00	100.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany ($200 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$150	33.3% of $200	$66.67
D	$100/$150	66.7% of $200	$133.33
Total			$200.000

This would result in the claims of customers C and D being reduced below zero.

Accordingly, the claims of customer C and D will only be reduced to zero, or $50 for C and $100 for D. This results in a Total Excess Shortfall of $50.

Actual shortfall	Allocation of shortfall for customer C	Allocation of shortfall for customer D	Total excess shortfall
$200	$50	$100	$50

This shortfall will be divided among the remaining customers who have authorized funds to be held outside the U.S. or in a currency other than U.S. dollars.

Customer	Total claims of customers permitting funds to be held outside the U.S.	Portion of claim required to be int the U.S.	Allocation share (column B–C/column B Total—all customer claims in U.S.)	Allocation share of actual total excess shortfall	Actual total excess shortfall allocated
B	$100	$50	$50/$200	25% of $50	$12.50
C	50	0	[1]		0
D	200	100	$100/200	50% of $50	25
E	100	50	50/100	25% of $50	12.50
Total	450.00				50.00

[1] Claim already reduced to $0.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action Germany	Allocation of total excess shortfall	Claim after all reductions
A	$50			$50.00
B	100		12.50	87.50
C	50	50		0
D	200	100	25	75.00
E	100		12.50	87.50
Total	500.00	150.00	50.00	300.00

Issued in Washington, DC on January 29, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–2508 Filed 2–3–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Formalin Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Natchez Animal Supply Co. The supplemental NADA provides for use of formalin in a water bath for the control of certain external parasites on finfish and shrimp and for the control of certain fungi on finfish eggs. Minor corrections to the regulations are also being made.

DATES: This rule is effective February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–131), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *jgotthar@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Natchez Animal Supply Co., 201 John R. Junkin Dr., Natchez, MS 39120, filed a supplement to NADA 137–687 that provides for use of formalin in a water bath for the control of certain external parasites on finfish and shrimp and for the control of certain fungi on finfish eggs. The supplemental NADA is approved as of November 25, 2002, and the regulations are amended in 21 CFR 529.1030 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part

20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1030 [Amended]

2. Section 529.1030 *Formalin solution* is amended as follows:

(a) In the section heading and in paragraph (a) by removing the word ''solution'' following the word ''Formalin'';

(b) By revising the introductory text of paragraph (b);

(c) In paragraph (b)(1) by removing ''No. 050378'' and by adding in its place ''Nos. 049968 and 050378'';

(d) In paragraph (b)(2) by removing ''Nos. 049968 and'' and by adding in its place ''No.'';

(e) In paragraph (d)(2)(i), in the table, in the heading to the second column, by adding ''daily'' after ''1 hour''; and

(f) In paragraph (d)(2)(iv), in the first column in the table by removing ''½F'' each time it occurs and by adding in its place ''°F''.

The revision is to read as follows:

§ 529.1030 Formalin.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (d) of this section.

* * * * *

Dated: January 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–2601 Filed 2–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 522

[BOP–1110–I]

RIN 1120–AB08

Admission and Orientation Program: Removal From Rules

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) removes its rules on the Admission and Orientation Program from the CFR. We intend this amendment to streamline our regulations by removing internal agency management procedures that need not be stated in regulation.

DATES: This rule is effective February 4, 2003. Please send comments on this rulemaking by April 7, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

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

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons (Bureau) removes its rules on the Admission and Orientation Program by reserving 28 CFR subpart E. Although we are removing these rules from the CFR, they will remain in Bureau policy statements on the Admission and Orientation Program.

Why Are We Making This Change?

We intend this change to streamline our regulations by removing internal agency management procedures that need not be stated in regulation. In doing this, we will be able to adjust our Admission and Orientation program, through policy instead of rules, to allow us to provide more current information more quickly to new inmates. Bureau policy is a more appropriate vehicle through which to provide instruction and guidance to staff.

Admission and Orientation Program Rules

The three rules in 28 CFR subpart E, §§ 522.40, 522.41, and 522.43 contained descriptions of the Bureau's Admission and Orientation Program. Although we are removing these rules from the CFR, we retain the language of these rules in our Admission and Orientation policy, which is an instructional document for Bureau employees and institutional staff.

Section 522.40 required institutions and staff to ''offer each newly committed inmate an orientation to the institution'' which includes information on the inmate's rights, responsibilities, obligations, and the institution's programs and disciplinary system.

Section 522.41 delineated Warden and staff responsibility for conducting the Admission and Orientation (A&O) program. This section required staff involved in the A&O program to develop an outline of information to present during A&O and develop written orientation materials. This section also instructed staff to monitor inmates with significant emotional stress during A&O, so that the institution could provide them with appropriate assistance.

Section 522.42 contained guidelines for institutions' A&O programs, including such details as location, activities, and length of the program.

All of these rules consist of our instruction and guidance to Bureau staff. These rules relate solely to internal agency management and practice, and do not impose obligations or confer any benefits upon our regulated entities (the inmates) or the public.

Administrative Procedure Act

Because procedures relating to agency management are exempt from the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), we are publishing this change as an interim final rule.

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for ''(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

This rulemaking is exempt from normal notice-and-comment procedures because these rules are general statements of policy and relate only to internal agency procedure and practice.

The procedures that were in these regulations will continue to exist, unchanged, in our policy statement on the Admission and Orientation Program. Any requirement imposed on our staff in these rules will remain a Bureau-wide requirement in our policy.

Because this change maintains current Bureau policy and practice while eliminating rule text from the CFR, we find that normal notice-and-comment rulemaking is unnecessary. We are, however, allowing the public to comment on this rule change by publishing it as an interim final rule.

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534.

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period. In light of comments received, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

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

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Plain Language Instructions

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi at the telephone number or address listed above.

List of Subjects in 28 CFR Part 522

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we are amending 28 CFR part 522, chapter V, subchapter B, as follows:

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 522—ADMISSION TO INSTITUTION

1. Revise the authority citation for 28 CFR part 522 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

Subpart E—[Reserved]

2. Remove §§ 522.40 through 522.42 and reserve Subpart E.

[FR Doc. 03–2517 Filed 2–3–03; 8:45 am]

BILLING CODE 4410–25–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket No. MARAD–2002–11984]

RIN 2133–AB46

Requirements to Document U.S. Flag Fishing Industry Vessels of 100 Feet or Greater in Registered Length and To Hold a Preferred Mortgage on Such Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (''MARAD, we, our, or us'') is amending its regulations that implement the U.S. citizenship requirements and mortgage requirements set forth in the American Fisheries Act of 1998 (''AFA'') for vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is sought.

Section 2202 of the Supplemental Appropriations Act, 2001, amended the AFA on July 24, 2001. This rule implements the new statutory requirements for the owners of fishing vessels, fish processing vessels and fish tender vessels of 100 feet or greater in registered length (collectively referred to as ''fishing industry vessels''), amends the requirements to hold a preferred mortgage on such fishing industry vessels, and makes other minor amendments to the regulations to address issues that arose during the early stages of MARAD's implementation of the new AFA regulations.

DATES: *Effective Date:* March 6, 2003. *Compliance Date:* Mortgagees and mortgage trustees will not be required to comply with the new requirements of this final rule until April 1, 2003.

ADDRESSES: The complete file for this rule is available for inspection with the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001, between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. You may also view the comments submitted to the

docket via the Internet at *http://dms.dot.gov* by using the search function and entering the docket number 11984.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel at (202) 366–5320. You may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR–222, 400 Seventh St., SW., Washington, DC 20590–0001, or you may send e-mail to *John.Marquez@marad.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The AFA imposed new citizenship requirements for both the owners of fishing industry vessels of 100 feet or greater in registered length as well as entities that hold a preferred mortgage on such vessels. The AFA raised the U.S. citizen ownership and control standard for U.S. flag fishing industry vessels operating in U.S. waters from a controlling interest standard (greater than 50%) to a 75 percent interest requirement as set forth in section 2(c) of the Shipping Act, 1916, as amended (''1916 Act''). In addition to the requirements of section 2(c) of the 1916 Act, the AFA specifically delineated certain criteria for purposes of determining whether ''control'' of the owner of a fishing industry vessel is vested in citizens of the United States.

Section 202(b) of the AFA also imposed new requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater by amending the definition of ''preferred mortgage'' at 46 U.S.C. 31322(a)(4) with respect to such vessels. Section 31322(a)(4) of title 46, United States Code, as amended by the AFA on October 21, 1998, defined a preferred mortgage with respect to a fishing industry vessel of 100 feet or greater as one that is held by a mortgagee that: (1) Is a person that meets the 75% U.S. citizen ownership and control standard for fishing industry vessels under 46 U.S.C. 12102(c); (2) is a State or Federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916, 46 U.S.C. 802(b); or (c) is a person that complies with the mortgage trustee provisions of 46 U.S.C. 12102(c)(4).

As the October 1, 2001, effective date of the AFA approached, it became apparent that many traditional lenders in the fishing industry were having difficulty either complying with or demonstrating that they complied with the new standards to hold a preferred mortgage. Therefore, Congress amended the requirements to broaden the category of lenders that will qualify to hold a preferred mortgage on fishing industry vessels of 100 feet or greater and to limit the extent to which a demonstration of U.S. citizenship would be required.

Section 2202(b) of the Supplemental Appropriations Act, 2001, Pub. L. 107–20, amended the definition of ''preferred mortgage'' at 46 U.S.C. 31322(a)(4) with respect to fishing industry vessels of 100 feet or greater. As amended, 46 U.S.C. 31322(a)(4), defines a preferred mortgage with respect to such vessels as a mortgage that has as its mortgagee:

(1) A person eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c);

(2) A State or Federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(3) A farm credit lender established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*);

(4) A commercial fishing and agriculture bank established pursuant to State law;

(5) A commercial lender organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a) of this title; or

(6) A mortgage trustee that complies with the requirements of 46 U.S.C. 31322(f).

In addition, the amendments to the AFA defined the terms ''commercial lender'' and ''lending syndicate'' and relocated the mortgage trustee provisions from 46 U.S.C. 12102(c)(4) to 46 U.S.C. 31322(f).

In order to ensure that MARAD would have time to implement new regulations related to the eligibility of lenders to hold a preferred mortgage on fishing industry vessels, Congress delayed the effective date of 46 U.S.C. 31322(a), as amended by section 202(b) of the AFA and section 2202 of the Supplemental Appropriations Act, 2001, until April 1, 2003. MARAD was also directed not to consider the citizenship status of a lender, in its capacity as a lender, when determining whether a vessel's owner complies with the requirements of 46 U.S.C. 12102(c) prior to April 1, 2003. Accordingly, we suspended our review of loan transactions in determining whether a vessel owner qualifies as a U.S. citizen until April 1, 2003, when the new requirements become effective.

Finally, section 2202(e) of the Supplemental Appropriations Act, 2001, included changes to section 213(g) of the AFA. As originally enacted, section 213(g) of the AFA stated that if the requirements of 46 U.S.C. 12102(c) or 46 U.S.C. 31322(a), as amended by the AFA, were determined to be inconsistent with the provisions of an international investment agreement to which the United States was a party with respect to the owner or mortgagee of a fishing industry vessel on October 1, 2001, the requirements of the AFA would not apply to the owner or mortgagee of that specific vessel to the extent of the inconsistency. Congress amended section 213(g) of the AFA to change the date upon which an ownership or mortgage interest was required to be in place in order for an owner or mortgagee to claim the protection of an international investment agreement. The date was changed from October 1, 2001, to July 24, 2001.

We issued a notice of proposed rulemaking on April 16, 2002, 67 FR 18547, that proposed amendments to our regulations at 46 CFR part 356 and requested comments from the public. Seven commenters responded to the NPRM.

Comments on the Proposed Rule

Subpart A—General Provisions

Section 356.3 Definitions

Section 356.3 has been amended by adding several new terms to the definitions, amending several existing definitions and renumbering the definitions accordingly. The three new terms that have been added to the definitions are ''commercial lender,'' ''fishing industry vessel,'' and ''lender syndicate.'' The term ''fishing industry vessel'' is a new term that is being added to the regulation to refer to a fishing vessel, fish tender vessel or fish processing vessel as defined in § 356.3. In the NPRM, we proposed to replace the phrase *''fishing vessel, fish processing vessel, or fish tender vessel''* with the term ''fishing industry vessel'' in sections and paragraphs that we were amending. One commenter suggested that we make this change throughout part 356 in order to avoid confusion. We agree with the commenter that use of the term ''fishing industry vessel'' throughout part 356 would be preferred; therefore, we have amended part 356 to replace the phrases ''fishing vessel, fish processing vessel, or fish tender vessel'' and ''fishing vessel, fish tender vessel, or fish processing vessel'' in each place that either phrase appears with the term ''fishing industry vessel''.

The proposed definitions of ''commercial lender'' and ''lender syndicate'' mirrored the definitions provided by Congress in sections 2202(g) and (h), respectively, of the Supplemental Appropriations Act, 2001. Although the proposed definition

of lender syndicate tracked the language of the statute, two commenters urged that we provide some amplification in the definition to indicate what powers may be exercised under a trust arrangement without the concurrence of more than one beneficiary. The definition of lender syndicate states that it must be made up of four or more entities with a beneficial interest, held through an agent, under a trust arrangement, established pursuant to 46 U.S.C. 31322(f), ''no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary.'' The commenters suggested that the definition be amended to clarify that an agent can exercise routine administrative functions associated with the day-to-day administration of the loan without the consent of multiple beneficiaries, and that consent of more than one beneficiary should only be required to exercise substantive powers such as decisions on how to proceed in the event of default or bankruptcy, release of collateral or guarantors, and amendment or removal of loan covenants.

We agree with the commenter that the purpose of an agent is to handle routine administrative matters for the lender syndicate associated with the extension of credit. Therefore, we have amended the regulatory definition of lender syndicate to clarify that ''other than the exercise by the agent of powers related to routine administrative matters, none of the entities in a lender syndicate may exercise powers related to the lender syndicate's extension of credit without the concurrence of at lease one other unaffiliated beneficiary.'' In addition, we have stated in the definition that the routine administrative powers include those matters concerning the day-to-day management of the extension of credit such as monitoring compliance with loan covenants, collateral inspections and similar matters; however, more substantive powers such as amending loan and mortgage documents, releasing guarantors or collateral, or administering the loan in the event of a default are not considered routine.

The definition of lender syndicate does not define who may qualify as a beneficiary; however, entities that plan to form a lender syndicate are advised that if they are engaged in the fishing industry and have contractual relationships with the vessel owner, such as to purchase, process or market the vessel's catch, they may not use the formation of a lender syndicate as a means of avoiding MARAD review of the mortgage trustee transaction and the loan and mortgage covenants. Therefore, if the beneficiaries of a lender syndicate have such contractual relationships with the vessel owner, we will review the mortgage trustee arrangement, including the loan and mortgage covenants, to determine whether it constitutes an impermissible transfer of control.

Paragraph (3) under the definition of ''controlling interest'' has been deleted because a State or Federally chartered financial institution no longer has to qualify as a U.S. citizen under the controlling interest standard in order to hold a preferred mortgage on a fishing industry vessel.

The definition of the term ''mortgage trustee'' has been amended by removing the requirement in paragraph (2) that a mortgage trustee qualify as a U.S. citizen and replacing that paragraph with language requiring the mortgage trustee to be eligible to hold a preferred mortgage pursuant to 46 CFR 356.19(a)(1)–(4). This change expands the definition of mortgage trustee to encompass the broader range of parties that are now eligible to serve as a mortgage trustee.

The term ''preferred mortgage'' is amended to track the definition of 46 U.S.C. 31322(a)(4), as amended. Part of the definition states that a preferred mortgage is one where the mortgagee is a mortgage trustee that qualifies under 46 U.S.C. 31322(f) and 46 CFR 356.27–31. One commenter suggested that this definition could cause uncertainty with respect to the use of mortgage trustees because a violation of the regulations by the mortgage trustee could endanger the preferred status of the mortgage. The commenter suggested that we amend the definition to eliminate reference to the statute and regulations and simply state that a preferred mortgage is one where the mortgagee is an approved mortgage trustee. We intend for the preferred status of the mortgage to be at risk if a mortgage trustee fails to be in compliance with the regulations; however, we have addressed the concerns of the commenter by clarifying in § 356.27 that a mortgage trustee will have an opportunity to cure a defect in its approved status and by including a provision for MARAD notification of beneficiaries where there is a problem with the mortgage trustee's approved status. The preferred status of the mortgage will not be at risk until 30 days after notification of the beneficiary that there is a problem with the mortgage trustee's approval.

The second sentence in the definition of ''non-citizen'' has been deleted because there is no longer any special citizenship status for a State or Federally chartered financial institution that satisfies the controlling interest requirements of section 2(b) of the Shipping Act, 1916. Finally, the definition of ''trust'' is amended to conform the definition of a mortgage trust to the new requirements for mortgage trustees.

Section 356.5 Affidavit of U.S. Citizenship

Paragraph 356.5(d) provides the form of the affidavit of U.S. citizenship to be used by a corporation. The form is amended to add a new paragraph 6 which indicates that the vessel owner has submitted the documents required by 46 CFR 356.13 of MARAD's regulations. The existing paragraph 6 is renumbered as paragraph 7. The inclusion of this new paragraph in the affidavit of U.S. citizenship was deemed to be necessary to help ensure that vessel owners have reviewed the requirements and have submitted the required documentation.

Section 356.7 Methods of Establishing Ownership by United States Citizens

Paragraph 356.7(c)(1)(ii) has been amended by removing the language that applies the fair inference method to a State or Federally chartered financial institution that is acting as a preferred mortgagee. The amendments to the AFA deleted this standard for qualification as a preferred mortgagee, so it was not longer needed in the regulation.

Section 356.11 Impermissible Control by a Non-Citizen

The NPRM proposed an amendment to paragraph 356.11(a)(7) to clarify that we would not consider impermissible control to exist if the sale of a vessel is caused through the exercise of loan or mortgage covenants that are exercised either (i) by an entity that has not been approved as a U.S. citizen, but which is otherwise eligible to hold a preferred mortgage pursuant to 46 CFR 356.19(a)(2) through (5) or (ii) by an approved mortgage trustee that is exercising the loan or mortgage covenants for a non-citizen or an entity that does not qualify under § 356.19(a)(2) through (5), provided that the Citizenship Approval Officer has approved the use of such loan or mortgage covenants. Several commenters noted that this amendment implies that review of loan documents would be required in a mortgage trustee arrangement where the beneficiary is a commercial lender or lender syndicate, contrary to the intent of the statutory amendments to 46 U.S.C. 31322(f). We did not intend to require mortgage and loan documents related to loans from lender syndicates and commercial

lenders to be subject to MARAD review where a mortgage trustee is being utilized; therefore, we have specifically excluded such review in other parts of the regulations. We have also amended paragraph 356.11(a)(7) to clarify that loan and mortgage documents will not be subject to review where a mortgage trustee is holding a preferred mortgage for the benefit of a commercial lender or lender syndicate.

Section 356.13 Information Required To Be Submitted by Vessel Owners

The NPRM proposed an amendment to § 356.13(a) by clarifying in paragraph (5) that financing documents will only be required from entities that have not been approved to hold a preferred mortgage on fishing industry vessels or that have not received general approval for their loan documents pursuant to § 356.21. Several commenters noted that this section implies that review of loan documents may be required from commercial lenders or lender syndicates that are using an approved mortgage trustee. Again, we did not intend to include a review of financing documents where a mortgage trustee is holding a preferred mortgage for the benefit of a commercial lender or lender syndicate. Accordingly, we have added language to paragraph 356.13(a)(5) to specify that financing documents are not required to be submitted if the transaction is specifically exempted under paragraph 356.19(d), which specifically sets forth those preferred mortgage transactions for which no review of the loan or mortgage documents is required.

A new element has also been added to the list of material that vessel owners are required to submit with their affidavit of U.S. citizenship. For vessels that exceed 165 feet in registered length, 750 gross registered tons (as measured under 46 U.S.C. chapter 145) or 1900 gross registered tons (as measured under the International Tonnage Convention, 46 U.S.C. chapter 143) or that have engines capable of producing more than 3,000 horsepower, the vessel owner is required to provide a statement indicating whether the vessel meets certain requirements set forth in § 356.47 in order to be eligible for documentation with a fishery endorsement. While this information can be obtained by researching Coast Guard files on specific vessels, it was determined that we would not be able to research the information in a timely manner for all of the vessels that are subject to these new restrictions.

Section 356.15 Filing of Affidavit of U.S. Citizenship

Section 356.15 has been amended by deleting paragraphs 356.15(a), (b), and (c) that dealt with filing requirements prior to October 1, 2001. It is no longer necessary to maintain these requirements in the regulations now that the October 1, 2001, date has passed. The remaining paragraphs have been reordered in order to present the requirements for filing an affidavit of U.S. citizenship in a logical order.

A more significant amendment to § 356.15 is the addition of a new paragraph (d) that allows vessel owners or prospective vessel owners to request a letter ruling to determine whether a proposed ownership structure will meet the requirements of the regulations and allow the owner to document a vessel with a fishery endorsement. In the preamble to the final regulations (65 FR 44860, 44865–66 (July 19, 2000)), we stated that we would issue letter rulings for vessel owners prior to June 1, 2001, but that we did not plan to issue letter rulings after October 1, 2001, because letter rulings necessarily involve hypothetical transactions and can absorb an inordinate amount of time and resources. While we continue to be concerned about the burden on limited resources that may be presented by requests for letter rulings, we recognize that the ability to obtain a letter ruling before a transaction is finalized is extremely useful to vessel owners and other parties that are required to qualify as U.S. citizens. Therefore, we have amended the regulations to indicate that we will continue to issue letter rulings after October 1, 2001, to vessel owners and other entities that are required to qualify as U.S. citizens under these regulations. If the process of issuing letter rulings becomes too burdensome, it may be necessary to reconsider this position in the future.

Section 356.17 Annual Requirements for Vessel Owners

The NPRM included a proposed amendment to § 356.17 that would delete the requirement for owners of multiple fishing industry vessels to file a certification prior to the renewal date for the certificate of documentation for each vessel. Therefore, a vessel owner would be allowed to file one consolidated affidavit of U.S. citizenship on an annual basis for all of its fishing industry vessels. One commenter supported this amendment, but suggested that we broaden the language to clarify that if vessel owners have the same ultimate common ownership they may file a consolidated affidavit. The commenter noted that such an amendment would better address the common practice in the maritime industry where companies set up separate subsidiaries to own individual vessels. We agree with the commenter and have amended paragraph 356.17(b) to clarify that one affidavit may be filed for multiple vessels that have the same owner or where the owners ultimately have the same common ownership.

Section 356.19 Requirements To Hold a Preferred Mortgage

Section 2202(b) of the Supplemental Appropriations Act, 2001, amended 46 U.S.C. 31322(a)(4) by deleting from the definition of a preferred mortgage for fishing industry vessels of 100 feet or greater a mortgage that is held by a mortgagee that is a State or Federally chartered financial institution that meets the controlling interest requirement of the 1916 Act. Section 2202(b) of the Supplemental Appropriations Act also expanded the definition of preferred mortgage for fishing industry vessels by increasing the universe of entities that can act as the mortgagee. Accordingly, § 356.19 has been amended by deleting the requirements to hold a preferred mortgage in §§ 356.19(a)(2) through (d) and by adding new language to incorporate the new entities that will qualify to hold a preferred mortgage. The list of entities that will now qualify to hold a preferred mortgage includes: (1) Citizens of the United States who are eligible under 46 U.S.C. 12102(c) to own a vessel with a fishery endorsement; (2) State or Federally chartered financial institutions that are insured by the Federal Deposit Insurance Corporation; (3) farm credit lenders established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*); (4) commercial fishing and agriculture banks established pursuant to State law; (5) commercial lenders organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a); and (6) mortgage trustees that comply with the requirements of 46 U.S.C. 31322(f) and 46 CFR 356.27–356.31.

A new paragraph (b) has been added to the section to describe the information that the various entities must submit to the Citizenship Approval Officer so that a determination can be made as to whether the entities are qualified to hold a preferred mortgage on a fishing industry vessel. Several commenters suggested that the proposed paragraph (b)(5) be amended to clarify that there are different requirements for a commercial lender to

hold a preferred mortgage depending on whether it is holding the mortgage directly as a mortgagee or through a mortgage trustee. We agree with the commenters and have amended paragraph (b) to clarify that a commercial lender must demonstrate that it is in the business of financing and that it has a loan portfolio in excess of $100 million, not more than 50 percent of which is to borrowers in the commercial fishing industry. This requirement applies whether the commercial lender is holding the preferred mortgage directly or is using a mortgage trustee to hold the preferred mortgage for its benefit. If a commercial lender is holding a preferred mortgage directly, it must also file an affidavit of U.S. citizenship to demonstrate that it qualifies as a documentation citizen pursuant to 46 U.S.C. 12102(a).

We have also amended proposed paragraph 356.19(b) to address the required timing of submissions for a mortgagee. A mortgagee, including a mortgage trustee, that is holding a preferred mortgage on a fishing industry vessel prior to April 1, 2003, will be required to demonstrate that it meets the requirements of § 356.19(a) before the next renewal date after April 1, 2003, for the vessel's certificate of documentation. However, if a mortgagee wishes to confirm that it is in compliance with the requirements to hold a preferred mortgage before the certificate of documentation renewal date for the vessel, the mortgagee may request a letter ruling from the Citizenship Approval Officer pursuant to paragraph 356.19(e) at any time after the publication of this regulation. A mortgagee that wishes to enter into a new preferred mortgage after April 1, 2003, will be required to demonstrate that it meets the requirements of § 356.19(a) before it will be eligible to obtain a preferred mortgage on a fishing industry vessel.

Finally, several commenters noted that more guidance is needed regarding the form in which information must be submitted in order for a mortgagee to demonstrate that it is qualified to hold a preferred mortgage directly and for a lender syndicate or commercial lender to demonstrate that it qualifies as such an entity when it is using a mortgage trustee to hold a preferred mortgage for its benefit. We have set forth the requirements in the regulations that each entity must meet, and we have amended paragraph 356.19(b) to state that we will provide sample formats on MARAD's website the can be used for the various entities to submit the required information.

One commenter argued that the requirements of proposed § 356.19(b) are inconsistent with the Ship Mortgage Act because the regulation requires MARAD approval before a mortgage will qualify as a preferred mortgage. The commenter stated that the Ship Mortgage Act, 46 U.S.C. 31322(a)(4) does not require a mortgagee to demonstrate its eligibility to hold a preferred mortgage; therefore, the requirements of § 356.19(b) are inconsistent with the statute. Further, the commenter stated that the mortgagee has the most to lose by the loss of the preferred status of its mortgage. Consequently, the commenter believes that self regulation by mortgagees would be sufficient to ensure compliance with the statute.

We do not agree with the commenter. Requiring mortgagees to demonstrate that they meet the requirements of the statute is not inconsistent with statutory requirements. The certification that mortgagees would be required to submit under § 356.19 is not complicated and should not present a substantive or administrative burden that would hinder the ability of vessel owners to obtain financing or that would restrict the ability of a lender to obtain adequate security for its loans. Therefore, we are finalizing our proposed amendments to § 356.19 to require mortgagees to submit certain information to the Citizenship Approval Officer before they may obtain a new preferred mortgage or in order to maintain an existing preferred mortgage on a fishing industry vessel.

A new paragraph (c) has also been added to the regulations to require the certification from paragraph (b) to be submitted for each entity on an annual basis for as long as the entity holds a preferred mortgage on a fishing industry vessel. The annual certification must be filed at least 30 days prior to the annual anniversary date of the original approval. In order to address concerns of some commenters regarding the loss of the preferred status of a mortgage if the mortgagee fails to file the annual certification, we have amended paragraph (c) to require the Citizenship Approval Officer to notify a mortgagee if it fails to submit the required annual certification. The preferred status of the mortgage will be maintained for 30 days following the mailing date of the delinquency notice.

A new paragraph (d) was also proposed in the NPRM to make clear that an entity, other than a mortgage trustee, that is eligible to hold a preferred mortgage on a fishing industry vessel may exercise rights and covenants under loan or mortgage agreements and is not required to obtain approval from MARAD. Several commenters noted that this paragraph was too narrow because it did not state that a mortgage trustee may exercise loan or mortgage covenants without obtaining prior MARAD approval when it is holding a preferred mortgage for the benefit of an entity that is otherwise qualified to hold a preferred mortgage or for the benefit of a commercial lender or lender syndicate. We agree with the commenter and have revised paragraph (d) to specifically set forth which entities may exercise rights under loan or mortgage covenants without obtaining MARAD approval.

Several commenters suggested that lenders should be allowed to request a letter ruling in the same way that vessel owners may request a letter ruling from the Citizenship Approval Officer under § 356.15. We agree with the commenter that letter rulings should be available to lenders and mortgage trustees and have added a new paragraph 356.19(e) that will allow entities to request a letter ruling from the Citizenship Approval Officer to determine whether a mortgage or mortgage trust arrangement will comply with the requirements of 46 CFR part 356. If a letter ruling is issued, the date of the letter ruling may be deemed to be the approval date of the transaction and to be the required date for the annual approval.

Section 356.21 General Approval of Non-Citizen Lender's Standard Loan or Mortgage Agreements

Section 356.21 allowed non-citizen lenders that were using a mortgage trustee to get MARAD approval of their standard loan or mortgage covenants. The amendments to the AFA expanded the class of lenders that may hold a preferred mortgage directly to allow various entities that do not qualify as U.S. citizens to hold a preferred mortgage directly. If the beneficiary under a mortgage trust arrangement is allowed to hold a preferred mortgage directly, or qualifies as a commercial lender or lender syndicate, no review of the loan or mortgage covenants is required, notwithstanding the fact that the beneficiary may not qualify as a U.S. citizen. Accordingly, the term ''non-citizen lender'' is replaced with the term ''lender'' throughout the section.

Several commenters noted that paragraph 356.21(a) could be interpreted to require review of standard loan or mortgage agreements involving a mortgage trustee and a beneficiary that is either a commercial lender or lender syndicate. We did not intend to imply that MARAD review of such loan or mortgage documents would be mandated; therefore, we have amended

paragraph 356.21(a) to clarify that the approval of standard loan and mortgage covenants is available for entities that are not eligible to hold a preferred mortgage directly and that do not otherwise qualify as a commercial lender or lender syndicate.

Finally, we amended paragraph (d) by deleting the penalty imposed on the owner of a fishing industry vessel if a lender uses loan or mortgage covenants that were not approved by the Citizenship Approval Officer. Instead, we have added language to indicate that the Citizenship Approval Officer may determine that the transaction results in an impermissible transfer of control to a non-citizen and that therefore, the arrangement does not satisfy the requirements to qualify as a preferred mortgage. Furthermore, the lender will lose its general approval and will be required to obtain approval of its loan and mortgage covenants on a case-by-case basis in the future.

Section 356.23 Restrictive Loan Covenants Approved for Use by Lenders

Section 356.23 has been amended by deleting the term ''non-citizen lender'' in the title and the body of the section and substituting the term ''lenders'' in its place. As noted above, the amendments to the AFA have created a class of lenders that may or may not qualify as U.S. citizens, but who are nevertheless eligible to hold a preferred mortgage directly and to exercise restrictive loan and mortgage covenants without requiring approval from MARAD. Accordingly, the term ''lender'' has been substituted for ''non-citizen lender'' throughout the section because the approval of these restrictive loan covenants is not required for all ''non-citizen lenders'' but rather only for those who do not meet the requirements to hold a preferred mortgage directly.

Several commenters noted that as proposed in the NPRM, the amendments to paragraph 356.23(a) could be interpreted to require MARAD review of loan or mortgage covenants where a commercial lender or lender syndicate is using a mortgage trustee to hold the preferred mortgage for its benefit. We have therefore amended paragraph 356.23(a) to clarify that this section is intended to apply to lenders that are not otherwise exempt from MARAD review of their loan or mortgage covenants pursuant to paragraph 356.19(d).

Section 356.25 Operation of Fishing Industry Vessels by Mortgagees

Paragraph 356.25(c) provides that a mortgagee that is not eligible to own a fishing industry vessel may operate the vessel for a non-commercial purpose to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a citizen of the United States and for no longer than 15 calendar days. One commenter suggested that there is no need for an iron-clad 15 day limit and that the regulations should be amended to allow a non-citizen mortgage trustee to operate a vessel for longer than 15 days if the Citizenship Approval Officer grants approval. There is no need to amend paragraph 356.25(c) because paragraph 356.25(b) already provides leeway for the Citizenship Approval Officer to grant written authorization for operation of a vessel beyond what is specifically allowed in paragraph 356.25(c). Paragraph 356.25(b) states that, except as provided in paragraph 356.25(c), the vessel may not be operated for any purpose without the prior written approval of the Citizenship Approval Officer. Therefore, if a mortgagee that is not eligible to own a fishing industry vessel wishes to operate such a vessel for the purposes enumerated in 356.25(c) for a period in excess of 15 days, it may do so with written authorization of the Citizenship Approval Officer.

Section 356.27 Mortgage Trustee Requirements

The mortgage trustee requirements were amended to delete references to a requirement that the mortgage trustee demonstrate that it qualifies as a U.S. citizen because mortgage trustees are no longer required to qualify as a U.S. citizen if they otherwise meet one of the requirements of 46 U.S.C. 31322(a)(4)(A)–(E). Where references to proving citizenship were included in § 356.27, we have substituted a requirement that the mortgage trustee supply the appropriate information to demonstrate that it complies with the requirements of 46 CFR 356.19(b)(1)–(5) to be eligible to hold a preferred mortgage on fishing industry vessels.

A new paragraph (4) was also added to the trustee application which requires the mortgage trustee to agree to furnish the Citizenship Approval Officer with copies of the trust agreement as well as any other issuance, assignment or transfer of an interest related to the transaction if the beneficiary under the trust arrangement is not a commercial lender, a lender syndicate or an entity eligible to hold a preferred mortgage under 46 CFR 356.19(a)(1)–(5). This submission is necessary so that the Citizenship Approval Officer can make a determination that the trust arrangement does not result in an impermissible transfer of control.

Several commenters noted that some entities may be reluctant to qualify as a mortgage trustee because of the risk of liability that is imposed by paragraph (d) of the mortgage trustee application, which states that a mortgage trustee ''shall not assume any fiduciary duty in favor of non-citizen beneficiaries that is in conflict with any restrictions as requirements of the regulation.'' The commenters suggested that paragraph (d) be deleted. However, paragraph 356.27(e) provides for review by the Citizenship Approval Officer of the form of trust agreement to be used, and the Citizenship Approval Officer will review and approve the loan and mortgage documents where the beneficiary is not a commercial lender, a lender syndicate or an entity otherwise qualified to hold a preferred mortgage. This review should limit the liability exposure of a mortgage trustee; therefore, we have decided to retain paragraph (d) in the mortgage trustee application.

One commenter suggested that the requirement in paragraphs 356.27(c)(3) and (g) to submit a copy of the mortgage trustee's articles of incorporation and bylaws should be deleted as there is no need to examine these documents unless the mortgage trustee is seeking to qualify as a U.S. citizen. The requirement for a mortgage trustee that is seeking to qualify as a U.S. citizen to submit its articles of incorporation and bylaws is addressed by reference to the need to comply with § 356.19; therefore, we have deleted paragraph 356.27(c)(3) and paragraphs (a)(2) and (a)(3)(ii) of the mortgage trustee application in § 356.27(g).

Several commenters remarked that the beneficiaries under a trust agreement have the most to lose if a mortgage trustee fails to continue to qualify as a mortgage trustee. Consequently, the beneficiaries should be notified of the mortgage trustee's failure to qualify. We agree with the commenters and have added a new paragraph (a)(3)(iv) to the mortgage trustee application at § 356.27(g). The new paragraph requires mortgage trustees to provide the identity and address of all beneficiaries for which it is acting as mortgage trustee, so that the Citizenship Approval Officer can notify the beneficiaries if the mortgage trustee fails to qualify under the regulations.

Finally, one commenter suggested that the proposed requirements of § 356.27 serve no apparent purpose and that the requirements of the statute should be self executing. The commenter stated that there should be

no requirement for MARAD approval of mortgage trustees except in cases where the mortgage trustee is holding a preferred mortgage for the benefit of a lender that is not qualified to hold a preferred mortgage directly or that does not qualify as a commercial lender or lender syndicate. We disagree with the commenter that the statutory requirements for an entity to qualify as a mortgage trustee must be self executing. The AFA placed restrictions on the entities that can hold a preferred mortgage on fishing industry vessels in order to insure that non-citizen entities cannot use loan or mortgage covenants to control fishing industry vessels that they are otherwise not eligible to own. While the amendments to the Ship Mortgage Act were intended to broaden the universe of entities that could hold a preferred mortgage directly and that could act as a mortgage trustee, the statute does not restrict MARAD from determining whether or not an entity is eligible to qualify as a mortgage trustee. In fact, the statute sets forth specific criteria that must be met and states that a mortgage trustee must also satisfy any other requirements that the Secretary of Transportation may require. Therefore, we do not agree with the commenter, and we will continue to require mortgage trustees to demonstrate that they meet certain requirements.

Section 356.31 Maintenance of Mortgage Trustee Approval

Section 356.31 was amended by deleting the requirement in paragraph (a)(1) that a mortgage trustee provide an affidavit of U.S. citizenship on an annual basis. A mortgage trustee is no longer required to qualify as a U.S. citizen, provided that it is otherwise qualified to hold a preferred mortgage on a fishing industry vessel. Accordingly, mortgage trustees will be required to submit the appropriate documentation required under § 356.19(b)(1)–(5) to demonstrate that they are qualified to hold a preferred mortgage on fishing industry vessels.

One commenter suggested that the requirement in paragraph 356.31(a)(2) to submit a copy of the mortgage trustee's articles of incorporation and bylaws on an annual basis should also be deleted as there is no need to examine these documents unless the mortgage trustee is seeking to qualify as a U.S. citizen. We agree with the commenter since the requirement for U.S. citizens to submit any changes to these documents is covered under the § 356.19; therefore, paragraph 356.31(a)(2) has been deleted and the section has been renumbered accordingly.

Paragraph 356.31(b) has also been amended by deleting any reference to the requirement for a mortgage trustee to make an annual filing within 30 days of its annual stockholders meeting. Several commenters noted that the correlation of the filing date to the annual stockholders meeting is a carryover from when the mortgage trustee was required to file an affidavit of U.S. citizenship. Accordingly, the annual filing date will be tied to the date of the mortgage trustee approval by the Citizenship Approval Officer.

Several commenters stated that paragraph 356.31(c) should be amended to provide a mortgage trustee with an opportunity to cure a deficiency in its approval within 30 days and to require the Citizenship Approval Officer to notify the beneficiaries when a mortgage trustee fails to comply with the regulations and is no longer qualified to act as a mortgage trustee. The commenters also suggested that the preferred status of the mortgage remain intact until 30 days after the beneficiaries are notified, rather than 30 days after publication of the disapproval of the mortgage trustee in the **Federal Register**.

We agree with the commenter that the beneficiaries should be notified because the beneficiaries under a mortgage trust arrangement are the entities that would suffer the greatest harm from the loss of the preferred status of a mortgage held by a mortgage trustee. Therefore, we have added a new paragraph 356.31(a)(4) that requires a mortgage trustee to provide the identity and address of all beneficiaries for which it is acting as mortgage trustee. We have also amended paragraph 356.31(c) to require the Citizenship Approval Officer to notify the beneficiaries if the mortgage trustee fails to qualify under the regulations. Such notice will be provided by mailing a copy of the **Federal Register** notice through standard U.S. mail to the beneficiary at the address provided by the mortgage trustee. During the 30 day period following publication of the disapproval notice in the **Federal Register**, the mortgage trustee must either transfer its responsibilities to an approved mortgage trustee or cure the defect in its approval or the mortgage will no longer be qualified as a preferred mortgage. While we have amended paragraph 356.31(c) to require the Citizenship Approval Officer to notify the beneficiary of a mortgage trustee's failure to qualify, we will continue to use the date that the disapproval notice is published in the **Federal Register** as the date from which the 30 day period for the mortgage trustee to cure the defect or transfer its responsibilities will begin to run in order to minimize confusion over multiple compliance dates and to provide an absolute date with which to work.

Section 356.37 Operation of a Fishing Industry Vessel by a Mortgage Trustee

Section 356.37 provides that a mortgage trustee may only operate a fishing industry vessel where such operation is necessary for the immediate safety of the vessel. One commenter suggested that section 356.37 should be amended to provide mortgage trustees with the same flexibility to operate a fishing industry vessel as that which is granted to preferred mortgagees in paragraph 356.25(c). We agree with the commenter that these sections could be more closely aligned; therefore, we have amended section 356.37 to clarify that a mortgage trustee may operate a fishing industry vessel where non-commercial operation is necessary for the immediate safety of the vessel, as well as for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a citizen of the United States for a period of no more than 15 calendar days.

Section 356.45 Advance of Funds

Section 356.45(a)(2)(iv) does not currently allow non-citizens to advance funds to a vessel owner and to obtain a security interest in property of the vessel owner in order to secure the debt. Because non-citizens will now be allowed to utilize a mortgage trustee to hold a preferred mortgage on a vessel for the benefit of the non-citizen lender, we propose to amend paragraph 356.45(a)(2)(iv) by inserting language at the end that would allow a non-citizen to advance funds to a vessel owner and to have a security interest in the vessel or other collateral, provided that the non-citizen uses a qualified mortgage trustee to hold the mortgage and debt instrument for the benefit of the non-citizen.

Section 356.47 Special Requirements for Large Vessels

Section 356.47 implements special requirements for certain large vessels. Vessels that exceed 165 feet in registered length, 750 gross registered tons or that have engines capable of producing in excess of 3000 horsepower are ineligible for documentation with a fishery endorsement pursuant to 46 U.S.C. 12102(c)(5), as redesignated by section 2202(a)(2) of the Supplemental Appropriations Act, 2001. A vessel that meets any of the above criteria can be exempted from the prohibition on obtaining a fishery endorsement if it

meets all of the following requirements: (1) A certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997; (2) the vessel is not placed under foreign registry after October 21, 1998; and (3) in the event of the invalidation of the fishery endorsement after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the invalidation.

There are a number of events that can render a vessel's documentation and fishery endorsement immediately invalid under Coast Guard regulations. If one of these events occurs, such as the death of one of the owners in a tenancy by the entirety ownership arrangement, and the remaining owners do not apply for a new fishery endorsement within 15 business days, the vessel could potentially suffer a permanent loss of its eligibility to be documented with a fishery endorsement. Because of the harsh result that could occur if one of these events occurred and the vessel owner did not address the issue within the prescribed time period, MARAD's regulations state that the 15 day period will not begin to run until the vessel owner receives written notification from MARAD or the Coast Guard identifying the reason for such invalidation. In other words, the vessel's fishery endorsement will not be deemed invalid for purposes of complying with paragraph 356.47(b)(3) until notice is given. This requirement ensures that a vessel owner is aware of the consequences of failing to apply for a new fishery endorsement within the specified period of time in the event of an invalidation.

We believe that the sale in bankruptcy of a fishing industry vessel that meets the criteria of paragraph 356.47(a) can also lead to an unintended and harsh result if the vessel is purchased by a mortgagee that is not qualified to own a vessel with a fishery endorsement. A mortgagee is permitted under 46 U.S.C. 31329 to purchase a vessel on which it holds a preferred mortgage, even though the mortgagee may not be qualified to own a documented vessel. The Coast Guard's regulations at 46 CFR 67.161 provide that such a sale to a mortgagee is not deemed to be a foreign sale or to invalidate the vessel's documentation for purposes of complying with certain specified statutory provisions; however, the endorsement on the vessel is not deemed to remain valid. Therefore, as a practical matter, a mortgagee that is not qualified to own a fishing industry vessel is restricted from purchasing such a vessel on which it holds a mortgage and subsequently holding the vessel for resale to a qualified buyer, as permitted by 46 U.S.C. 31329(b), because the vessel would lose its eligibility to be documented with a fishery endorsement if an application for a new fishery endorsement is not submitted within 15 business days by a qualified owner. Consequently, a mortgagee would be deprived of using a statutorily permitted means of protecting the value of its collateral by purchasing the vessel and subsequently selling the vessel to a qualified buyer. Furthermore, this could adversely impact the ability of vessel owners to obtain financing from entities that are eligible to hold a preferred mortgage on fishing industry vessels, but which are not eligible to own fishing industry vessels. Accordingly, we have amended paragraph 356.47(b)(3) to clarify that a fishing industry vessel's fishery endorsement will not be deemed invalid for purposes of complying with this paragraph, if the vessel is purchased pursuant to 46 U.S.C. 31329 by a mortgagee that is not eligible to own a vessel with a fishery endorsement, provided that the mortgagee is eligible to hold a preferred mortgage on such vessel at the time of the purchase.

Following the publication of the NPRM, the AFA was amended by section 1103 of Public Law 107–206 by striking the phrase ''of more than 750 gross registered tons'' in each place it appears, and inserting in lieu thereof, ''of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons (as measured under chapter 143 of that title)''. This change was deemed to be necessary because newly constructed fishing industry vessels would not be eligible for documentation with a fishery endorsement if the vessel was over approximately 60 feet in registered length. Newly constructed fishing industry vessels are required to be measured pursuant to 46 U.S.C. chapter 143 for purposes of complying with the AFA. The tonnage measurement of a vessel measured under chapter 145 is much higher than that which would be obtained for a vessel of comparable length that was measured under chapter 143; therefore, newly constructed vessels that are much smaller than 165 feet would not be eligible for documentation with a fishery endorsement prior to the amendment to the AFA. The amendment allows vessels of up to 165 feet to be eligible for documentation if the vessel meets the corresponding tonnage threshold under the tonnage measurement system that applies to the particular vessel. We have amended § 356.47 to incorporate this technical change.

We are also amending § 356.47 by adding a new paragraph (e) that will require the owners of vessels that are greater than 165 feet in registered length, 750 gross tons (as measured under 46 U.S.C. chapter 145) or 1,900 gross registered tons (as measured under the International Tonnage Convention, 46 U.S.C. chapter 143), or that have engines capable of producing in excess of 3,000 shaft horsepower to submit with their annual affidavit of U.S. citizenship a certification that the vessel is eligible to be documented with a fishery endorsement because it complies with § 356.47(b), (c) or (d) of these regulations. While this information can be obtained by researching Coast Guard files on specific vessels, we have determined that we would not be able to research the information in a timely manner for all of the vessels that are subject to these new restrictions. Therefore, the vessel owner will be required to certify that the vessel is eligible for documentation pursuant to one of the exceptions in § 356.47.

Section 356.51 Exemptions for Specific Vessels

Paragraph (a) states that certain vessels will be exempt from the requirements of 46 U.S.C. 12102(c) ''until such time as 50% of the interest owned and controlled in the vessel changes.'' We added the phrase ''after October 1, 2001,'' after ''such time'' in paragraph (a) in order to clarify that the ownership structure on October 1, 2001, is the baseline from which we will measure any change in ownership of a vessel that is exempt from the requirements of 46 U.S.C. 12102(c) pursuant to this section.

In addition, there were several technical amendments to § 356.51 to correct typographical errors in the regulation. The official number for the vessel EXCELLENCE was corrected in paragraphs 356.51(a)(1) and (c). Paragraph 356.51(e) was deleted and a reworded version of the paragraph was inserted as a new paragraph (d).

The current paragraph (d) relates to the exemption from the ownership and control requirements for fishing industry vessels engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council and for purse seine vessels that are engaged in tuna fishing in the Pacific Ocean outside of the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty. Such vessels are exempted, pursuant to 46 U.S.C. 12102(c)(4), as redesignated by

section 2202 of the Supplemental Appropriations Act, 2001, from complying with the new ownership and control requirements of the AFA. Our current regulations exempt the vessels from the requirement to meet the higher ownership and control standard of the AFA; however, the regulations require the owners of such vessels to file an affidavit of U.S. citizenship with MARAD to demonstrate that the vessel complies with the ownership and control standard that existed prior to the passage of the AFA. Because many of these vessels and the vessel owners are located in remote areas, the requirement to file an affidavit of U.S. citizenship with MARAD has proven to be a difficult requirement for many vessel owners to satisfy. After further consideration, we have determined that the intent of the statutory exemption was to allow the owners of such vessels to forgo the requirement to file an affidavit of U.S. citizenship with MARAD. Accordingly, we have deleted the requirement to file an affidavit of U.S. citizenship with MARAD, and we are adding a new paragraph (f) that will require the vessel owner to notify both MARAD's Citizenship Approval Officer and the Coast Guard's National Vessel Documentation Center that it is claiming the exemption available to the vessel under 46 CFR 356.51(e). Vessel owners will then be required to follow the Coast Guard's regulatory procedures that were in effect prior to the passage of the AFA to document the vessel with a fishery endorsement. Furthermore, vessels covered by 46 CFR 356.51(e) are not subject to the restrictions of § 356.47 during the time that the vessel is engaged in the fisheries as outlined in paragraph 356.51(e).

Only one party provided comments on the amendments to § 356.51. The commenter supported the proposed changes and noted that the changes would relieve an administrative burden that has complicated efforts for the owners of such vessels to raise capital for their operations.

Section 356.53 Conflicts with International Agreements

Section 213(g) of the AFA states that if the requirements of 46 U.S.C. 12102(c) or 46 U.S.C. 31322(a), as amended by the AFA, are determined to be inconsistent with the provisions of an international investment agreement to which the United States was a party with respect to the owner or mortgagee of a fishing industry vessel on October 1, 2001, the requirements of the AFA will not apply to the owner or mortgagee of that specific vessel to the extent of the inconsistency. Section 2202(e) of the Supplemental Appropriations Act, 2001, amends section 213(g) of the AFA to change the date upon which an ownership or mortgage interest must be in place in order for an owner or mortgagee to claim the protection of an international investment agreement. The date was changed from October 1, 2001, to July 24, 2001. Accordingly, we have amended § 356.53 by substituting the July 24, 2001 date for ''October 1, 2001'' and ''September 30, 2001'' where those dates appear in the section.

We have also amended paragraph (d) to give the Chief Counsel the discretion as to whether a petition under this section should be published in the **Federal Register**. The decision as to whether a petition should be published in the **Federal Register** will hinge on whether the petition contains new and unique arguments on which the Chief Counsel believes that the public should be given an opportunity to comment. Because of the expense and time involved in publishing these petitions in the **Federal Register** and the fact that no comments were received in response to any of the petitions that were published in the last year, we determined that it would be best to provide discretion to the Chief Counsel to determine whether a petition warrants publication and public comment.

Paragraph (b)(5), which addresses the timing of submissions prior to October 1, 2001, has also been removed. This section is no longer necessary now that October 1, 2001, has passed.

Finally, section 213(g) of the AFA provides that a vessel owner is not subject to the requirements of the AFA with respect to a particular vessel to the extent that those requirements are found to be inconsistent with an international agreement relating to foreign investment to which the United States is a party. However, section 213(g) also states that the requirements of the AFA shall apply to the owner if any ownership interest in the vessel owner is transferred to or otherwise acquired by a foreign individual or entity after the effective date of the AFA. Section 2002(e) of the Supplemental Appropriations Act, 2001, further amended section 213(g) to require that the provisions of 46 U.S.C. 12102(c) and 46 U.S.C. 31322, as amended by the AFA, shall apply to a vessel owner or mortgagee that is subject to an exemption under section 213(g) if the percentage of foreign ownership in the vessel is increased after the effective date of this subsection.

Section 356.53(g) sets forth the requirement that the provisions of the AFA will apply to all owners and mortgagees that acquire an interest after the effective date of the AFA in a fishing industry vessel that is subject to a section 213(g) exemption. Paragraph 356.53(g)(2) states that the requirements of the AFA will apply to all owners and mortgagees in a fishing industry vessel that is subject to a section 213(g) exemption if any ownership interest in that vessel owner is transferred to or otherwise acquired by a non-citizen after the effective date of the AFA. The existing paragraph 356.53(g)(2) provides that an ownership interest in a vessel would be considered to be transferred under this subsection when an interest in the primary vessel owner is transferred. However, we stated that we would not consider a transfer in the primary vessel owner to occur where: (1) The transfer is of disparately held shares of a publicly traded company that equal less than 5 percent of the shares in any class of stock; (2) the transfer is between subsidiary companies under one parent; or (3) the transfer is pursuant to a divorce or death.

We proposed several changes to paragraph 356.53(g) in the NPRM in order to incorporate the new statutory amendments that dictate that the requirements of the AFA should be applied to a vessel owner or mortgagee if the percentage of foreign ownership in the vessel is increased after the effective date of section 213(g), as amended. We also proposed an amendment to tighten our interpretation of what constitutes a change in ownership interest. Specifically, we proposed to add a new paragraph (g)(3) to clarify that an ownership interest is deemed to be transferred if: (1) There is a transfer of direct ownership interest in the primary vessel owning entity or the parent of the primary vessel owning entity where the primary vessel owning entity is a wholly owned subsidiary; or (2) there is a transfer of ownership at any tier that results in a transfer of five percent or more of the ownership interest in the primary entity. A new paragraph (g)(4) was also proposed and the provisions of paragraph (g)(2) relating to transfers of disparately held shares in a publicly traded vessel owning entity and transfers made pursuant to divorce or death were moved there.

One party submitted comments on the proposed changes to § 356.53. The commenter objected to our proposed amendments in paragraph 356.53(g)(3)(ii) to further restrict our interpretation of what constitutes a transfer of ownership. The commenter stated that transfers of ownership should be limited to transfers of the

primary vessel owning entity and that we should not and could not restrict transfers of ownership in entities that are farther up the ownership chain. The commenter objected to our proposal for the following reasons: (1) That the plain language of section 213(g) provides that the treaty exemption will be lost only if there is a transfer of interest in the primary vessel owning entity; (2) that section 213(g) provides that the treaty exemption will be lost if there is a transfer of ''any'' interest in the vessel owner; (3) that the proposed rule would adopt an insupportable interpretation of the words ''foreign individual or entity;'' (4) that the 2001 amendment to section 213(g) does not provide support for proposed paragraph 356.53(g)(3)(ii); and (5) that MARAD proposes to take inconsistent positions in evaluating the percentage of ''foreign ownership'' under 46 U.S.C. 12102(c) and AFA section 213(g).

We disagree with the commenter regarding our authority to regulate transfers of ownership beyond the first tier of vessel ownership. The increase in U.S. citizen ownership and control of fishing industry vessels that is mandated by the AFA was intended to increase the U.S. citizen ownership and control of fishing industry vessels and to address a loophole that was created in 1987 by the Commercial Fishing Industry Vessel Anti Reflagging Act of 1987 (''Anti-Reflagging Act''), Pub. L. 100–239. The Anti-Reflagging Act raised the U.S. citizen ownership and control requirement for fishing industry vessels from a ''documentation citizen'' standard to a ''controlling interest'' standard. However, section 7(b) of the Anti-Reflagging Act provided a savings clause for the owners of vessels that were documented with a fishery endorsement prior to the passage of the Anti-Reflagging Act. The savings clause allowed the vessel owner to continue to document a particular vessel with a fishery endorsement if the vessel had been documented with a fishery endorsement prior to the passage of the Act. This grandfather provision was subsequently determined in *Southeast Shipyard Ass'n* v. *United States,* 979 F.2d 1541 (D.C. Cir. 1992), to run with the vessel rather than the vessel owner. Therefore, the increased U.S. ownership and control in these vessels could not be assured as U.S. entities continued to buy into the grandfathered vessels over time because a grandfathered vessel could always be sold back to an entity that could be wholly owned by non-citizens, provided that the entity qualified as a documentation citizen.

Section 204 of the AFA repealed the ownership savings clause of the Anti-Reflagging Act and required vessel owners to comply with the new 75 percent U.S. citizen ownership and control standard imposed by the AFA. Vessel owners and mortgagees are exempted from complying with the new requirements of the AFA if the requirements are inconsistent with the provisions of an international investment agreement to which the United States is a party. However, the exemption provided for in section 213(g) is limited in several ways. First, the exemption is limited to the ownership or mortgage interest of a particular owner or mortgagee with respect to a particular vessel, and it applies only to the extent of the inconsistency with the international agreement. Secondly, the exemption will be lost if any ownership interest in the vessel owner is transferred to or otherwise acquired by a foreign individual or entity or if the percentage of foreign ownership in the vessel is increased after July 24, 2001, the effective date of section 213(g), as amended.

The purpose of the exemption under section 213(g) is twofold. First, the exemption for specific vessels ensures that the AFA cannot be deemed unenforceable in its entirety because it is in conflict with U.S. obligations under an international investment agreement. Secondly, it provides an exemption for the owners and mortgagees of vessels that do not meet the new ownership and control requirements, provided that when any interest is sold or transferred, it is sold or transferred to U.S. citizens so that, over time the U.S. citizen ownership and control of the vessel comes into compliance with the requirements of the AFA.

The commenter states that the plain language of section 213(g) provides that the treaty exemption will be lost only if there is a transfer of an interest in the primary vessel owning entity. Furthermore, the commenter asserts that section 213(g) does not provide statutory authority for MARAD to regulate transfers of ownership interest above the first tier of vessel ownership. We disagree with the commenter.

Section 213(g) refers to the ''vessel owner'' and in no way specifically addresses the primary vessel owner or limits our authority to govern transfers of ownership at various levels of the ownership structure. The term ''owner'' as used in the context of the AFA implicitly applies to the complete ownership structure and therefore covers the owners at each tier. The fact that section 213(g) does not explicitly refer to the owner ''at each tier and in the aggregate'' as is done in 46 U.S.C. 12102(c) does not mean that we are prohibited from looking beyond the first tier owner in evaluating the ownership structure of a vessel subject to a section 213(g) exemption. Acceptance of the commenter's interpretation that the term ''owner'' applies only to the first tier vessel owner would allow a vessel owner to easily circumvent the restrictions in section 213(g) on transfers of interest to foreign individuals or entities by simply having a tiered ownership structure and selling an interest in the vessel ownership structure above the first tier. For example, a vessel that is subject to a 213(g) exemption and that was grandfathered under the Anti-Reflagging Act could be owned by a U.S. corporation that is wholly owned by a foreign entity, provided that the U.S. corporation qualifies as a documentation citizen. Under the commenter's interpretation, all or part of the interest in the non-citizen parent of the documentation citizen could be freely transferred to another non-citizen entity because the non-citizen parent is not the primary vessel owner. The restrictions on transfers of sale in section 213(g) were designed to ensure that any transfers of ownership in a vessel subject to a section 213(g) exemption would be to U.S. citizens until such time as the entire ownership structure came into compliance with the new ownership and control requirements of the AFA. The commenter's interpretation would completely frustrate this intended result.

The commenter also argues that the proposed regulation would adopt an insupportable interpretation of the words ''foreign individual or entity.'' Section 213(g) provides that the exemption will be lost if there is a transfer of an ownership interest in the vessel owner ''to a foreign individual or entity.'' The commenter suggests that our proposed regulations essentially substitute the term non-citizen for the terms ''foreign individual or entity'' and that this cannot be supported by the statute. The commenter states that a corporation or partnership formed under the laws of the United States does not become a ''foreign * * * entity'' because more than 25 percent of the ownership of the entity is owned by persons who do not meet the AFA test of citizenship. Therefore, the commenter suggests that we are incorrect in determining that a transfer of an ownership interest in a vessel to an entity that does not qualify as a U.S. citizen under the AFA should be treated

in the same manner as a transfer to a foreign entity.

We disagree with the commenter on this interpretation of what is covered by the term ''foreign individual or entity'' as used in section 213(g). As noted above, section 213(g) clearly contemplates that transfers of ownership in a vessel subject to a section 213(g) exemption must be to U.S. citizens that comply with the AFA citizenship standard until such time as the entire vessel ownership structure complies with the new ownership and control standard of the AFA. Following the commenter's reading of the statute could lead to results that would actually increase the foreign participation in the ownership structure. For example, an entity within the ownership structure that has 100 percent U.S. citizen ownership and control would be permitted to sell its interest under the commenter's interpretation to a documentation citizen that is wholly owned by a foreign corporation. Although the documentation citizen is a U.S. company with U.S. management, it is a foreign-owned entity and should be treated accordingly for purposes of complying with section 213(g). The commenter's suggested interpretation is inconsistent with the objective of section 213(g) to ratchet up the U.S. citizen participation in the ownership structure when a vessel owner transfers its ownership interests.

The commenter also suggests that proposed paragraph 356.53(g)(3)(ii) should not become part of the final rule because it is inconsistent with the standard that is applied to determining the aggregate U.S. citizen ownership when applying 46 U.S.C. 12102(c). The commenter notes that when we determine the percentage of non-citizen ownership in applying 46 U.S.C. 12102(c), we determine that any entity that does not qualify as a U.S. citizen under the AFA is a non-citizen. We do not look into the percentage of non-citizen ownership within that entity in order to determine the aggregate non-citizen participation. For example, an entity that is owned 74 percent by U.S. citizens and 26 percent by non-citizens would be deemed to be a non-citizen and would be treated the same as an entity that was owned 100% by a non-citizen for purposes of determining the aggregate U.S. citizen participation. In other words, no credit would be given for the U.S. ownership in an entity that does not qualify independently as a U.S. citizen. However, when applying section 213(g), we do not treat all non-citizen entities in the ownership chain equally because we continue to monitor the transfer of ownership in those non-citizen entities. The commenter argues that we should treat non-citizens the same way in determining the amount of non-citizen ownership under section 213(g) and that once an entity is determined to be a non-citizen we should not be concerned with transfers of ownership in that entity.

We do not agree with the commenter that there is a requirement to apply the same standard when determining the level of non-citizen participation under section 213(g) as when we determine the level of aggregate non-citizen participation under 46 U.S.C. 12102(c). As noted above, the purpose of the restrictions on transfer of ownership interest in section 213(g) is to ensure that U.S. participation in the ownership structure is increased at any time that a non-citizen participant decides to exit the ownership structure and transfer its interest. Consequently, we believe that it is appropriate to apply a different standard under section 213(g) with respect to transfers of ownership interest.

Finally, the commenter states that the standard that we have applied in paragraph 356.53(g)(3)(ii) regarding transfers of indirect ownership is too liberal and exceeds the scope of our authority. The commenter notes that we have stated in proposed paragraph 356.53(g)(3)(ii) that we will deem a transfer of ownership interest to occur where there is a transfer of indirect ownership at any tier that results in a transfer of five percent or more of the interest in the primary vessel owning entity. The commenter points out that section 213(g) provides that the exemption will be lost if ''any ownership interest in [the vessel] owner'' is transferred to or otherwise acquired by a foreign individual or entity.'' Therefore, the commenter contends that if a transfer of an indirect ownership interest is deemed to be a constructive transfer of an ownership interest in the vessel owner, MARAD's proposal to permit transfers of less than five percent is flatly inconsistent with the statute. The only instance in which the commenter believes that the use of a five percent threshold is supportable is where a publicly traded entity holds an interest in the vessel, as currently provided for in the regulations.

We attempted to build some flexibility into the regulations regarding transfers of indirect interests, so that every transfer of an interest in the ownership chain, regardless of how small the interest is or how far removed it is from the primary vessel owner, would not potentially result in a loss of the exemption. However, we agree with the commenter's assertion that section 213(g) is intended to cover all transfers of ownership interest to another party. Therefore, we are amending our proposed language in paragraphs 356.53(g)(3)(i) and (ii) to address the commenter's objection and to clarify that an ownership interest is deemed to be transferred if: (i) There is a transfer of direct ownership interest in the primary vessel owning entity; or (ii) there is a transfer of indirect ownership interest at any tier. We will, however, continue to implement our policy with regard to transfers of disparately held shares in publicly traded companies as outlined in paragraph 356.53(g)(4).

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this rule under Executive Order 12866 and have determined that this is not a significant regulatory action. Additionally, this rule is not likely to result in an annual effect on the economy of $100 million or more. The purpose of this rule is: To implement amendments to the requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater in registered length; to implement statutory changes to section 213(g) of the AFA, which allows vessel owners and mortgagees to petition MARAD for a determination that the AFA does not apply to them because it is inconsistent with an international investment agreement; and to make other technical changes and revisions to MARAD's regulations regarding the ownership and control of fishing industry vessels by U.S. citizens.

This rule is also not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and benefits associated with this rulemaking are so minimal that no further analysis is necessary. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

Federalism

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with

State and local officials was not necessary.

Regulatory Flexibility Act

This rulemaking will not have a significant economic impact on a substantial number of small entities. The amendments to the regulations relating to vessel owners are of a technical nature that will not result in a significant economic impact. Furthermore, this rule will make it easier for owners of fishing industry vessels to obtain financing for their vessels by expanding the universe of lenders that are eligible to hold a preferred mortgage on a fishing industry vessel as security for a loan. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small business entities.

Environmental Impact Statement

We have analyzed this rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (''MAO'') 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations which clearly have no environmental impact.

Paperwork Reduction Act

The Office of Management and Budget (''OMB'') previously reviewed the information collection requirements under 46 CFR part 356 and assigned OMB control number 2133–0530. This rule establishes a new requirement for the collection of information. OMB has been requested to review and approve the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). We request that commenters address in their comments whether the information collection in this proposal is necessary for the agency to properly perform its functions and will have practical utility, the accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. Comments should be sent not later than 30 days following publication of this notice in the **Federal Register**. Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/gov/submit.* All comments received will be available for examination at the above referenced address between 10 a.m. and 5 p.m. e.d.t. (or e.s.t.), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

In accordance with the Paperwork Reduction Act, this notice announces MARAD's intentions to request an amendment to its approval for the subject information collection to allow processing of applications to determine the eligibility of owners of vessels of 100 feet or greater in registered length to obtain a fishery endorsement to the vessel's documentation, to determine the eligibility of lending institutions to hold a preferred mortgage on a fishing vessel, a fish processing vessel, or a fish tender vessel of 100 feet or greater in registered length and to determine the eligibility of mortgage trustees to hold a preferred mortgage on such vessels for the benefit of a non-citizen lender. Copies of this request may be obtained from the Office of Chief Counsel at the address given above under **ADDRESSES**.

Title of Collection: (Eligibility of U.S.-Flag Vessels of 100 Feet or Greater In Registered Length to Obtain a Fishery Endorsement to the Vessel's Documentation) 46 CFR part 356.

Type of Request: Modification of existing information collection.

OMB Control Number: 2133–0530.

Form Number: None.

Expiration Date of Approval: Three years following approval by OMB.

Summary of the Collection of Information: Owners of vessels of 100 feet or greater in registered length who wish to obtain a fishery endorsement to the vessel's documentation are currently required to file an affidavit of United States citizenship demonstrating that they comply with the requirements of section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c) and with the requirements of 46 U.S.C. 12102(c). Other documentation that must be submitted with the affidavit includes a copy of the articles of incorporation, bylaws or other comparable documents, a description of any management agreements entered into with non-citizens, a certification that any management contracts with non-citizens do not convey control in a fishing industry vessel to a non-citizen, and a copy of any time charters or voyage charters with non-citizens.

Mortgagees who plan to finance vessels of 100 feet or greater in registered length that have a fishery endorsement or for which a fishery endorsement to the vessel's documentation is sought must submit a certification to demonstrate that they meet the statutory definition of a ''preferred mortgagee'' at 46 U.S.C. 31322(a)(4). Prior to this rulemaking a preferred mortgagee was required to submit an affidavit of United States citizenship to demonstrate that it complies with the United States citizen ownership and control requirements of section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), or in the case of a State or Federally chartered financial institution, the controlling interest requirements of section 2(b) of the 1916 Act. If a mortgagee does not comply with the definition of a ''preferred mortgagee,'' it must use a mortgage trustee that qualifies as a citizen of the United States to hold the preferred mortgage for the benefit of the non-citizen lender. The mortgage trustee must file an application for approval as a mortgage trustee that includes evidence that it is eligible to hold a preferred mortgage and that it complies with the requirements of 46 U.S.C. 31322. In addition to the affidavit of United States citizenship, corporations and other entities must submit documents which demonstrate that the entity is organized and existing under the laws of the United States, such as articles of incorporation and bylaws, or other comparable documents. Annually, owners of vessels, mortgagees and applicable mortgage trustees must submit prescribed citizenship or other qualifying information to MARAD's Citizenship Approval Officer.

Need and Use of the Information: The information collection will be used to verify statutory compliance with the United States citizen ownership and control requirements under section 2(b) and section 2(c) of the 1916 Act and 46 U.S.C. 12102(c) for owners, charterers, mortgagees, and mortgage trustees of vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is being sought. The information collection is being modified to require owners of vessels that are greater than 165 feet or 750 gross tons or that have engines capable of producing more than 3000 horsepower to submit a certification indicating that the vessel was documented with a fishery endorsement on September 25, 1997 and that the fishery endorsement has remained valid, therefore the vessel

is eligible for continued documentation with a fishery endorsement. In addition, rather than demonstrate that they meet specific U.S. citizenship standards, most preferred mortgagees will now be required to submit information to demonstrate that they comply with the new statutory definition of a preferred mortgagee at 46 U.S.C. 31322(a)(4). Without the information it would be impossible to know whether certain vessels are eligible for documentation with a fishery endorsement and whether a preferred mortgagee is eligible to hold a preferred mortgage on a fishing industry vessel. This amendment to the collection of information does not result in an increased burden, but it does result in a change in the type of information that is being collected.

One commenter suggested that the requirements under section 356.19 are inconsistent with the Paperwork Reduction Act and the Ship Mortgage Act. The regulations require a lender to file a certification with MARAD to demonstrate that the lender complies with the statutory requirements to hold a preferred mortgage on a fishing industry vessel before the mortgage will qualify as a preferred mortgage. The commenter states that a lender has the most to lose if it does not comply with the statutory requirements; therefore, self regulation by the industry should be sufficient. In addition, the commenter states that the Ship Mortgage Act, as amended, does not give MARAD specific authority to require such a certification from preferred mortgagees, so the certification requirement is inconsistent with the requirements of both the Ship Mortgage Act and the Paperwork Reduction Act.

While we agree with the commenter that a lender has the most to lose if a determination is made that it does not qualify as a preferred mortgagee, self regulation of preferred mortgagees is not adequate to satisfy the spirit of the law and MARAD's mandate to ensure that non-citizens do not acquire impermissible control of fishing industry vessels. Because a preferred mortgagee can exercise control over a fishing industry vessel, it is important that MARAD establish that the mortgagee complies with the requirements of the statute and that it is not an entity that is prohibited from exercising control over the vessel. There is no language in the statute to indicate that MARAD is limited in any way regarding the information that it can or should require from preferred mortgagees. Furthermore, as discussed in the preamble to section 356.19, we have created a simple certification that should not be burdensome to lenders that wish to file a preferred mortgage.

Description of Respondents: Owners, bareboat charterers, mortgagees, and mortgage trustees of vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is being sought.

Annual Responses: Responses will be required on an occasional and an annual basis. Updates will be required during the year if there are changes to the ownership or financing of the vessel. There are approximately 550 vessels and 400 vessel owners that are subject to this regulation. Approximately 450 responses are expected from owners and bareboat charterers and less than 50 responses are expected from mortgagees and mortgage trustees.

Annual Burden: 2950 hours.

Unfunded Mandates Reform Act of 1995

This rule would not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This rule is the least burdensome alternative that achieves the objective of the rule.

Regulatory Identification Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 356

Citizenship and naturalization, Fishery endorsement, Fishing vessels, International investment agreements, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, 46 CFR part 356 is amended as follows:

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

1. The authority citation for part 356 is revised to read as follows:

Authority: 46 U.S.C. 12102; 46 U.S.C. 31322; Pub. L. 105–277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107–20, section 2202, 115 Stat. 168–170; 49 CFR 1.66.

2. Part 356 is amended by revising the phrases ''Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel'' and ''Fishing Vessel, Fish Tender Vessel, or Fish Processing Vessel'' to read ''Fishing Industry Vessel'' in every place that either phrase appears in part 356 except as used in newly added § 356.3(j).

Subpart A—General Provisions

356.3 [Amended]

3. Section 356.3 is amended as follows:

a. Paragraphs (l) through (x) are redesignated as paragraphs (o) through (aa).

b. Paragraphs (i) through (k) are redesignated as paragraphs (k) thorugh (m).

c. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i).

d. New paragraphs (g), (j) amd (n) are added.

e. Paragraph (e)(2) and newly designated paragraphs (h)(2), (u) and (y)(2) are revised.

f. In newly designated paragraph (q), paragraph (q)(2) is removed, paragraph (q)(3) is redesignated as paragraph (q)(2), and new paragraph (q)(3) is added.

g. In newly designated paragraphs (p) and (q), add the word ''Industry'' following the word ''Fishing''.

h. Newly designated paragraph (s) is revised.

The additions and revisions read as follows:

356.3 Definitions

* * * * *

(e) *Citizen of the United States, Citizen or U.S. Citizen:*

* * * * *

(2) Other criteria that must be met by entities other than individuals include:

(i) In the case of a corporation:

(A) The chief executive officer, by whatever title, and chairman of the board of directors and all officers authorized to act in the absence or disability of such persons must be Citizens of the United States; and

(B) No more of its directors than a minority of the number necessary to constitute a quorum are Non-Citizens;

(ii) In the case of a partnership all general partners are Citizens of the United States;

(iii) In the case of an association:

(A) All of the members are Citizens of the United States;

(B) The chief executive officer, by whatever title, and the chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or

disability are Citizens of the United States; and,

(C) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or a partnership; and,

(B) Each co-venturer is a Citizen of the United States;

(v) In the case of a Trust that owns a Fishing Industry Vessel:

(A) The Trust is domiciled in the United States or a State;

(B) The Trustee is a Citizen of the United States; and

(C) All beneficiaries of the trust are persons eligible to document vessels pursuant to the requirements of 46 U.S.C. 12102(c);

(vi) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to a Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation are Citizens of the United States; and,

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC.

* * * * *

(g) *Commercial Lender* means an entity that is primarily engaged in the business of lending and other financing transactions and that has a loan portfolio in excess of $100,000,000, of which not more than 50 per centum in dollar amount consists of loans to borrowers in the commercial fishing industry, as certified by the Commercial Lender to the Citizenship Approval Officer.

* * * * *

(h) *Controlling Interest:*

* * * * *

(2) Other criteria that must be met by entities other than an individual include:

(i) In the case of a corporation:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(ii) In the case of a partnership all general partners are Citizens of the United States;

(iii) In the case of an association:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or partnership; and

(B) A majority of the equity is owned by and vested in Citizens of the United States free and clear of any trust or fiduciary obligation in favor of any Non-Citizen;

(v) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to the Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation and any Persons authorized to act in their absence are Citizens of the United States; and,

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC;

* * * * *

(j) *Fishing Industry Vessel* means a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

* * * * *

(n) *Lender Syndicate* means an arrangement established for the combined extension of credit of not less than $20,000,000 made up of four or more entities that each have a beneficial interest, held through an agent, under a trust arrangement established pursuant to 46 U.S.C. 31322(f). Other than the exercise by the agent of powers related to routine administrative matters, none of the entities in a Lender Syndicate may exercise powers related to the Lender Syndicate's extension of credit without the concurrence of at least one other unaffiliated beneficiary. Powers related to routine administrative matters include those concerning the day-to-day management of the extension of credit such as monitoring compliance with loan covenants, collateral inspections and similar matters; however, more substantive powers such as amending loan and mortgage documents, releasing guarantors or collateral, or administering the loan in the event of a default are not considered routine.

* * * * *

(q) *Mortgage Trustee,* * * *

* * * * *

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is eligible to hold a Preferred Mortgage under 46 U.S.C. 31322(a)(4)(A)-(E);

* * * * *

(s) *Non-Citizen Lender* means a lender that does not qualify as a Citizen of the United States.

* * * * *

(u) *Preferred Mortgage* means a mortgage on a Fishing Industry Vessel that has as the Mortgagee:

(1) A person eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c);

(2) A state or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(3) A farm credit lender established under title 12, chapter 23, of the United States Code [12 U.S.C. 2001 *et seq.*];

(4) A commercial fishing and agriculture bank established pursuant to State law;

(5) A commercial lender organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a); or

(6) A Mortgage Trustee that complies with the requirements of 46 U.S.C. 31322(f) and 46 CFR 356.27 through 356.31.

* * * * *

(y) *Trust* means:

* * * * *

(2) In the case of a mortgage trust, a trust that is domiciled in and existing under the laws of the United States, or of a State, that has as its trustee a Mortgage Trustee as defined in this section, and that is authorized to act on behalf of a beneficiary in accordance with the requirements of §§ 356.27 through 356.31.

* * * * *

Subpart B—Ownership and Control

4. In § 356.5, revise paragraph (d) to read as follows:

§ 356.5 Affidavit of U.S. Citizenship.

* * * * *

(d) The prescribed form of the Affidavit of U.S. Citizenship is as follows:

State of _____ County of _____ Social Security Number: _____I, _____, (Name) of _____, (Residence address) being duly sworn, depose and say:

1. That I am the _____ (Title of office(s) held) of _____, (Name of corporation) a corporation organized and existing under the laws of the State of_____ (hereinafter called the ''Corporation''), with offices at _____, (Business address) in evidence of which incorporation a certified copy of the Articles or Certificate of Incorporation (or Association) is filed herewith (or has been filed) together with a certified copy of the corporate Bylaws. [Evidence of continuing U.S. citizenship status, including amendments to said Articles or Certificate and Bylaws, should be filed within 45 days of the annual documentation renewal date for vessel owners. Other parties required to provide evidence of U.S. citizenship status must file within 30 days after the annual meeting of the stockholders or annually, within 30 days after the original affidavit if there has been no meeting of the stockholders prior to that time.];

2. That I am authorized by and in behalf of the Corporation to execute and deliver this Affidavit of U.S. Citizenship;

3. That the names of the Chief Executive Officer, by whatever title, the Chairman of the Board of Directors, all Vice Presidents or other individuals who are authorized to act in the absence or disability of the Chief Executive Officer or Chairman of the Board of Directors, and the Directors of the Corporation are as follows:[1]

_____
Name Title

_____
Date and Place of Birth

_____

_____
(The foregoing list should include the officers, whether or not they are also directors, and all directors, whether or not they are also officers.) Each of said individuals is a Citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law, except (give name and nationality of all Non-Citizen officers and directors, if any). The By-laws of the Corporation provide that ____ (Number) of the directors are necessary to constitute a quorum; therefore, the Non-Citizen directors named represent no more than a minority of the number necessary to constitute a quorum.

4. Information as to stock, where Corporation has 30 or more stockholders:

_____

That I have access to the stock books and records of the Corporation; that said stock books and records have been examined and disclose (a) that, as of ____, (Date) the Corporation had issued and outstanding _____ (Number) shares of _____, (Class) the only class of stock of the Corporation issued and outstanding [if such is the case], owned of record by _____ (Number) stockholders, said number of stockholders representing the ownership of the entire issued and outstanding stock of the Corporation, and (b) that no stockholder owned of record as of said date five per centum (5%) or more of the issued and outstanding stock of the Corporation of any class. [If different classes of stock exist, give the same information for each class issued and outstanding, showing the monetary value and voting rights per share in each class. If there is an exception to the statement in clause (b), the name, address, and citizenship of the stockholder and the amount and class of stock owned should be stated and the required citizenship information on such stockholder must be submitted.] That the registered addresses of _____ owners of record of _____ shares of the issued and outstanding _____ (Class) stock of the Corporation are shown on the stock books and records of the Corporation as being within the United States, said _____ shares being _____ per centum ____(%) of the total number of shares of said stock (each class). [The exact figure as disclosed by the stock books of the corporation must be given and the per centum figure must not be less than 65 per centum for a corporation that must satisfy the controlling interest requirements of section 2(b) of the Shipping Act, 1916, 46 App. U.S.C. § 802(b), or not less than 95 per centum for an entity that is demonstrating ownership in a vessel for which a fishery endorsement is sought. These per centum figures apply to corporate stockholders as well as to the primary corporation.] (The same statement should be made with reference to each class of stock, if there is more than one class.)

or

[**Note:** An entity that has less than 30 stockholders should use the following alternate paragraph (4) and strike the inapplicable paragraph (4).]

4. Information as to stock, where Corporation has less than 30 stockholders: That the information as to stock ownership, upon which the Corporation relies to establish that 75% of the stock ownership is vested in Citizens of the United States, is as follows:

Name of stockholder	Date and place of birth	Number of shares owned (each class)	Percentage of shares owned (each class)

and that each of said individual stockholders is a Citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law. **NOTE:** If a corporate stockholder, give information with respect to State of incorporation, the names of the officers, directors, and stockholders and the appropriate percentage of shares held, with statement that they are all U.S. citizens. Nominee holders of record of 5% or more of any class of stock and the beneficial owners thereof should be named and their U.S. citizenship information submitted to MARAD.

5. That 75% of the interest in (each) said Corporation, as established by the information hereinbefore set forth, is owned by Citizens of the United States; that the title to 75% of the stock of (each) class of the stock of (each) said Corporation is vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any person not a Citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in Citizens of the United States; that through no contract or understanding is it so arranged that more than 25% the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a Citizen of the United States; and that by no means whatsoever, is any interest in said Corporation in excess of 25% conferred upon or permitted to be exercised by any person who is not a Citizen of the United States; and

or

[**Note:** An entity that is required to comply with the controlling interest requirements of section 2(b) of the Shipping Act, 1916, 46 App. U.S.C. § 802(b), should use the following alternate paragraph (5) and strike the inapplicable paragraph (5).]

5. That the Controlling Interest in (each) said Corporation, as established by the information hereinbefore set forth, is owned by Citizens of the United States; that the title to a majority of the stock of (each) said Corporation is vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any person not a Citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in Citizens of the United States; that through no contract or understanding is it so arranged that the majority of the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a Citizen of the United States; and that by no means whatsoever, is control of (each) said Corporation conferred upon or permitted to

[1] Offices that are currently vacant should be noted when listing Ofifcers and Directors in the Affidavit.

be exercised by any person who is not a Citizen of the United States; and

6. That the affiant has submitted all of the necessary documentation required under 46 CFR § 356.13 in connection with this Affidavit of U.S. Citizenship for the vessels herein identified.

Vessel Name	Official Number
1.	
2.	

[**Note:** Paragraph 6 should be included in the Affidavit of U.S. Citizenship submitted by an entity that owns a Fishing Industry Vessel.]

7. That affiant has carefully examined this affidavit and asserts that all of the statements and representations contained therein are true to the best of his knowledge, information, and belief.

_____

_____

(Name and title of affiant)

_____

(Signature of affiant)

_____

Date

Penalty for False Statement: A fine or imprisonment, or both, are provided for violation of the proscriptions contained in 18 U.S.C. § 1001 (see also, 18 U.S.C. §§ 286, 287).

* * * * *

§ 356.7 [Amended]

5. Section 356.7(c)(1)(ii) is revised to read as follows:

§ 356.7 Methods of establishing ownership by United States Citizens.

* * * * *

(c) * * *

(1)(i) * * *

(ii) At least 65% of the stock (each class) of the corporation be held by Persons having a registered U.S. address in order to infer at least 51% ownership by U.S. Citizens; and

* * * * *

§ 356.11 [Amended]

6. Section 356.11(a)(7) is revised to read as follows:

§ 356.11 Impermissible control by a Non-Citizen.

(a) * * *

(7) Has the right to cause the sale of a Fishing Industry Vessel other than:

(i) By an entity that is eligible to hold a Preferred Mortgage on the vessel pursuant to § 356.19(a)(2) through (a)(5);

(ii) By an approved Mortgage Trustee that is exercising loan and mortgage covenants on behalf of a beneficiary that qualifies as a Commercial Lender, a Lender Syndicate or an entity eligible to hold a Preferred Mortgage under § 356.19(a)(2) through (a)(5);

(iii) By an approved Mortgage Trustee that is exercising loan or mortgage covenants for a beneficiary that is not qualified to hold a Preferred Mortgage, provided that the loan or mortgage covenants have been approved by the Citizenship Approval Officer; or

(iv) Where it is necessary in order to allow a Non-Citizen to dissolve its interest in the entity;

* * * * *

Subpart C—Requirements for Vessel Owners

§ 356.13 [Amended]

7. Section 356.13 is amended as follows:

a. By removing the word ''and'' at the end of paragraph (a)(11);

b. By removing the period at the end of paragraph (a)(12) and inserting in lieu thereof a semicolon followed by the word ''and'';

c. By revising paragraph (a)(5); and

d. By adding a new paragraph (a)(13).

The additions read as follows:

§ 356.13 Information required to be submitted by vessel owners.

(a) * * *

(5) Any loan agreements or other financing documents applicable to a Fishing Industry Vessel where the lender has not been approved by MARAD to hold a Preferred Mortgage on Fishing Industry Vessels, excepting financing documents that are exempted from review pursuant to § 356.19(d) and loan documents that have received general approval from the Citizenship Approval Officer pursuant to § 356.21 for use with an approved Mortgage Trustee.

* * * * *

(13) A copy of the Large Vessel Certification required by § 356.47.

* * * * *

§ 356.15 [Amended]

8. Section 356.15 is amended as follows:

a. By removing paragraphs (a), (b), and (c);

b. By redesignating paragraphs (e) and (f) as paragraphs (a) and (b);

c. By redesignating paragraph (d) as paragraph (c) and by removing the words ''will necessarily'' from the third sentence and inserting in lieu thereof the word ''may''; and

d. By adding a new paragraph (d) to read as follows:

§ 356.15 Filing of Affidavit of U.S. Citizenship.

* * * * *

(d) The owner of a Fishing Industry Vessel or a prospective owner of such a vessel may request a letter ruling from the Citizenship Approval Officer in order to determine whether the owner under a proposed ownership structure will qualify as a U.S. Citizen that is eligible to document the vessel with a fishery endorsement. A complete request for a letter ruling must be accompanied by an Affidavit of U.S. Citizenship and all other documentation required by '' 356.13. The Citizenship Approval Officer will issue a letter ruling based on the ownership structure that is proposed; however, the Citizenship Approval Officer reserves the right to reverse the determination if any of the elements of the ownership structure, contractual arrangements, or other material relationships are altered when the vessel owner submits the executed Affidavits and supporting documentation.

§ 356.17 [Amended]

9. Section 356.17(b) is revised to read as follows:

§ 356.17 Annual requirements for vessel owners.

* * * * *

(b) The annual certification required by paragraph (a) of this section must be filed at least 45 days prior to the renewal date for the vessel's documentation and fishery endorsement. Where multiple Fishing Industry Vessels are owned by the same entity or by entities that ultimately have common ownership, an Affidavit of U.S. Citizenship and supporting documentation may be filed for all of the vessels in conjunction with the first vessel documentation renewal during each calendar year. Any information or supporting documentation unique to a particular vessel that would normally be required to be submitted under § 356.13 or any other provision of this part 356 such as charters, management agreements, loans or financing agreements, sales, purchase or marketing agreements, or exemptions claimed under this part must be submitted with the annual filing for that vessel if the documents are not already on file with the Citizenship Approval Officer.

* * * * *

Subpart D—Mortgages

10. Section 356.19 is revised to read as follows:

§ 356.19 Requirements to hold a Preferred Mortgage.

(a) In order for a Mortgagee to be eligible to obtain a Preferred Mortgage on a Fishing Industry Vessel, it must be:

(1) A Citizen of the United States;

(2) A state or federally chartered financial institution that is insured by

the Federal Deposit Insurance Corporation;

(3) A farm credit lender established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*);

(4) A commercial fishing and agriculture bank established pursuant to State law;

(5) A Commercial Lender organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a); or

(6) A Mortgage Trustee that complies with the requirements of 46 U.S.C. 31322(f) and 46 CFR 356.27 through 356.37.

(b) A Mortgagee must demonstrate to the Citizenship Approval Officer that it satisfies one of the requirements set forth in paragraph (a) of this section before it will be qualified to obtain a Preferred Mortgage on a Fishing Industry Vessel after April 1, 2003. A Mortgagee that has an existing Preferred Mortgage on a Fishing Industry Vessel prior to April 1, 2003, will be required to demonstrate that it satisfies one of the requirements set forth in paragraph (a) of this section before the vessel's next certificate of documentation renewal date after April 1, 2003. Failure to submit the required information may result in the loss of the preferred status for the mortgage. A sample format that may be used to submit the required information for Mortgagees, Commercial Lenders and Lender Syndicates is available on the MARAD website at *http://www.marad.dot.gov/afa.html.* The required information that must be submitted in order to make such a demonstration for each category in paragraph (a) is as follows:

(1) If a Mortgagee plans to qualify as a United States Citizen under paragraph (a)(1) of this section, the Mortgagee must file an Affidavit of United States Citizenship demonstrating that it complies with the citizenship requirements of 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, which require that 75% of the ownership and control in the Mortgagee be vested in U.S. Citizens at each tier and in the aggregate. In addition to the Affidavit of U.S. Citizenship, a certified copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents must be submitted to the Citizenship Approval Officer.

(2) A state or federally chartered financial institution must provide a certification that indicates whether it is a state chartered or federally chartered financial institution and that certifies that it is insured by the Federal Deposit Insurance Corporation (''FDIC''). The certification must include the FDIC Certification Number assigned to the institution.

(3) A farm credit lender must provide a certification indicating that it qualifies as a farm credit lender established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*);

(4) A commercial fishing and agriculture bank must provide a certification indicating that it has been lawfully established as a commercial fishing and agriculture bank pursuant to State law and that it is in good standing;

(5) A Commercial Lender that seeks to be qualified to hold a Preferred Mortgage directly or through a Mortgage Trustee must provide evidence that it is engaged primarily in the business of lending and other financing transactions and a certification that it has a loan portfolio in excess of $100 million, of which no more than 50 percent of the dollar amount of the loan portfolio consists of loans to borrowers in the commercial fishing industry. The certification must include information regarding the approximate size of the loan portfolio and the percentage of the portfolio that consists of loans to borrowers in the commercial fishing industry. A Commercial Lender that seeks to be qualified to hold a Preferred Mortgage directly must also submit an Affidavit of U.S. Citizenship to the Citizenship Approval Officer to demonstrate that it qualifies as one of the following:

(i) An individual who is a citizen of the United States;

(ii) An association, trust, joint venture, or other entity—

(A) All of whose members are citizens of the United States; and

(B) That is capable of holding title to a vessel under the laws of the United States or of a State;

(iii) A partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

(iv) A corporation established under the laws of the United States or of a State, whose chief executive officer, by whatever title, and chairman of its board of directors are citizens of the United States and no more of its directors are Non-citizens than a minority of the number necessary to constitute a quorum;

(v) The United States Government; or

(vi) The government of a State.

(6) A Mortgage Trustee must submit the Mortgage Trustee Application and other documents required in § 356.27. If the beneficiary under the trust arrangement has not demonstrated to the Citizenship Approval Officer that it qualifies as a Commercial Lender, a Lender Syndicate or an entity eligible to hold a preferred mortgage under paragraphs (a)(1) through (5) of this section, the Mortgage Trustee must submit to the Citizenship Approval Officer copies of the trust agreement, security agreement, loan documents, preferred mortgage, and any issuance, assignment or transfer of interest so that a determination can be made as to whether any of the arrangements results in an impermissible transfer of control of the vessel to a person not eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c).

(c) A Mortgagee is required to provide the certification required by paragraph (b) of this section to the Citizenship Approval Officer on an annual basis during the time in which it holds a preferred mortgage on a Fishing Industry Vessel. The annual certification must be submitted at least 30 calendar days prior to the annual anniversary date of the original approval. The Citizenship Approval Officer will notify a Mortgagee if the Mortgagee fails to submit the required annual certification. If the Mortgagee does not provide the certification within 30 calendar days of the mailing date of the delinquency notice, the mortgage will no longer qualify as a Preferred Mortgage.

(d) The following entities may exercise rights under loan or mortgage covenants with respect to a Fishing Industry Vessel without obtaining MARAD approval:

(1) An entity that is deemed qualified to hold a Preferred Mortgage under paragraphs (a)(1) through (5) of this section and that has submitted the appropriate certification to the Citizenship Approval Officer under paragraph (b) of this section; and

(2) An approved Mortgage Trustee that is holding a Preferred Mortgage for a beneficiary that is qualified to hold a Preferred Mortgage under paragraphs (a)(1) through (a)(5) of this section or for a beneficiary that qualifies as a Commercial Lender or a Lender Syndicate and that has made an appropriate certification to the Citizenship Approval Officer that it meets the requirements of either § 356.3(g) or § 356.3(n).

(e) An entity that holds a Preferred Mortgage on a Fishing Industry Vessel or that is using a Mortgage Trustee to hold a Preferred Mortgage for its benefit may request a letter ruling from the Citizenship Approval Officer in order to determine whether a mortgage or mortgage trust arrangement is in compliance with the regulations in this part. The Citizenship Approval Officer reserves the right to reverse any advice

given under a letter ruling if any of the elements of the proposed loan or mortgage are materially altered or if the entity requesting the letter ruling has failed to fully disclose all relevant information.

§ 356.21 [Amended]

11. Section 356.21 is amended as follows:

a. By revising the heading of the section;

b. By removing the term ''Non-Citizen Lender'' everywhere that it appears in the section and adding in its place the term ''lender''; and

c. By revising paragraphs (a) introductory text and (e) to read as follows:

§ 356.21 General approval of standard loan or mortgage agreements.

(a) A lender that is engaged in the business of financing Fishing Industry Vessels and that is not a Commercial Lender or Lender Syndicate using a Mortgage Trustee to hold a Preferred Mortgage for its benefit or an entity that is otherwise qualified to hold a Preferred Mortgage on Fishing Industry Vessels pursuant to § 356.19(a)(2) through (a)(5), may apply to the Citizenship Approval Officer for general approval of its standard loan and mortgage agreements for such vessels. In order to obtain general approval for its standard loan and mortgage agreements, a lender using an approved Mortgage Trustee must submit to the Citizenship Approval Officer:

* * * * *

(e) A lender that has received general approval for its lending program and that uses covenants in a loan or mortgage on a Fishing Industry Vessel that have not been approved by the Citizenship Approval Officer will be subject to loss of its general approval and the Citizenship Approval Officer may review and approve all of the lender's mortgage and loan covenants on a case-by-case basis. The Citizenship Approval Officer may also determine that the arrangement results in an impermissible transfer of control to a Non-Citizen and therefore does not meet the requirements to qualify as a Preferred Mortgage. If the lender knowingly files a false certification with the Citizenship Approval Officer or has used covenants in a loan or mortgage on a Fishing Industry Vessel that are materially different from the approved covenants, it may also be subject to civil and criminal penalties pursuant to 18 U.S.C. 1001.

§ 356.23 [Amended]

12. Section 356.23 is amended as follows:

a. By revising the section heading; and

b. By revising paragraph (a) introductory text to read as follows:

§ 356.23 Restrictive loan covenants approved for use by lenders.

(a) We approve the following standard loan covenants, which may restrict the activities of the borrower without the lender's consent and which may be included in loan agreements or other documents between an owner of a Fishing Industry Vessel and an unrelated lender that is using an approved Mortgage Trustee to hold the mortgage and debt instrument for the benefit of the lender and that is not exempted under § 356.19(d) from MARAD review of its loan and mortgage covenants, so long as the lender's consent is not unreasonably withheld:

* * * * *

Subpart E—Mortgage Trustees

§ 356.27 [Amended]

13. Section 356.27 is amended by revising paragraphs (a), (b)(1), (c)(2), (c)(3), (c)(4) and (g) to read as follows:

§ 356.27 Mortgage Trustee requirements.

(a) A lender who is not qualified under § 356.19(a)(1) through (5) to hold a Preferred Mortgage directly on a Fishing Industry Vessel may use a qualified Mortgage Trustee to hold, for the benefit of the lender, the Preferred Mortgage and the debt instrument for which the Preferred Mortgage is providing security.

(b) * * *

(1) Be eligible to hold a Preferred Mortgage on a Fishing Industry Vessel under § 356.19(a)(1) through (a)(5);

* * * * *

(c) * * *

(2) The appropriate certification and documentation required under § 356.19(b)(1) through (5) to demonstrate that it is qualified to hold a Preferred Mortgage on Fishing Industry Vessels;

(3) A copy of the most recent published report of condition of the Mortgage Trustee; and,

(4) A certification that the Mortgage Trustee is authorized under the laws of the United States or of a State to exercise corporate trust powers and is subject to supervision or examination by an official of the United States or of a State;

* * * * *

(g) An application to be approved as a Mortgage Trustee should include the following:

The undersigned (the ''Mortgage Trustee'') hereby applies for approval as Mortgage Trustee pursuant to 46 U.S.C. 31322(f) and the Regulation (46 CFR part 356), prescribed by the Maritime Administration (''MARAD''). All terms used in this application have the meaning given in the Regulation. In support of this application, the Mortgage Trustee certifies to and agrees with MARAD as hereinafter set forth:

The Mortgage Trustee certifies:

(a) That it is acting or proposing to act as Mortgage Trustee on a Fishing Industry Vessel documented, or to be documented under the U.S. registry;

(b) That it—

(1) Is organized as a corporation under the laws of the United States or of a State and is doing business in the United States;

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is qualified to hold a Preferred Mortgage on Fishing Industry Vessels pursuant to 46 CFR 356.19(a);

(4) Is subject to supervision or examination by an official of the United States Government or a State; and

(5) Has a combined capital and surplus of at least $3,000,000 as set forth in its most recent published report of condition, a copy of which, dated _____, is attached.

The Mortgage Trustee agrees:

(a) That it will, so long as it shall continue to be on the List of Approved Mortgage Trustees referred to in the Regulation:

(1) Notify the Citizenship Approval Officer in writing, within 20 days, if it shall cease to be a corporation which:

(i) Is organized under the laws of the United States or of a State, and is doing business under the laws of the United States or of a State;

(ii) Is authorized under those laws to exercise corporate trust powers;

(iii) Is qualified under 46 CFR. 356.19(a) to hold a Preferred Mortgage on Fishing Industry Vessels;

(iv) Is subject to supervision or examination by an authority of the U.S. Government or of a State; and

(v) Has a combined capital and surplus (as set forth in its most recent published report of condition) of at least $3,000,000.

(2) Furnish to the Citizenship Approval Officer on an annual basis:

(i) The appropriate certification and documentation required under § 356.19(b)(1)–(5) to demonstrate that it is qualified to hold a Preferred Mortgage on Fishing Industry Vessels;

(ii) A copy of the most recent published report of condition of the Mortgage Trustee;

(iii) A list of the Fishing Industry Vessels for which it is acting as Mortgage Trustee; and,

(iv) The identity and address of all beneficiaries for which it is acting as a Mortgage Trustee.

(3) Furnish to the Citizenship Approval Officer copies of each Trust Agreement as well as any other issuance, assignment or transfer of an interest related to each transaction where the beneficiary under a trust arrangement is not a Commercial Lender, a Lender Syndicate or an entity that is eligible to hold a Preferred Mortgage under 46 CFR 356.19(a)(1)–(5);

(4) Furnish to the Citizenship Approval Officer any further relevant and material information concerning its qualifications as Mortgage Trustee under which it is acting or proposing to act as Mortgage Trustee, as the Citizenship Approval Officer may from time to time request; and,

(5) Permit representatives of the Maritime Administration, upon request, to examine its books and records relating to the matters referred to herein;

(b) That it will not issue, assign, or in any manner transfer to a person not eligible to own a documented vessel, any right under a mortgage of a Fishing Industry Vessel, or operate such vessel without the approval of the Citizenship Approval Officer; except that it may operate the vessel to the extent necessary for the immediate safety of the vessel, for its direct return to the United States or for its movement within the United States for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States for a period not to exceed 15 calendar days;

(c) That after a responsible official of such Mortgage Trustee obtains knowledge of a foreclosure proceeding, including a proceeding in a foreign jurisdiction, that involves a documented Fishing Industry Vessel on which it holds a mortgage pursuant to approval under the Regulation and to which 46 App. U.S.C. 802(c), 46 U.S.C. 31322(a)(4) or 46 U.S.C. 12102(c) is applicable, it shall promptly notify the Citizenship Approval Officer with respect thereto, and shall ensure that the court or other tribunal has proper notice of those provisions; and

(d) That it shall not assume any fiduciary obligation in favor of Non-Citizen beneficiaries that is in conflict with any restrictions or requirements of the Regulation.

This application is made in order to induce the Maritime Administration to grant approval of the undersigned as Mortgage Trustee pursuant to 46 U.S.C. 31322 and the Regulation, and may be relied on by the Citizenship Approval Officer for such purposes. False statements in this application may subject the applicant to fine or imprisonment, or both, as provided for violation of the proscriptions contained in 18 U.S.C. 286, 287, and 1001.

Dated this _____ day of _____, 20____.

ATTEST:

_____

(Print or type name below)

(SEAL)

MORTGAGE TRUSTEE'S NAME & ADDRESS

_____

By:

(Print or type name below)

TITLE

§ 356.31 [Amended]

14. Section 356.31 is revised to read as follows:

§ 356.31 Maintenance of Mortgage Trustee approval.

(a) A Mortgage Trustee that holds a Preferred Mortgage on a Fishing Industry Vessel must submit the following information to the Citizenship Approval Officer during each calendar year that it is acting as a Mortgage Trustee:

(1) The appropriate certification and documentation required under § 356.19(b)(1) through (b)(5) to demonstrate that it is qualified to hold a Preferred Mortgage on Fishing Industry Vessels;

(2) A copy of the most recent published report of condition of the Mortgage Trustee;

(3) A list of the Fishing Industry Vessels for which it is acting as Mortgage Trustee; and

(4) The identity and address of all beneficiaries for which it is acting as a Mortgage Trustee.

(b) The Mortgage Trustee must file the documents required in paragraph (a) of this section within 30 calendar days prior to the anniversary date of the original approval from the Citizenship Approval Officer.

(c) If at any time the Mortgage Trustee fails to meet the statutory requirements set forth in the AFA, the Mortgage Trustee must notify the Citizenship Approval Officer of such failure to qualify as a Mortgage Trustee not later than 20 calendar days after the event causing such failure. Upon learning that a Mortgage Trustee fails to meet the statutory or regulatory requirements to qualify as a Mortgage Trustee, we will publish a disapproval notice in the **Federal Register** and will notify the U.S. Coast Guard, the Mortgage Trustee, and the beneficiary of each Preferred Mortgage of such disapproval by providing them a copy of the disapproval notice. The notice to beneficiaries will be provided by standard U.S. mail to the address supplied to the Citizenship Approval Officer by the Mortgage Trustee. Within 30 calendar days of publication in the **Federal Register** of the disapproval notice, the disapproved Mortgage Trustee must either transfer its fiduciary responsibilities to a successor Mortgage Trustee that has been approved by the Citizenship Approval Officer or cure the defect in its approval. The preferred status of the mortgage will be maintained during the 30 day period following publication of the notice in the **Federal Register** and pending transfer of the Mortgage Trustee's fiduciary responsibilities to a successor Mortgage Trustee or cure of the defect.

§ 356.37 [Amended]

15. Section 356.31 is revised to read as follows:

§ 356.37 Operation of a Fishing Industry Vessel by a Mortgage Trustee.

An approved Mortgage Trustee cannot operate a Fishing Industry Vessel without the approval of the Citizenship Approval Officer, except where non-commercial operation is necessary for the immediate safety of the vessel, or for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a Citizen of the United States for a period of no more than 15 calendar days.

Subpart F—Charters, Management Agreements and Exclusive or Long-Term Contracts

§ 356.45 [Amended]

16. Section 356.45(a)(2)(iv) is amended by adding the following after the word ''funds'': '', unless a qualified Mortgage Trustee is used to hold the debt instrument for the benefit of the Non-Citizen''.

Subpart G—Special Requirements for Certain Vessels

§ 356.47 [Amended]

17. Section 356.47 is amended by revising paragraphs (a)(2) and (b)(3) and by adding a new paragraph (e) to read as follows:

§ 356.47 Special requirements for large vessels.

(a) * * *

(2) It is more than 750 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 145) or 1900 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 143); or

* * * * *

(b) * * *

(3) In the event of the invalidation of the fishery endorsement after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the receipt of written notification from MARAD or the Coast Guard identifying the reason for such invalidation. The fishery endorsement of a Fishing Industry Vessel that meets the criteria of paragraph (a) of this section is not deemed to be invalid for purposes of complying with this paragraph (a)(3), if the vessel is purchased pursuant to 46 U.S.C. 31329 by a Mortgagee that is not eligible to own a vessel with a fishery endorsement, provided that the Mortgagee is eligible to hold a preferred mortgage on such vessel at the time of the purchase;

* * * * *

(e) The owner of a vessel that meets any of the criteria in paragraph (a) of this section is required to submit a

certification each year in conjunction with its Affidavit of U.S. Citizenship in order to document that the vessel is eligible for documentation with a fishery endorsement. The certification should indicate that the vessel meets the criteria of paragraph (a) of this section; however, it is eligible to be documented with a fishery endorsement because it complies with the requirements of either paragraph (b), (c), or (d) of this section. A sample form for the certification is available on the MARAD Web site at *http://www.marad.dot.gov/afa.html* or may be obtained by contacting the Citizenship Approval Officer.

§ 356.51 [Amended]

18. Section 356.51 is amended as follows:

a. By adding ''after October 1, 2001,'' after ''such time'' in paragraph (a) introductory text;

b. By removing the number ''296779'' following the vessel name ''EXCELLENCE'' in paragraphs (a)(1) and (c) and adding in its place the number ''967502'';

c. By removing paragraph (e).

d. By redesignating paragraph (d) as paragraphs (e);

e. By adding paragraphs (d) and (f); and

f. By removing the phrase ''Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels'' from newly designated paragraphs (e) introductory text and (e)(1) and adding in its place the term ''Fishing Industry Vessels''.

The additions read as follows:

§ 356.51 Exemptions for specific vessels.

* * * * *

(d) Owners of vessels that are exempt from the new ownership and control requirements of the AFA and this part 356 pursuant to paragraph (a) of this section must still comply with the requirements for a fishery endorsement under the federal law that was in effect on October 21, 1998. The owners must submit to the Citizenship Approval Officer on an annual basis:

(1) An Affidavit of United States Citizenship in accordance with § 356.15 demonstrating that they comply with the Controlling Interest requirements of section 2(b) of the 1916 Act. The Affidavit must note that the owner is claiming an exemption from the requirements of this part 356 pursuant to paragraph (e) of this section; and

(2) A description of the current ownership structure, a list of any changes in the ownership structure that have occurred since the filing of the last Affidavit, and a chronology of all changes in the ownership structure that have occurred since October 21, 1998.

* * * * *

(f) Fishing Industry Vessels that are claiming the exemption provided for in paragraph (e) of this section must certify to the Citizenship Approval Officer that the vessel is exempt from the ownership and control requirements of this part 356 pursuant to the exemption in paragraph (e) of this section. The vessel owner will be required to follow the U.S. Coast Guard's procedures for documenting a vessel with a fishery endorsement, as in effect prior to the passage of the AFA. The vessel owner must also notify the Coast Guard's National Vessel Documentation Center that it is claiming an exemption from the ownership and control requirements of this part 356 pursuant to paragraph (e) of this section.

Subpart H—International Agreements

§ 356.53 [Amended]

19. Section 356.53 is amended as follows:

a. By revising ''October 1, 2001'' to read ''July 24, 2001'' in both places where it appears in paragraph (a) and by removing the last sentence of paragraph (a);

b. By revising ''October 1, 2001'' to read ''July 24, 2001'' in both places where it appears in paragraph (b)(1);

c. By adding the word ''and'' at the end of paragraph (b)(3);

d. By revising ''October 1, 2001'' and ''September 30, 2001'' to read ''July 24, 2001'' in paragraph (b)(4);

e. By removing the semicolon and the word ''and,'' at the end of paragraph (b)(4) and adding a period in its place;

f. By removing paragraph (b)(5);

g. By removing the word ''will'' in the first sentence of paragraph (d) and adding the word ''may'' in lieu thereof; by adding ''if the petition presents unique issues that have not been addressed in previous determinations'' after the word ''comment'' in the first sentence of paragraph (d); and by inserting '',if any,'' after the word ''comments'' in the third sentence of paragraph (d);

h. By revising ''September 30, 2001'' to read ''July 24, 2001'' in paragraph (f)(4);

i. By revising ''October 1, 2001'' to read ''July 24, 2001'' in paragraph (g)(1);

j. By revising paragraph (g)(2); and

k. By adding new paragraphs (g)(3) and (g)(4).

The revisions and additions read as follows:

§ 356.53 Conflicts with international agreements.

* * * * *

(g) * * *

(2) To the owner of a Fishing Industry Vessel on July 24, 2001, if any ownership interest in that owner is transferred to or otherwise acquired by a Non-Citizen or if the percentage of foreign ownership in the vessel is increased after such date.

(3) An ownership interest is deemed to be transferred under this paragraph (g) if:

(i) There is a transfer of direct ownership interest in the primary vessel owning entity. If the primary vessel owning entity is wholly owned by another entity, the parent entity will be considered the primary vessel owning entity; or

(ii) There is a transfer of indirect ownership at any tier.

(4) A transfer of interest in a vessel owner does not include:

(i) Transfers of disparately held shares of a vessel-owning entity if it is a publicly traded company and the total of the shares transferred in a particular transaction equals less than 5% of the shares in that class. An interest in a vessel owning entity that exceeds 5% of the shares in a class can not be sold to the same Non-Citizen through multiple transactions involving less than 5% of the shares of that class of stock in order to maintain the exemption for the vessel owner; or

(ii) Transfers pursuant to a divorce or death.

Dated: January 28, 2003.

By Order of the Maritime Administrator

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–2312 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–03–153; MB Docket No. 02–287, RM–10569]

Radio Broadcasting Services; Stuart, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Robert Fabian, allots Channel 228A to Stuart, Oklahoma, as the community's first commerical FM transmission service. *See* 67 FR 63875, October 16, 2002. Channel 228A can be allotted to Stuart in compliance with the Commission's minimum distance separation requirements at the city

reference coordinates without a site restriction. The reference coordinates for Channel 228A at Stuart are 34–54–18 North Latitude and 96–06–00 West Longitude. A filing window for Channel 228A at Stuart, Oklahoma, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective March 3, 2003.

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

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–287, adopted January 15, 2003, and released January 17, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Stuart, Channel 228A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2471 Filed 2–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 03–144; MM Docket No. 99–331; RM–9728, RM–9847 and RM–9848]

Radio Broadcasting Services, Bay City, College Station, Columbus, Edna, Garwood, Giddings, Madisonville, Palacios and Sheridan, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by Sunburst Media, LP proposing the reallotment of Channel 241C2 from Madisonville, Texas, to College Station, Texas, and modification of the license for Station KAAG accordingly, the Commission issued a *Notice of Proposed Rule Making. See* 64 FR 68662, December 8, 1999. The proposal for Madisonville and College Station has been withdrawn. Two counterproposals were filed in response to the Notice. The counterproposal filed by Garwood Broadcasting Company of Texas which involved the communities of Bay City, Columbus, Edna, Garwood, Palacios and Sheridan, Texas, has been denied. In response to a counterproposal filed by Giddings Community Broadcasting Company we shall allot Channel 240A to Giddings, Texas. Channel 240A can be allotted to Giddings, Texas, with a site restriction 12.1 kilometers (7.5 miles) north of the community at coordinates 30–10–54 and 96–56–12. The issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order. With this action, this proceeding is terminated.

DATES: Effective March 7, 2003.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–331, adopted January 15, 2003, and released January 21, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the Commission's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Giddings, Channel 240A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2472 Filed 2–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–152; MB Docket No. 02–261, RM–10503, RM–10607]

Radio Broadcasting Services; Iraan and Ozona, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Robert Fabian requests the allotment of Channel 289C1 to Ozona, Texas, as the community's second local FM transmission service. *See* 67 FR 57781, September 12, 2002. Channel 289C1 can be allotted to Ozona, Texas in compliance with the Commission's minimum distance separation requirements with a site restriction 39.8 kilometers (24.7 miles) southwest to avoid short-spacing to the application site of a New FM station, Channel 289C2, Mason, Texas. Since Ozona is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence was requested and received. The reference coordinates for Channel 289C1 at Ozona are 30–25–54 North Latitude and 101–27–42 West Longitude. In response to a

counterproposal filed by Iraan Broadcasting, the Audio Division allots Channel 269C2 to Iraan, Texas, as that community's first local FM transmission service. Filing windows for Channel 289C1 at Ozona, Texas and Channel 269C2 at Iraan, Texas, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective March 3, 2003.

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

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–261, adopted January 15, 2003, and released January 17, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Channel 269C2 can be allotted to Iraan in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) west to avoid a short-spacing to the license site of Station KWFR, Channel 270C1, San Angelo, Texas. The reference coordinates for Channel 269C2 at Iraan are 30–53–44 North Latitude and 101–56–34 West Longitude. Since Iraan is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested, but not yet received. Therefore, if a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified for Iraan herein is subject to modification, suspension, or termination without right to a hearing, if found by the Commission to be necessary in order to conform to the 1992 USA–Mexico FM Broadcast Agreement.''

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Iraan, Channel 269C2 and by adding Channel 289C1 at Ozona.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2473 Filed 2–3–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 012903G]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 1, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the GOA, which will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area is 1,302 metric tons (mt) as established by the interim 2003 harvest specifications of groundfish for the GOA (67 FR 78733, December 26, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,252 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for

waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–2569 Filed 1–30–03; 2:55 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 23
Tuesday, February 4, 2003

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

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 614, and 617

RIN 3052–AC04

Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Borrower Rights; Effective Interest Rate Disclosure

AGENCY: Farm Credit Administration (FCA).

ACTION: Proposed rule.

SUMMARY: The FCA (agency, we, or our) proposes to amend its regulations governing disclosure of effective interest rates (EIR) and related information on loans. The proposed rule clarifies the current rule as to when and how qualified lenders must disclose the EIR and other loan information to borrowers; when and how the cost of Farm Credit System (FCS or System) borrower stock must be disclosed to borrowers; and how loan origination charges and other loan information must be disclosed to borrowers. The proposal requires lenders to use a discounted cash flow method in determining the EIR to provide meaningful disclosures to borrowers. However, it does not prescribe detailed calculation procedures. To make the regulations easier to understand and use by borrowers, lenders, and other users, we have rewritten the existing regulations in part 614, subpart K, Disclosure of Loan Information, in a question-and-answer format and moved them to a new part 617.

DATES: Please send your comments to the FCA by March 6, 2003.

ADDRESSES: You may send comments by electronic mail to ''*reg-comm@fca.gov*'' or through the Pending Regulations section of FCA's Web site, ''*http://www.fca.gov.*'' You may also send comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Tong-Ching Chang, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; TTY (703) 883–4434;
or
Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposal are to:

- Ensure that borrowers receive meaningful and timely disclosure of the EIR and related information on loans;
- Promote consistency in the method used to determine the EIR; and
- Make the regulations easy to understand and use by borrowers, lenders, and other users.

II. Background

Section 4.13(a) of the Farm Credit Act of 1971, as amended (Act), requires the FCA to enact regulations requiring ''qualified lenders'' [1] to provide borrowers, not later than the time of loan closing, with meaningful and timely disclosure of:

- The current rate of interest on the loan;
- The amount and frequency of interest rate adjustments and the factors that the lender may take into account in adjusting rates for adjustable or variable rate loans;
- The effect of any loan origination charges or purchases of stock or participation certificates on the rate of interest on the loan;
- A statement indicating that stock purchased is at risk; and
- A statement indicating the various types of loan options available to borrowers.

The requirements of section 4.13 of the Act are applicable to all loans made by ''qualified lenders'' not subject to the Truth in Lending Act (TILA).[2]

Under section 4.13(a) of the Act, qualified lenders must give borrowers notice of any change in the interest rate applicable to a borrower's loan within a ''reasonable time'' after the change. In addition, section 4.13(b) of the Act requires qualified lenders that offer more than one rate of interest to borrowers to: (1) Provide, upon borrower request, a review of the loan to determine if the proper rate has been established; (2) explain to the borrower, in writing, the basis for the rate charged; and (3) explain to the borrower, in writing, how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

Current FCA regulations implement the disclosure requirements of the Act, but contain limited guidance on several key issues. Additionally, when the statute on EIR disclosure went into effect in the 1980s, borrower stock requirements were generally 5 to 10 percent of the loan amount. Disclosure has varied more in recent years because FCS institutions have established a variety of stockholder capitalization and stock retirement policies. Current System borrower stock purchase requirements range from the minimum (the lesser of 2 percent or $1,000) to various higher amounts. Perhaps more significantly, the capitalization requirements are applied not only on a per loan basis, but also on a per borrower basis. With the multiple stock purchase requirements, new loan programs, and varied methodologies for calculation of effective interest rates, compliance with current EIR disclosure regulations has become more challenging and has led to inconsistent disclosure among qualified lenders.

In August 1998, FCA issued a notice soliciting comments from the public to identify regulations and policies that are ineffective or impose a burden on the System.[3] We received comments requesting that changes be made to our regulations on the EIR disclosure. In a letter to the FCA dated May 17, 2000, the Farm Credit Council (FCC) consolidated input from each Farm Credit district and requested that more changes to our borrower rights regulations be made. We considered all

[1] ''Qualified lenders'' include System lenders (except for a bank for cooperatives) and non-System lenders (other financing institutions (OFIs)) for loans made with funding from a Farm Credit bank. *See* 12 U.S.C. 2202a(a)(6).

[2] 15 U.S.C. 1601 *et seq.* TILA applies to consumer loans and specifically exempts agricultural loans.

[3] *See* 63 FR 44176, August 18, 1998.

comments received on EIR disclosure in developing these proposed amendments and will address changes to other borrower rights regulations in a separate rulemaking.

This proposed rule, however, does not address comments on electronic or Web-based compliance with borrower rights regulations. These issues are subject to FCA's E-commerce rule.[4] System institutions should interpret the terms used in this part broadly to permit electronic transmission, communications, records, and submissions in business, consumer, or commercial transactions, unless otherwise prohibited.

III. Section-by-Section Analysis

To make our regulations easier to understand and use by borrowers, lenders, and other users, we have rewritten the existing regulations in part 614, subpart K, Disclosure of Loan Information, in a question-and-answer format and moved them to a new part 617. The existing part 617, Referral of Known or Suspected Criminal Violations, will be moved to part 612, Standards of Conduct, in a new subpart B, and redesignated as §§ 612.2300 through 612.2303.

In the section-by-section analysis below, we explain our proposed amendments to the current EIR disclosure regulations. We also address comments received pertinent to loan information and EIR disclosures.

Subpart A—General

Section 617.7000—Definitions

Proposed § 617.7000 defines ''effective interest rate'' generally as a measure of the cost of credit that, expressed as an annual percentage rate, shows the effect of borrower stock or participation certificates purchased and loan origination charges on the stated interest rate of a loan. The new definition would replace the current definition of EIR in § 614.4366(b). Proposed § 617.7125 explains how a qualified lender should determine the effective interest rate.

In addition, the proposed amendments reword the definitions of ''adjustable rate loan'' and ''interest rate'' in plain language. We also propose to eliminate the existing definitions of ''fixed rate loan,'' ''loan origination charges,'' and ''standard adjustments factors'' because: (1) The term ''fixed rate loan'' is not used in the proposed rule; (2) the term ''loan origination charges'' is addressed separately in proposed § 617.7115; and (3) a qualified lender would disclose ''the specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan'' under proposed § 617.7130(b)(5); thus, eliminating the need for these definitions. The two existing definitions for ''loan'' and ''qualified lender'' are reworded slightly but we did not intend to make any substantive change.

Subpart B—Disclosure of Effective Interest Rates

Section 617.7100—Who Must Make and Who Is Entitled To Receive an Effective Interest Rate Disclosure?

Proposed § 617.7100(a) states a basic requirement of section 4.13 of the Act, that a qualified lender is required to provide an effective interest rate disclosure to borrowers for all loans not subject to TILA. Paragraph (a) would replace current § 614.4365.

In its letter requesting regulatory relief, the FCC generally recommended that we amend the current rule to allow a single notice be sent when a borrower has multiple loans that close on the same day. The FCC also suggested that amendments allow a lender to apply a notice given in connection with a loan closing to any future indebtedness by the borrower. The Act requires that an EIR disclosure be made for ''all'' loans. Because each loan is a separate legal obligation and carries its own interest rate and specific terms and conditions, we believe that each loan requires a separate disclosure. However, separate disclosures of multiple loans closed simultaneously may be included in the same notice to the borrower.

Paragraph (b) provides what a lender must do when there is more than one borrower obligated on a loan. Current § 614.4367(d) allows the lender to satisfy the disclosure requirements by providing the disclosure to any one of the primary obligors on the loan. The proposed rule will give borrowers the opportunity to designate, in writing, the person they wish to receive the disclosures. If the borrowers do not designate a particular recipient, the lender must provide the disclosures to at least one borrower primarily liable for repayment of the loan. FCA believes that allowing borrowers, and not just the lender, to designate who will receive the disclosures is more in keeping with the intent of the ''borrower rights'' provisions of the Act and will not be burdensome to the lender.

Section 617.7105—When Must a Qualified Lender Disclose the Effective Interest Rate to a Borrower?

Section 4.13 of the Act requires EIR disclosure not later than the time of loan closing for all covered loans. This rule is easy to apply for new customers, and proposed paragraph (a) contains this general directive for prospective borrowers.

However, the question of when a new EIR disclosure is required to be made to an existing borrower—for example when the borrower ''renews'' or ''refinances'' a loan—has met with varied interpretations under FCA's current regulations. FCC suggests amending the regulatory definition of ''loan'' to include ''any renewal or refinancing of such a loan, but not including any interest rate conversion, reamortization, or other loan servicing action that does not result in a new obligation between a borrower and a qualified lender.'' In general, FCA agrees with the substance of this suggestion. However, rather than change our definition of ''loan'' (which is taken directly from the Act), we instead propose revising the criteria that establish the circumstances in which EIR disclosure is necessary. Paragraph (b), therefore, provides that a qualified lender must make a new EIR disclosure to existing borrowers on or before the date the borrower:

(1) Executes a new promissory note or other comparable evidence of indebtedness;

(2) Purchases additional stock as a condition of obtaining new funds from the qualified lender; or

(3) Pays an additional loan origination charge to the qualified lender as a condition of obtaining new funds.

As the FCC points out, a new note (or other comparable document)—ordinarily executed for a renewal or a refinancing—creates a new, binding legal obligation and therefore must be treated as a new ''loan'' for disclosure purposes. While ''reamortization'' may not require a new disclosure if none of the above conditions is met, any new interest rate on the reamortized loan must be disclosed under the subsequent disclosure requirements of proposed § 617.7135.

Section 4.13(a)(3) of the Act also requires qualified lenders to disclose the effect of ''any'' purchases of stock or participation certificates or loan origination charges. As a result, new disclosure must be made any time a borrower is required to buy stock or pay additional loan origination charges in connection with a lending transaction,

[4] *See* 67 FR 16627, April 8, 2002.

whether under an existing or new promissory note.

Paragraph (b)(2) of proposed § 617.7105 is intended to clarify that no new disclosure is required for additional advances made under an open-end line of credit or similar preexisting arrangement unless one of the three aforementioned conditions occurs. For these types of loans, normally only one EIR disclosure—at the time of loan closing—is required.

Section 617.7110—How Should a Qualified Lender Disclose the Cost of Borrower Stock or Participation Certificates?

The Act and current FCA regulations require a qualified lender to disclose the effect of any purchases of stock or participation certificates on the effective rate of interest on a loan. Where the lender has a per loan stock purchase requirement, this rule is straightforward to apply. However, many System lenders have adopted per member, rather than per loan, stock purchase requirements. This raises the issue of whether previously purchased stock must be included in the EIR for new loans to existing borrowers/stockholders.

Historically, we have advised institutions that stock must be included in the EIR disclosure because stock was generally issued on a per loan basis. After reviewing current stock issuance practices, we have concluded that the Act does not require a qualified lender to include the cost of previously purchased stock in the EIR calculation for new loans. Amounts previously paid to a lender in connection with an earlier, separate loan transaction are not properly included in the EIR calculation as ''interest'' on a subsequent loan because the borrower is not paying that amount to the lender and the lender is not receiving that amount from the borrower in connection with the new ''loan.''

Furthermore, shares of stock in a corporation, such as an FCS lending institution, are personal property, constituting an asset of the owner. Therefore, we believe FCS borrower stock should not be treated as a continuing liability or cost to a borrower. Section 4.13(a)(5) of the Act requires that borrowers be informed that they are purchasing an at-risk equity investment in the System institution. We believe that treating the stock purchase as a continuing cost to the borrower (by continuing to include it in EIR calculations) is at odds with the nature of an at-risk equity investment and confuses the meaning of the section 4.13(a)(5) required disclosure.

We have incorporated this new guidance into the proposed rule by providing that the cost of borrower stock must be included in the EIR calculation only at the time the stock is purchased in connection with a loan transaction, whether purchased with cash, included in a promissory note, or otherwise paid. For subsequent loans made to existing borrowers, only the cost of new stock, if any, purchased in connection with the transaction must be included in the EIR calculation.

Section 617.7115—How Should a Qualified Lender Disclose Loan Origination and Other Charges?

The Act and current FCA regulations require qualified lenders to disclose the effect of ''any loan origination charges'' on the ''effective rate of interest'' on a loan. However, the Act does not define ''loan origination charges,'' and FCA's current regulatory definition (in § 614.4366(f)) does not clearly state which charges should and which should not be included in the EIR calculation. In adopting the current definition of ''loan origination charges,'' FCA looked, in part, to similar terms used in Federal Reserve Board regulations implementing TILA (Regulation Z).

The FCC commented that it did not seem likely that Congress intended System institutions to consider or include in their EIR calculations all or most of the charges listed in Regulation Z and that FCA has not explicitly incorporated Regulation Z's ''Charges excluded from the finance charge'' (12 CFR 226.4(c)). The FCC suggests that since TILA, by its terms, does not apply to agricultural loans, FCA should not look to Regulation Z for guidance in determining what constitutes ''loan origination charges'' under the Act. FCC recommends defining loan origination charges to include ''stock, participation certificates, and fees paid in lieu of interest (points, origination fees, etc.).'' The FCC further states that this would be ''a clearer, more concise, less burdensome definition that would comport with the relevant requirements of the Act, especially in view of the fact that no other lender is required to give an effective interest rate disclosure when it makes an agricultural loan.''

We generally agree with FCC's comments. First, Congress provided, in section 4.13 of the Act, that the EIR disclosure is for loans not subject to TILA. Congress also specifically excluded agricultural loans from TILA requirements because it believed that consumer disclosures were not appropriate.[5] Therefore, while Regulation Z may provide some background guidance, we believe it is not appropriate to graft TILA and Regulation Z definitions or requirements onto Farm Credit Act EIR disclosure requirements.

Second, we agree that only origination fees, points, and similar charges paid to a lender by the borrower should be considered ''interest'' charges and be included in the EIR calculation. However, we also believe that all costs a borrower is required to pay in order to obtain a loan from a qualified lender should be disclosed in some fashion in order to satisfy the intent of section 4.13 of the Act. Therefore, proposed § 617.7115 provides guidance on which loan charges must be included in the EIR calculation and which charges must be disclosed separately.

Paragraph (a) is intended to replace and clarify the current definition of ''loan origination charges'' found in § 614.4366(f). It requires that any one-time charge paid by a borrower to a qualified lender in consideration for making a loan be included in the EIR calculation as a loan origination charge. Loan origination charges include, but are not limited to, loan origination fees, application fees, and conversion fees charged by the lender. Loan origination charges also include any payments made by a borrower to a qualified lender to reduce the interest rate that would otherwise be charged, including any charges designated as ''points.''

Ordinarily, any general administrative or processing fee charged by a lender to recover the lender's operating costs constitutes added lending costs to borrowers that must be included in the loan origination charges under paragraph (a). However, loan origination charges should not include any general fee collected by a lender on behalf of third parties or other fees charged by the lender for specific services rendered to borrowers.

We added paragraph (b) to provide that all other payments that a borrower is required to make to obtain a loan, but not included in the loan origination charges described in paragraph (a) in the EIR calculation, must be disclosed separately at the time of loan closing. These include, but are not limited to, real or personal property taxes, guarantee fees, or insurance premiums paid by borrowers to third parties, and appraisal fees paid either to the lender or to a third party.

We believe only charges that could reasonably be defined as ''interest''

[5] *See* S. Rep. 96–338, at 24 (1980), reprinted in 1980 U.S.C.C.A.N. 259

received by the lender in exchange for making the loan should be included in the EIR calculation. Having fewer items included in the EIR more clearly demonstrates the effect of stock and origination charges paid to the qualified lender and reduces artificial inflation of the EIR. We also believe that separate disclosure of charges not included in the EIR calculation, consisting of a list of the actual cost of other items, is more meaningful to borrowers than including them in the EIR calculation.

Section 617.7120—How Should a Qualified Lender Present the Disclosures to a Borrower?

Paragraph (a) requires a qualified lender to disclose the effective interest rate and other required information clearly and conspicuously in writing, in a form that is easy to read and understand and that may be kept by the borrower. Paragraph (b) further provides that the required disclosures cannot be combined with any information not directly related to the information required by proposed §§ 617.7130 and 617.7135. These standards are intended to provide reasonable assurance that qualified lenders provide user-friendly, meaningful disclosures to borrowers. We also propose to eliminate the model forms contained in the Appendix to 12 CFR 614.4367 of the current regulations to permit lenders to tailor their disclosures to a variety of loan types.

Section 617.7125—How Should a Qualified Lender Determine the Effective Interest Rate?

Current FCA regulations provide direction as to the general requirements of EIR disclosures; they do not, however, prescribe a specific formula or methodology for calculation of an effective interest rate. The absence of a definitive methodology for calculating an effective interest rate has led to the use of different approaches—ranging from simplistic to a more complex discounted cash flow method.

Proposed § 617.7125 provides that a qualified lender must calculate the effective interest rate on a loan using a discounted cash flow method showing the effect of the time value of money in determining the EIR. Further, the proposed rule provides that, for all loans, the cash flow stream used for calculating the effective interest rate of a loan must include: (1) Principal and interest; (2) the cost of stock or participation certificates that a borrower is required to purchase in connection with the loan; and (3) loan origination charges described in § 617.7115(a).

The discounted cash flow method required by proposed § 617.7125 is conceptually similar to the formula prescribed in Regulation Z for determination of the annual percentage rate (APR) on loans subject to TILA. While loan charge components differ between the EIR required by the Act and the APR required by Regulation Z, we believe requiring the disclosure of an EIR determined under a widely used method for analyzing the cost of credit would provide more meaningful information to borrowers.

As discussed earlier, we believe it is not appropriate to graft TILA or Regulation Z requirements onto the Act's EIR disclosure requirements. Consequently, the proposed rule does not impose, on qualified lenders, a formula or specific procedures for calculating the EIR. Instead, we propose that all qualified lenders establish policies and procedures for calculating the EIR and use a standard methodology (the discounted cash flow method) for determining required EIR disclosures to borrowers.

Paragraph (c) requires lenders to establish policies and procedures for disclosing the effect of the cost of borrower stock and loan origination charges on the interest rate of a loan. Qualified lenders will also be required to establish policies and procedures for determining the major assumptions used in calculating the EIR, such as for calculating the EIR for adjustable rate loans, revolving or open-end lines of credit, or other loans where key terms may vary or may not be fixed. Qualified lenders may not, however, assume retirement of stock in calculating the EIR disclosed to borrowers because the Act provides that borrower stock is ''at risk'' and a qualified lender cannot guarantee stock retirement. Qualified lenders, may, however, provide supplemental disclosures to borrowers to demonstrate the effect of potential stock retirements so long as the additional disclosures are not misleading.

In considering the best way to achieve consistent, accurate, and meaningful EIR disclosures, the FCA considered common practices in the financial services industry for similar disclosures. Regulation Z for consumer credit provides detailed requirements for uniform APR calculations that essentially use a discounted cash flow method. Because the discounted cash flow method for calculating an EIR explicitly and routinely weighs the time value of money, we believe it produces the most accurate reflection of a loan's cost.

Although the discounted cash flow method involves somewhat complex mathematical computations, the FCA does not believe a requirement to use this method would cause undue burden to lenders. A survey of System-lender disclosures we conducted in the spring of 2002 indicated that a substantial majority (more than 80 percent) of FCS lenders have already incorporated discounted cash flows in their EIR calculations. In addition, a variety of computer-based tools for calculating effective interest rates are readily available in the market place at a reasonable cost.

FCA believes that the complexity of agricultural lending requires a more flexible disclosure approach than provided for under Regulation Z. Therefore, rather than prescribing the exact form and content of disclosure, the proposed rule requires qualified lenders to disclose the EIR and other loan information to borrowers in a form that is easy to read and understand and that the borrower may keep, as long as disclosures are made clearly and conspicuously in writing. However, as discussed above, qualified lenders must establish written policies and procedures regarding disclosure of the EIR and loan information to borrowers and apply the policies and procedures consistently. Each qualified lender must also maintain adequate documentation showing how the lender calculated and disclosed the EIR on each loan.

When a single borrower closes on multiple loans simultaneously and the borrower is required to purchase stock and pay loan origination charges on a per borrower basis, a qualified lender must retain documentation evidencing specific procedures used for assigning costs among the loans in determining the EIR for each particular loan.

To illustrate the determination of an EIR based on discounted cash flows, we have included two examples in Part IV of this preamble.

Section 617.7130—What Initial Disclosures Must a Qualified Lender Make to a Borrower?

(a) *Required disclosures-in general*—To ensure that all essential elements of a loan are disclosed, the information required by existing § 614.4367(a)(1), (3), (4), and (5) are incorporated in proposed § 617.7130(a). Qualified lenders must disclose the following in writing:

(1) The interest rate on the loan;

(2) The effective interest rate of the loan;

(3) The amount of stock or participation certificates that a borrower is required to purchase in connection with the loan and included in the calculation of the effective interest rate of the loan;

(4) All loan origination charges included in the effective interest rate;

(5) All other charges not included as loan origination charges in the effective interest rate calculation that borrowers are required to pay to obtain a loan;

(6) That stock or participation certificates that borrowers are required to purchase are at risk and may only be retired at the discretion of the board of the institution; and

(7) The various types of loan options available to borrowers, with an explanation of the terms and borrower rights that apply to each type of loan.

The information required above is intended to reflect the actual loan for which the disclosure is being provided. The qualified lender may, at its discretion, include additional disclosures or examples—including illustrations of the impact on the effective interest rate of any change in borrower stock ownership—so long as such disclosures are not misleading.

The FCC contended in its comment letter that existing § 614.4367(a)(3), which requires the computation of EIR to be made on a transaction-specific basis, goes beyond the requirement of section 4.13(a)(3) of the Act. The FCC believes that the statutory requirement could be satisfied by using a representative example based on a generic transaction and recommended that FCA allow disclosure through the use of a standard example.

As indicated in prior rulemakings, we disagree with this approach and believe that in order for borrower disclosure to be ''meaningful,'' as is required by statute, the disclosure should take into account the specific loan for which the disclosure is being provided. The EIR disclosed should be derived from the interest rate and related charges applicable to the loan being made to the borrower. However, for adjustable or revolving loans where the terms and conditions are not fixed or are subject to change, a disclosure of the EIR based on the terms and conditions known at the inception of the loan, coupled with representative examples showing the effect of changes in any of the cost elements of the loan, *e.g.*, borrower stock, loan origination charges, or interest rate, on the EIR would be appropriate under the circumstances.

(b) *Adjustable rate loans*—Information required by current § 614.4367(a)(2) is incorporated in proposed § 617.7130. Qualified lenders must disclose to borrowers at the inception of adjustable rate loans:

(1) The circumstances under which the rate can be adjusted;

(2) How much the rate can be adjusted at any one time and how much the rate can be adjusted during the term of the loan;

(3) How often the rate can be adjusted;

(4) Any limitations on the amount or frequency of adjustments; and

(5) The specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan.

Paragraph (b)(5) was added to replace the current definition of ''standard adjustments factors'' in § 614.4366(h), which includes those factors typically taken into consideration by a qualified lender in adjusting the interest rate on loans, such as a lender's cost of funds, operating expenses, provision for loan losses, changes in retained earnings, etc.

Section 617.7135—What Subsequent Disclosures Must a Qualified Lender Make to a Borrower?

(a) *Notice of interest rate change*—Section 4.13(a)(4) of the Act requires qualified lenders to provide notice to borrowers of ''any change in the interest rate applicable to the borrower's loan'' within a ''reasonable time after'' the effective date of increase or decrease. Current § 614.4367(b)(3) requires notice to be made within 10 days after the effective date of the rate change. For loans with interest rates directly tied to a widely publicized external index, the notice may be made within 30 days after the effective date of the rate change.

The FCC recommends that the period in which disclosure must be made should be the same for all loans, regardless of any tie to an external index, in order to ''simplify the disclosure process for System institutions.'' However, under the current regulation, a System lender may choose to make disclosure for all adjustable rate loans within 10 days of the effective date of a change. Therefore, no regulatory change is necessary to achieve this recommendation. Additionally, when we adopted the 10- and 30-day rule in 1996, we said that the ''need to provide timely information to borrowers outweighed the regulatory burden that a 10-day post-notice may entail.'' We continue to believe that a longer notice period is not appropriate for ''administered rate loans'' (adjustable rate loans not tied to a widely published external index), thus we retain the 10-day requirement in the proposed rule at § 617.7135(a)(3).

The FCC also recommends that ''where an interest rate is based on a widely publicized external index plus a spread, disclosure of a change of rate should not be required merely when the index changes but should be required only when the change in rate is caused by a change in the spread.'' In support, FCC notes that: (1) Borrowers receive notice in their original contract of what the index is and when the rate can change; (2) borrowers can easily find changes in the index through readily available sources; (3) anticipated changes in an external index (as opposed to unanticipated changes in the spread) would not have much impact on a borrower's decision to refinance with another lender; and (4) when an external index changes, there is no change to the borrower's contract rate of interest (index plus spread).

However, we believe eliminating the notice of interest changes for index rate loans is not appropriate. The Act requires notice of ''any change in the interest rate applicable to the borrower's loan.'' While the contract rate (index plus spread) may not have changed, it is clear that when the index changes, the rate of interest the borrower pays on the loan has changed. There is nothing in the legislative history of the Act to suggest that Congress intended to exempt index rate loans from the disclosure requirement. Furthermore, we believe it is important to remind borrowers that interest rate changes will affect their payment amounts.

We propose to extend the deadline to provide notice on loans directly tied to a widely publicized index from 30 to 45 days. This would allow lenders that provide monthly billing or account statements sufficient time to include the notice of change with the regular mailing. The notice could also be satisfied by providing the required disclosure to borrowers in any form of correspondence, such as a newsletter.

We considered revising the rule to allow qualified lenders to send notice with the borrower's next regularly scheduled billing or account statement. However, for annual, semiannual, or quarterly payment loans, it could result in some borrowers not receiving notice of interest rate change for a considerable time period. We did not believe that would constitute ''reasonable'' notice for those borrowers and would result in significantly disparate treatment for borrowers depending on their payment schedule.

We consider the nationally published commercial bank Prime Rate and the London Interbank Offered Rate (LIBOR) to be the primary examples of widely publicized external indexes. Other rates may also qualify, but the qualified lender must ensure that the rate is published in a source readily available to its borrowers. The 45-day rule applies only for changes in the index itself; if the lender changes the spread, a 10-day post-notice is required.

We do not propose to materially alter the required content of the notice. Current and proposed rules require notice of the new interest rate and the effective date of the new rate. In the only change, we eliminated the reference to ''standard adjustments factors'' and now propose that lenders directly disclose ''the factors used to adjust the interest rate on the loan,'' *e.g.*, spread, index averages, etc., in the notice.

(b) *Notice of increase in stock purchase requirement*—Current § 614.4367(c) requires that each qualified lender ''that takes any action which changes the amount of stock or participation certificates which borrowers are required to own and that modifies the effective interest rate'' send a notice to borrowers at least 10 days before the effective date of the action. The FCC recommends that the 10-day prior notice be changed to a 30-day post-notice, stating that when there is a stock reduction, the requirement is burdensome to the lender (requiring two mailings, one notice and one forwarding the stock retirement proceeds) and does not materially benefit the borrower (who would not normally decide to refinance because of a stock and effective interest rate reduction).

We agree with FCC that prior notice of a decrease in required stock ownership does not provide any meaningful benefit to borrowers. We also believe that the Act does not require a notice for a decrease in stock ownership requirement. Therefore, the proposed rule does not require any notice for a decrease in stock ownership.

However, we believe that the Act requires a lender to make a new EIR disclosure if it increases a borrower's stock purchase requirement because of the need to show the effect of any ''purchases'' of stock on the EIR. Ten-day (10-day) prior notice of such a change is necessary to give a borrower the opportunity to refinance using a meaningful comparison of interest rates. Therefore, the proposed rule retains the 10-day prior notice requirement for any required increase in stock ownership and includes the same basic information requirements as the current regulation. This obligation should not create a burden on System lenders since a stock increase is typically applicable to borrowers of new loans rather than applied retroactively to existing borrowers.

Subpart C—Disclosure of Differential Interest Rates

Section 617.7200—What Disclosures Must a Qualified Lender Make to a Borrower on Loans Offered With More Than One Rate of Interest?

Under the Act, qualified lenders that offer loans with differential interest rates must disclose additional information to borrowers at the request of a borrower of a loan. This requirement was implemented by existing § 614.4368, which requires a lender to inform borrowers of their rights when the lender offers more than one rate of interest to borrowers. We rearranged the existing regulation and moved it to the proposed § 617.7200 without changes in substance.

IV. Calculation of the Effective Interest Rate Using a Discounted Cash Flow Method

To illustrate how discounted cash flows can be used in determining a loan's effective interest rate, we developed the following examples using computer spreadsheet software based on a given set of assumptions to determine the cash flow stream in the calculation.

We assumed that the borrower's stock is not retired either as the loan is paid down or at maturity. We also assumed the future cash flow stream consists of a series of annual equal payments for calculation of the effective interest rate.

The amount of a lender's loan disbursement to the borrower is the loan amount reduced by the borrower's payments for borrower stock and loan origination charges, regardless of the form of the payments. However, depending on how the borrower stock and loan origination charges are paid by the borrower in a loan transaction, the amount of the promissory note to be used for calculation of the EIR may be different.

The following examples demonstrate a loan transaction with two different loan disbursement scenarios: Consider a 10-year, $100,000 loan with a stated interest rate of 9 percent and equal annual payments until maturity. The loan has a $1,000 stock purchase requirement (the lesser of $1,000 or 2 percent of the loan amount) and a $200 loan origination charge. In Example A, we have assumed that the borrower has paid for the stock and fees at the time the loan is disbursed. As a result, the borrower takes a $100,000 loan but only receives loan proceeds of $98,800 ($100,000 loan minus $1,200 stock and loan origination fee). In example B, we have assumed the borrower has rolled the cost of the stock and loan origination fee into the promissory note. In order to receive loan proceeds of $100,000, the borrower needs to take $101,200 loan.

EXAMPLE A.—LOAN PROCEEDS OF $98,800 TO BORROWER WITH A PROMISSORY NOTE OF $100,000

Loan proceeds to borrower	$98,800
Stock purchase	$1,000
Origination fee	$200
Promissory note	$100,000
Interest rate	9.00%
Term of loan	10 years
Annual payment	$15,582
Effective interest rate	9.2752%

The initial cash flow we used in determining the EIR includes: (1) The principal of the loan; (2) the amount of stock a borrower is required to purchase; and (3) the amount of loan origination charges a borrower is required to pay.

In computing the effective interest rate, the first step is to determine the cash flow stream for the loan to maturity. The first in the series of cash flows is the loan disbursement or the loan proceeds to the borrower. In Example A, the amount of loan disbursement to the borrower is determined by taking the gross loan amount of $100,000 minus the stock purchase of $1,000 and the loan origination fee of $200 for a total of $98,800. Thus, the borrower's legal obligation is $100,000, but the borrower only has the use of $98,800—this is the present value from which the effective interest rate on the loan is derived.

The remainder of the cash flow stream consists of the annual payments on the loan to maturity. Microsoft Excel's [6] Payment (PMT) function was used to calculate the constant payment based on the amount of loan to be repaid (*i.e.*, $100,000), the interest rate (9 percent), and the number of payments in the loan term (10). The amount of annual level payments derived from these given factors is $15,582.

Once the cash flow stream has been determined, Excel's Internal Rate of Return (IRR) function is used to calculate the loan's effective interest rate. The effective interest rate for the loan derived from the IRR function is 9.2752 percent [7] (based on the initial cash outflow of $98,800 and a future cash inflow stream consisting of 10 level

[6] We used Microsoft Excel application software to develop these examples. However, the same results can be achieved using other commercially available software.

[7] For illustration purposes, the EIR is expressed in four decimal points in our examples. However, the EIR may be expressed with two or more decimal points based on the size, term, and common industry practice for similar loans.

payments in the amount of $15,582 each year). The IRR reflects the effective interest rate of a loan consisting of disbursements (negative values for cash outflows) and loan payments of principal and interest (positive values for cash inflows) that occur at regular intervals.

EXAMPLE B.—LOAN PROCEEDS OF $100,000 TO BORROWER WITH A PROMISSORY NOTE OF $101,200

Loan proceeds to borrower	$100,000
Stock purchase	1,000
Origination fee	200
Promissory note	101,200
Interest rate	9.00%
Term of loan	10 years
Annual payment	$15,769
Effective interest rate	9.2719%

In Example B, the initial cash flow of the loan to be used in the IRR function for calculating the effective interest rate is the $100,000 loan proceeds to the borrower. The amount of total loan obligation used for determination of the annual payment and the amount of annual payments derived from the PMT function are $101,200 ($100,000 + $1,000 + $200) and $15,769, respectively. The effective interest rate in this case is 9.2719 percent.

In addition to the EIR disclosure, a qualified lender may include supplemental disclosures of the effective interest rate using the assumption that borrower stock will be retired upon repayment of the loan or as the loan is paid down. The qualified lender must explain the purpose of the supplemental disclosure and that stock or participation certificates that borrowers are required to purchase are at risk and may only be retired at the discretion of the board of the institution.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 612

Agriculture, Banks, banking, Conflict of interests, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

For the reasons stated in the preamble, parts 611, 612, 614 and 617 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

Subpart P—Termination of System Institution Status

2. Amend § 611.1223(d)(6) by revising the second sentence to read as follows:

§ 611.1223 Information statement—contents.

* * * * *

(d) * * *

(6) * * * You must explain the effect termination will have on borrower rights granted in the Act and part 617 of this chapter.

* * * * *

3. Amend § 611.1290 by revising the second sentence to read as follows:

§ 611.1290 Continuation of borrower rights.

* * * Institutions that become other financing institutions on termination must comply with the applicable borrower rights provisions in the Act and part 617 of this chapter.

PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

4. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

5. Revise the heading of part 612 to read as set forth above.

6. Redesignate §§ 612.2130 through 612.2270 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Standards of Conduct

PART 614—LOAN POLICIES AND OPERATIONS

7. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart K—[Removed]

8. Remove subpart K, consisting of §§ 614.4365 through 614.4368.

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

9. Revise § 614.4560(d) to read as follows:

§ 614.4560 Requirements for OFI funding relationships.

* * * * *

(d) The borrower rights requirements in part C of title IV of the Act, and section 4.36 of the Act, and the regulations in part 617 of this chapter shall apply to all loans that an OFI funds or discounts through a Farm Credit Bank or agricultural credit bank, unless such loans are subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

* * * * *

PART 617—REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

10. The authority citation for part 617 continues to read as follows:

Authority: Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252).

PART 617—[REMOVED]

§§ 617.1—617.4 [Redesignated as §§ 612.2300—612.2303]

11. Redesignate §§ 617.1 through 617.4 as new *§§ 612.2300 through 612.2303*.

12. Remove part 617.

13. Redesignate newly designated §§ 612.2300—612.2303 as subpart B and add a heading for subpart B to read as follows:

Subpart B—Referral of Known or Suspected Criminal Violations

§ 612.2300 [Amended]

14. Amend newly designated § 612.2300 by removing the reference ''§ 617.2'' each place it appears and add in its place, the reference ''§ 612.2301'' in paragraphs (a), (c), and (e).

15. Add a new part 617 to read as follows:

PART 617—BORROWER RIGHTS

Subpart A—General

Sec.
617.7000 Definitions.

Subpart B—Disclosure of Effective Interest Rates

617.7100 Who must make and who is entitled to receive an effective interest rate disclosure?
617.7105 When must a qualified lender disclose the effective interest rate to a borrower?
617.7110 How should a qualified lender disclose the cost of borrower stock or participation certificates?
617.7115 How should a qualified lender disclose loan origination and other charges?
617.7120 How should a qualified lender present the disclosures to a borrower?
617.7125 How should a qualified lender determine the effective interest rate?
617.7130 What initial disclosures must a qualified lender make to a borrower?
617.7135 What subsequent disclosures must a qualified lender make to a borrower?

Subpart C—Disclosure of Differential Interest Rates

617.7200 What disclosures must a qualified lender make to a borrower on loans offered with more than one rate of interest?

Authority: Secs. 4.13, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2243, 2252(a)(9)).

Subpart A—General

§ 617.7000 Definitions.

For purposes of this part, the following terms apply:

Adjustable rate loan means a loan where the interest rate payable over the term of the loan may change. This includes adjustable rate, variable rate or other similarly designated loans.

Effective interest rate means a measure of the cost of credit, expressed as an annual percentage rate, that shows the effect of the following costs, if any, on the interest rate on a loan charged by a qualified lender to a borrower:

(1) The amount of any stock or participation certificates that a borrower is required to buy to obtain the loan; and

(2) Any loan origination charges paid by a borrower to a qualified lender to obtain the loan.

Interest rate means the stated contract rate of interest.

Loan means an extension of credit made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing that directly relates to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

Qualified lender means:

(1) A System institution, except a bank for cooperatives, that makes loans as defined in this section; and

(2) Each bank, institution, corporation, company, credit union, and association described in section 1.7(b)(1)(B) of the Act (commonly referred to as an other financing institution), but only with respect to loans discounted or pledged under section 1.7(b)(1).

Subpart B—Disclosure of Effective Interest Rates

§ 617.7100 Who must make and who is entitled to receive an effective interest rate disclosure?

(a) A qualified lender must make the disclosures required by subparts B and C of this part to borrowers for all loans not subject to the Truth in Lending Act.

(b) For a single loan involving more than one borrower, a qualified lender is required to provide only one set of disclosures to borrowers. All borrowers may designate, in writing, one person who will receive the effective interest rate disclosure. If the borrowers do not designate a particular recipient, the lender may provide the disclosure to at least one of the borrowers who is primarily liable for repayment of the loan.

§ 617.7105 When must a qualified lender disclose the effective interest rate to a borrower?

(a) *Disclosure to prospective borrowers.* A qualified lender must provide written effective interest rate disclosure for each loan no later than the time of loan closing.

(b) *Disclosure to existing borrowers.* (1) A qualified lender must provide a new effective interest rate disclosure to an existing borrower on or before the date:

(i) The borrower executes a new promissory note or other comparable evidence of indebtedness;

(ii) The borrower purchases additional stock as a condition of obtaining new funds from the qualified lender; or

(iii) The borrower pays an additional loan origination charge to the qualified lender as a condition of obtaining new funds.

(2) A qualified lender is not required to provide a new effective interest rate disclosure when it advances new funds to an existing borrower if none of the conditions of paragraph (b)(1) of this section apply and the advance is made pursuant to a preexisting contract that specifically provides for future advances.

§ 617.7110 How should a qualified lender disclose the cost of borrower stock or participation certificates?

The cost of borrower stock must be included in the effective interest rate calculation at the time the stock is purchased in connection with a loan transaction. For subsequent loans to existing borrowers, only the cost of new stock, if any, purchased in connection with a new loan or advance of new funds must be included in the effective interest rate calculation for the transaction.

§ 617.7115 How should a qualified lender disclose loan origination and other charges?

(a) Any one-time charge paid by a borrower to a qualified lender in consideration for making a loan must be included in the effective interest rate as a loan origination charge. These include, but are not limited to, loan origination fees, application fees, and conversion fees. Loan origination charges also include any payments made by a borrower to a qualified lender to reduce the interest rate that would otherwise be charged, including any charges designated as ''points.''

(b) All other payments of fees not included in the loan origination charges described in paragraph (a) of this section that borrowers are required to make to obtain a loan must be disclosed separately at the time of loan closing. These include, but are not limited to, fees paid to the lender or a third party to obtain an appraisal, and any taxes, guarantee fees, or insurance premiums paid by borrowers to third parties.

§ 617.7120 How should a qualified lender present the disclosures to a borrower?

A qualified lender must:

(a) Disclose the effective interest rate and other information required by subparts B and C of this part clearly and conspicuously in writing, in a form that is easy to read and understand and that the borrower may keep; and

(b) Not combine the disclosures with any information not directly related to the information required by §§ 617.7130 and 617.7135.

§ 617.7125 How should a qualified lender determine the effective interest rate?

(a) A qualified lender must calculate the effective interest rate on a loan using the discounted cash flow method showing the effect of the time value of money.

(b) For all loans, the cash flow stream used for calculating the effective interest rate of a loan must include:

(1) Principal and interest;

(2) The cost of stock or participation certificates that a borrower is required to purchase in connection with the loan; and

(3) Loan origination charges described in § 617.7115(a).

(c) A qualified lender must establish policies and procedures for EIR disclosures that clearly show the effect of the cost of borrower stock and loan origination charges on the interest rate of a loan. A qualified lender must also establish policies and procedures for determining major assumptions used in calculating the effective interest rate, *e.g.*, criteria on how the cost of borrower stock and loan origination charges are assigned or allocated among multiple loans obtained by a borrower simultaneously.

§ 617.7130 What initial disclosures must a qualified lender make to a borrower?

(a) *Required disclosures—in general.* A qualified lender must disclose in writing:

(1) The interest rate on the loan;

(2) The effective interest rate of the loan;

(3) The amount of stock or participation certificates that a borrower is required to purchase in connection with the loan and included in the calculation of the effective interest rate of the loan;

(4) All loan origination charges included in the effective interest rate;

(5) All other charges not included as loan origination charges in the effective interest rate calculation that borrowers are required to pay to obtain a loan;

(6) That stock or participation certificates that borrowers are required to purchase are at risk and may only be retired at the discretion of the board of the institution; and

(7) The various types of loan options available to borrowers, with an explanation of the terms and borrower rights that apply to each type of loan.

(b) *Adjustable rate loans.* A lender must provide the following information for adjustable rate loans in addition to the requirements of paragraph (a) of this section:

(1) The circumstances under which the rate can be adjusted;

(2) How much the rate can be adjusted at any one time and how much the rate can be adjusted during the term of the loan;

(3) How often the rate can be adjusted;

(4) Any limitations on the amount or frequency of adjustments; and

(5) The specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan.

§ 617.7135 What subsequent disclosures must a qualified lender make to a borrower?

(a) *Notice of interest rate change.* (1) A qualified lender must provide written notice to a borrower of any change in interest rate on the borrower's existing loan, containing the following information:

(i) The new interest rate on the loan;

(ii) The date on which the new rate is effective; and

(iii) The factors used to adjust the interest rate on the loan.

(2) If the borrower's interest rate is directly tied to a widely publicized external index, a qualified lender must provide written notice to the borrower of the rate change within forty-five (45) days after the effective date of the change.

(3) If the borrower's interest rate is not directly tied to a widely publicized external index, a qualified lender must send written notice to the borrower of the rate change within ten (10) days after the effective date of the change.

(b) *Notice of increase in stock purchase requirement.* If a qualified lender increases the amount of stock or participation certificates a borrower must own during the term of a loan, the lender must send a written notice to borrower at least ten (10) days prior to the effective date of the increase. The notice must state:

(1) The new effective interest rate on the outstanding balance for the remaining term of the borrower's loan;

(2) The date on which the new rate is effective; and

(3) The reason for the increase in the borrower stock purchase requirement.

Subpart C—Disclosure of Differential Interest Rates

§ 617.7200 What disclosures must a qualified lender make to a borrower on loans offered with more than one rate of interest?

A qualified lender that offers more than one rate of interest to borrowers must notify each borrower of the right to request a review of the interest rate charged on his or her loan no later than the time of loan closing. At the request of a borrower, the lender must:

(a) Provide a review of the loan to determine if the proper interest rate has been established;

(b) Explain to the borrower in writing the basis for the interest rate charged; and

(c) Explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

Dated: January 29, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–2401 Filed 2–3–03; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 609, 614, 615, and 617

RIN 3052–AB69

Electronic Commerce; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Borrower Rights

AGENCY: Farm Credit Administration (FCA).

ACTION: Proposed rule.

SUMMARY: These proposed rules clarify existing provisions, respond to comments, and reorganize the rules into a separate section of FCA (agency, we, or our) regulations. This update will help agricultural borrowers and institutions of the Farm Credit System (FCS or System) better understand the rights Congress afforded applicants and borrowers of the System. We intend for the proposal to clarify how FCS institutions should apply these rights to applicants and borrowers.

DATES: Written comments should be received on or before April 7, 2003.

ADDRESSES: You may submit comments by electronic mail to *''reg–comm@fca.gov''* or through the Pending Regulations section of our Web site at *''http://www.fca.gov.''* You may also mail or deliver written comments to Thomas G. McKenzie, Director,

Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or send them by facsimile transmission to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Mark L. Johansen, Policy Analyst, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479, TTY (703) 883–4434;

Or

Joy Strickland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of these proposed rules are to:

- Ensure that the borrower rights regulations provide the protection to applicants and distressed borrowers as mandated by the Farm Credit Act of 1971, as amended (Act).[1]
- Avoid placing unnecessary burdens on FCS institutions.
- Use plain language and a question and answer format.

II. Background

In the Farm Credit Amendments of 1985[2] and the Agricultural Credit Act of 1987,[3] Congress gave certain rights to borrowers of System institutions that operate under titles I and II of the Act. These rights include the right of review of certain loan decisions, the right to receive a notice when a loan becomes distressed, the opportunity to request a restructuring of a distressed loan, and the opportunity for the right of first refusal to repurchase or lease acquired agricultural real estate following foreclosure or voluntary conveyance. Collectively, these rights are referred to as borrower rights. On September 14, 1988, we published final borrower rights rules.[4] Since then we have observed differences in how System institutions apply these regulations and reviewed complaints from borrowers and applicants regarding their rights. To ensure that our expectations for borrower rights are clear, we propose these updated regulations.

[1] Pub. L. 92–181, 85 Stat. 583.

[2] Pub. L. 99–205, 99 Stat. 1678.

[3] Pub. L. 100–233, 101 Stat. 1568.

[4] 53 FR 35427 (September 14, 1988).

III. Comments Received

We received comments on our existing regulations prior to developing these proposed rules. The comments were in response to a June 23, 1993, regulatory burden solicitation [5] and a May 17, 2000, letter from the Farm Credit Council (FCC) on behalf of its member banks and associations.

IV. Redesignate Portions of Part 614 to Part 617

We propose redesignating the regulations from existing subparts H, L, and N of part 614 to part 617 of the regulations. This move will make the borrower rights rules more readily identifiable. We also propose conforming changes in §§ 609.910(c), 615.5280(h), and 615.5290(a) and (b) to part 617.

V. General Issues

We received comments on general issues of borrower rights applicability and relationship to other laws. We will address those first and then proceed to comments concerning specific issues.

A. Family Farmers [§ 617.7000]

The term ''loan,'' defined in section 4.14A(a)(5) of the Act and existing §§ 614.4440(g) and 614.4512(f), means an extension of credit made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products. The FCC commented that we should restrict application of borrower rights to ''family farmers,'' which FCC defined to mean farmers with agricultural sales equal to or less than $500,000. The FCC's interpretation of the legislative history of the borrower rights legislation is that Congress intended to narrow the bargaining position between borrowers and the System institutions. The FCC believes that, with increased consolidation and sophistication of farming operations, the need for a level-bargaining position has decreased.

We recognize that the consolidation among agricultural producers has resulted in more sophisticated operators, but we do not believe Congress intended that the borrower rights legislation apply only to family farmers. The statutory definition of loans covered by borrower rights is clear, unambiguous, and does not distinguish between types of farmers, nor does it contain any sales or income limitations. Although Congress considered limiting borrower rights to only family farmers when this legislation was being debated, it ultimately chose not to do so. The Senate bill limited borrower rights and provided a definition of family farmers.[6] Once the Senate and House bills were reconciled in conference, limiting borrower rights to family farmers was abandoned. Congress did not adopt the Senate's definition of family farmer. Instead, it adopted a definition of loan that includes all agricultural loans.[7]

We do not believe it is appropriate to restrict borrower rights to family farmers or farmers with agricultural sales of equal to or less than $500,000 as the FCC requested. Thus, we make no changes to the existing rules.

B. How Do Borrower Rights Apply to Loans That Are Sold to, Participated With, or Subordinated in Favor of Non-qualified Lenders? [§ 617.7015]

Section 4.14A(a)(5)(B) of the Act provides that borrower rights do not apply to loans sold into the secondary market. The FCC recommended defining loans sold into the secondary market to include participations, subordinated debt transactions, and other sales transactions that include non-qualified lenders. The FCC asserted that non-qualified lenders are hesitant to participate in such transactions with the System because of borrower rights requirements.

Loan sales to other lenders, participations, and subordinated debt transactions are not secondary market activities. We found no evidence that Congress intended the secondary market sales exemption to apply to other types of loan transactions.

We propose moving § 614.4336 from part 614, subpart H to § 617.7015 in part 617, subpart A.

C. Are Borrowers With Trade Credit Loans Excluded From Borrower Rights? [§ 617.7000]

The FCC commented that borrower rights are an impediment to an effective trade credit program. They suggested that borrowers purchase participation certificates instead of stock with trade credit loans in order to exempt such loans from borrower rights.

We do not agree with this comment and do not propose such a change. Existing § 614.4525(a) allows a qualified lender to ''enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate its

[5] 58 FR 34003 (June 23, 1993).

[6] See S. Rep. No. 100–230 at 34, 109 (1987).

[7] See H.R. Conf. Rep. 100–490 at 164–165 (1987).

making of loans'' to eligible borrowers. For the purpose of applying borrower rights, a loan that is facilitated by a third-party dealer or other agent is no different from any other loan made by a qualified lender. As a direct loan, trade credit loans require that the borrower buy stock pursuant to section 4.3A of the Act. Further, trade credit loans meet the definition contained in part C of title IV of the Act and are subject to borrower rights.

VI. Specific Issues

A. Definitions [§ 617.7000]

We propose moving the existing definition sections in §§ 614.4440 and 614.4512 to proposed § 617.7000. The definitions of applicant (§ 614.4440(b)), foreclosure proceeding (§ 614.4512(e)), independent evaluator (§ 614.4440(f)), and qualified lender (§§ 614.4440(h) and 614.4512(g)) remain unchanged. We propose the following definitional changes.

1. Adverse Credit Decision [§ 614.4440(a) to Proposed § 617.7000]

The FCC and a System institution requested that we revise the definition of ''adverse credit decision'' in existing § 614.4440(a) to clarify its intent. According to the commenters, the definition has been incorrectly construed to mean a denial of a loan and all the loan terms requested by the applicant.

We agree with this comment and propose clarifying this definition by deleting the phrase ''deny the credit applied for, or approve an extension of credit in an amount less than the amount applied for'' and replacing it with the following: (a) The lender decides not to make a loan to an applicant; (b) makes the loan in an amount less than the applicant requested; or (c) denies an application for restructuring. Making a loan in the amount requested, but with different terms, is not considered an adverse credit decision.

2. Application for Restructuring [§§ 614.4440(c) and 614.4512(a) to Proposed § 617.7000]

In response to a comment from the FCC, we propose to amend this definition to allow a borrower's plan of reorganization submitted in a bankruptcy proceeding to serve as the application for restructuring. We propose this change because the application for restructuring and the bankruptcy plan of reorganization contain similar information.

3. Distressed Loan [§§ 614.4440(e) and 614.4512(d) to proposed § 617.7000]

The FCC asked us to change our definition of a distressed loan to include all the loans from the qualified lender that the borrower is obligated to repay. We decline to change our definition because each loan separately must meet the definition of distressed.

4. Loan Application [§ 614.4440(d) to Proposed § 617.7000]

The FCC commented that we should clarify when a loan application is sufficiently complete to begin deliberations. FCC commented that qualified lenders need to distinguish between an inquiry and an application because an adverse decision on an application triggers borrower rights, but an inquiry does not. The FCC also suggested that we adopt the Regulation B definition of an application.[8]

We agree with the comment and propose changing the definition of a loan application to one similar to Regulation B. We propose adding language specifically describing a loan application as a package that provides the qualified lender with enough information to make a credit decision. Lenders should be mindful of the distinction between an application and an inquiry for purposes of borrower rights and Regulation B. Informal inquiries may rise to the level of applications if the lender evaluates information about the inquirer, decides to decline the request, and communicates this to the inquirer. Whether or not an inquiry is an application depends on the particular circumstances and a qualified lender needs to focus on how it responds to an applicant, rather than on what the applicant asks, in order to make the determination.

We propose to change the title of ''Application for a Loan or Loan Application'' in § 614.4440(d) to ''Loan Application'' in proposed § 617.7000.

5. Restructure [§§ 614.4440(i) and 614.4512(h) to Proposed § 617.7000]

We propose modifying the definition of restructure to recognize that not all restructurings will result in viability. For more discussion, see Part E.2. of this preamble.

6. Delete Reference to the Certified Lender and Special Asset Group [§ 614.4512(b)]

We propose deleting the definition of a certified lender in existing § 614.4512(b) and the reference to special asset group in § 614.4519(c) because the requirements for them are obsolete.

7. Redesignate Existing § 614.4512(c)—Cost of Foreclosure—to Proposed § 617.7415(b) [§ 617.7415(b)]

We propose redesignating the content of existing § 614.4512(c) to proposed § 617.7415(b) to locate the criteria for the cost of foreclosure near the rules on evaluating applications for restructuring.

B. May Qualified Lenders Use Electronic Communications to Comply with Borrower Rights? [§ 617.7005]

The FCC asked that we amend our existing rules to authorize electronic communications for borrower rights disclosures. As part of our initiative to implement the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, codified at 15 U.S.C. 7001 *et seq.* (E–SIGN) and our electronic commerce (E–commerce) rule,[9] we propose adding § 617.7005 to permit electronic communications as allowed for by law.

The preamble to the final E–commerce rule states that E–SIGN preempts (with some exceptions) provisions in most state or federal statutes or regulations, including the Act and its implementing regulations, which require contracts or other records to be written, signed, or to be in non-electronic form. With the parties' agreement, qualified lenders may now use E–commerce and electronic communications in many situations.

Qualified lenders should interpret this part broadly to allow electronic transmission, communications, records, and submissions, as provided by E–SIGN. Qualified lenders may interpret the terms used in this part to permit electronic transmission, communications, records, and submissions in business, consumer, or commercial transactions, unless otherwise prohibited. E–SIGN does not, however, allow electronic communications for a notice of default, acceleration, repossession, foreclosure, eviction, or the right to cure when an individual's primary residence secures the loan.[10] In these instances, a qualified lender must use the paper communications required by the Act and borrower rights regulations. E–SIGN also requires paper notification to cancel or terminate life insurance.

In addition to the primary residence provision, E–SIGN established different standards for business and consumers

[8] 12 CFR 202.2(f).

[9] 67 FR 16627 (April 7, 2002).

[10] This exception is found in section 103(b)(2)(B) of E–SIGN and 12 CFR 609.950(c).

using E–commerce. While both businesses and consumers must agree to E–commerce, E–SIGN provides certain protections and compulsory procedures when a statute or regulation, such as the Equal Credit Opportunity Act, requires that information be provided to a consumer. These same protections are not afforded to businesses. Under E–SIGN, ''consumer'' means an individual who obtains, through a transaction, products or services used primarily for personal, family, or household purposes. Some loans under E–SIGN qualify as consumer transactions, while others are business transactions. A qualified lender must distinguish between the two types of transactions to comply with E–SIGN.

We have summarized the pertinent consumer consent provisions below. For a complete list, please see the preamble to the proposed E–commerce rule.[11] You may also view the proposed rule and other E–commerce information under the ''Resources for the FCS'' section of our Web site at *http://www.fca.gov*.

- Consumer consent may apply to a particular transaction and/or category of records. Consumers may decide when they want electronic records and notices.
- Consumers who choose to receive documents electronically must show the technological capacity to do so prior to consenting to E–commerce. For example, to show technological capacity, the lender may ask the consumer to communicate with the lender by sending an e-mail to the lender through an Internet provider or by logging onto the lender's Internet Web site.

We direct qualified lenders to E–SIGN and part 609 of our regulations to determine how to apply E–commerce and use electronic communications. Qualified lenders should also consult legal counsel before engaging in E–commerce and using electronic communications.

C. May a Borrower Waive All or a Portion of the Borrower Rights? [§ 617.7010]

Questions about whether a borrower may waive the rights granted in the Act and FCA regulations have arisen since these laws were enacted. We have consistently taken the position that, as a general rule, an institution may not obtain a waiver of borrower rights. These rights have a public policy purpose and should only be waived in limited circumstances, such as when the parties are in a reasonably equal bargaining position or when other federal rights provide protections similar to borrower rights. We propose adding this position in proposed § 617.7010(a).

1. May a Borrower Who Has a Loan Guaranteed by the Small Business Administration (SBA) Waive Borrower Rights? [§ 617.7010(b)]

In FCA Bookletter BL–028, issued April 1, 1996, we permitted borrowers to waive certain borrower rights in connection with receiving a loan guarantee from the SBA. A borrower with an SBA guaranteed loan may waive the right of distressed loan restructuring, the right to appear before the credit review committee (CRC or committee), and the right of first refusal. We believe such a waiver is appropriate because the laws governing SBA guaranteed loans provide for servicing actions similar to the borrower rights provided in the Act. We propose incorporating this waiver in proposed § 617.7010(b)(1). Any waivers that are obtained pursuant to this regulation must be given voluntarily by the borrower and must be in writing. The qualified lender would be required to provide written explanation of the rights being waived by the borrower.

2. May a Borrower Waive Borrower Rights in Connection With a Subordinated Debt Transaction? [§ 617.7010(a)]

The FCC commented that a borrower should be able to waive borrower rights in subordinated debt transactions in the same manner as in loan sale transactions. We do not agree and are not proposing any regulatory changes. Subordinated debt transactions are direct loans made by a qualified lender. In these transactions, the lender is merely allowing another lender to have a priority lien on the collateral. The loan remains unchanged and borrower rights continue to apply.

3. How Does a Waiver Apply in a Loan Sale Transaction? [§ 617.7015(c)]

Existing § 614.4336(c) describes the procedures that a qualified lender must follow when selling a loan to a non-qualified lender. The qualified lender must either: (1) Include, with the borrower's consent, a provision in the original loan contract or modify it so that the purchasing lender will continue to provide the borrower rights granted by part C of title IV of the Act; or (2) obtain a waiver of borrower rights from the borrower. The FCC commented that we should allow, without borrower consent, the prospective buyer of a loan to execute an agreement with the qualified lender in which the buyer will provide all borrower rights that a qualified lender is obligated to provide. We do not propose adding this alternative. Under the Act, borrower rights belong to the borrower and may only be modified by the borrower. Absent a provision in the loan contract, non-qualified lenders are not obligated to provide borrower rights and we do not have enforcement authority over them.

The FCC alternatively asked if the buyer of a loan may directly obtain a waiver of borrower rights from the borrower, rather than requiring the qualified lender to obtain the waiver. We do not agree with this comment. Implementing all borrower rights provisions, including waivers, are the responsibility of the qualified lender. Therefore, we are proposing no changes to the waiver provisions of existing § 614.4336(c) and redesignating it as proposed § 617.7015(c).

D. What Is the Review Process for Adverse Credit Decisions? [§ 617.7300 et seq.]

Section 4.14 of the Act requires a qualified lender to establish a CRC to review adverse credit decisions made by the qualified lender on loan applications and denials of applications for restructuring.

1. Whom Should the Qualified Lender Notify? [§§ 617.7300, 617.7410(d), and 617.7420(b)]

Existing §§ 614.4441, 614.4516(a)(2), and 614.4518 allow a lender to notify one designated primary obligor or applicant in situations where there are multiple borrowers or applicants. The FCC recommended a single notice provision as a way of eliminating multiple notices and claims of a wrong party receiving notice. Although we recognize the efficiencies gained in sending disclosures to only one of the obligors, we also recognize the value of keeping all obligors informed. As a result, we propose in §§ 617.7300, 617.7410(d), and 617.7420(b) to require that qualified lenders notify all applicants or all parties listed on the promissory note as primarily obligated to repay the debt. The applicants or borrowers may designate one person to be the primary contact and the lender may then send the original notice to that person. However, the lender must send copies of the notice to the other applicants or borrowers.

[11] 66 FR 53348 (October 22, 2001).

2. When Should a Qualified Lender Notify a Borrower That the Application for Restructuring Has Been Denied and What Information May the Borrower Use in the CRC Review? [§ 617.7310(c)]

Confusion has arisen over the years as to when in the restructuring process the qualified lender must offer the right of CRC review. In addition, an FCS institution asked if a borrower may present the original application for restructuring to the CRC even if the original application was not the basis for the ultimate restructuring decision. In the preamble to § 614.4443,[12] we expressed the intent for the lender and borrower to engage in ''* * * a cooperative effort to attempt to find solutions before the CRC process began.'' We believe Congress expected borrowers and lender to negotiate applications for restructuring. The negotiations, which may include plan modifications, must reach a conclusion. Once negotiations are concluded and the lender denies the borrower's request, the borrower is then given the opportunity to appear before the CRC. The borrower may present the initial application for restructuring or any subsequent modifications that resulted in denial by the qualified lender.

We propose moving § 614.4443(b) to § 617.7310(c).

3. Who Serves on the CRC? [§ 617.7305]

Section 4.14(a) of the Act requires the membership of the CRC to include at least one farmer-member of the qualified lender's board of directors. In the preamble to the existing regulations,[13] we explained farmer board representation means a farmer, rancher, or producer or harvester of aquatic products. We are clarifying that farmer board representation also means an elected board member, as opposed to an appointed board member.

Section 4.14(a) of the Act also requires farmer board representation and prohibits the loan officer involved in the original credit decision from serving on the CRC. The Act does not prohibit delegations. However, existing § 614.4442 provides that the board member serving on the CRC may designate an alternate to serve on the committee as long as the alternate is also an elected farmer board member, but prohibits non-board members of the CRC from delegating committee duties. The FCC requested that the restriction prohibiting delegations be removed. We agree and propose removing the restriction in proposed § 617.7305. As long as the replacement members of the CRC are experienced and capable of rendering thoughtful and careful review of adverse credit decision, we believe the delegation restriction is unnecessary.

4. Must a Qualified Lender Notify an Applicant or Borrower of a CRC Meeting? [§ 617.7310(a)]

The existing rule at § 614.4443 does not require a qualified lender to notify an applicant or borrower of the CRC meeting date where the applicant or borrower's request for review will be discussed. Although we do not believe that this has been a problem in the past, we wish to correct this oversight. Proposed § 617.7310(a) requires a qualified lender to inform the applicant or borrower of the CRC meeting date at least 15 days in advance of when the request for review will be discussed.

5. What Information May Not Be Submitted to the CRC? [§ 617.7310(c)]

The FCC commented that the CRC is not a substitute for the normal credit process and the committee should not act on new information or negotiate a new proposal. The FCC requested that we emphasize that the CRC review is of the denied loan or restructuring request and is not an opportunity for the applicant or borrower to introduce new information. We believe the existing rule clearly indicates that the CRC function is one of review and the CRC meetings are not forums for new issues. Existing § 614.4443(b) allows an applicant or borrower to submit ''any documents or other evidence'' to the CRC that supports the application under review. The purpose of the review is to provide the opportunity for the applicant or borrower to demonstrate that the loan or restructuring request satisfies the credit standards of the qualified lender. The Act makes no provision for presenting a new application to the CRC.

We propose moving § 614.4443(b) to § 617.7310(c).

6. Who Has the Right to an Independent Collateral Evaluation? [§ 617.7310(d)]

A System institution and the FCC suggested that the right to an independent collateral evaluation only applies to those applicants or borrowers whose applications were denied because of insufficient real estate collateral. We disagree. The Act does not place conditions on the right to an independent collateral evaluation. Section 4.14(d) provides applicants and borrowers the right to have the CRC review independent collateral evaluations, whether or not insufficient collateral was the reason for the loan or restructure denial. However, we believe that if qualified lenders provide complete disclosure to the applicant or borrower of the reasons for the loan or restructure denial, unnecessary independent collateral evaluations will not occur.

We propose moving § 614.4443(c) to § 617.7310(d).

7. How Long Does an Applicant or Borrower Have To Obtain an Independent Collateral Evaluation? [§ 617.7310(d)(2)]

The FCC and one System institution suggested we establish a 60-day limit to seek an independent collateral evaluation. Section 4.14(d) of the Act provides that an applicant or borrower who receives an adverse credit decision may request an independent collateral evaluation in connection with an appeal to the CRC. Existing § 614.4443(c)(2) requires the collateral evaluation to be completed within a reasonable period of time. The Act does not provide a more definitive time limit for completing an independent evaluation, although the legislative history of section 4.14(d)(2) of the Act indicates that Congress was concerned with potential delays in this process. We do not believe a regulatory time limit to obtain an independent evaluation is appropriate. We recognize that in some cases the applicant or borrower legitimately may need longer than the 60-day limit recommended by the commenters, particularly if there are no authorized independent evaluators in the local area. We have instead proposed in § 617.7310(d)(2) a 30-day limit for applicants or borrowers to enter into a contract for evaluation services. We believe this time limit will help ensure that the review process is not unnecessarily delayed.

As a result of this change, we propose removing that portion of existing § 614.4443(c)(3) stating ''* * * provided the applicant's or borrower's evaluator has provided a copy of the evaluation report to the lender not less than 15 days prior to any scheduled meeting of the credit review committee.'' We originally adopted this requirement to assist a qualified lender in the situation where a borrower is attempting to delay the CRC review process. In re-evaluating our entire borrower rights regulations, however, we believe the better approach is to require the borrower to contract with an independent evaluator within 30 days. By removing this portion of the existing rule, we do not intend an applicant or borrower to delay submitting an independent collateral evaluation to the qualified lender. An applicant or borrower should make every effort to provide the independent

[12] *Id.* at note 4.

[13] *Id.* at note 4.

evaluation well in advance of the CRC meeting to ensure it is given full consideration. Although ultimately, the CRC must consider any independent collateral evaluation obtained, pursuant to section 4.14(d)(2) of the Act.

8. What Copies of Independent Collateral Evaluations Must a Qualified Lender Provide an Applicant or Borrower? [§ 617.7310(c)]

The FCC suggested that a borrower's right to receive a copy of the independent collateral evaluations used in a credit decision should be limited to the most recent independent collateral evaluation. We disagree. Section 4.14(d)(3) of the Act states that a borrower may obtain a copy of *each* independent collateral evaluation made and we reiterate this provision in proposed § 617.7310(c).

9. How Long May the CRC Take To Reach a Decision? [§ 617.7310(e)]

Existing § 614.4443(d) does not provide any time limit for the CRC to reach a decision. We propose in § 617.7310(e) a time limit of no more than 30 days for the CRC to reach a decision. Decisions should be made as expeditiously as possible to prevent undue delay and increased costs to the qualified lender and applicant or borrower. We believe this time limit will ensure an expedited decision-making process.

10. What Records Must the CRC Maintain? [§ 617.7315]

Existing § 614.4444 requires the CRC to maintain records of a request for review, the meeting minutes, and the decision of the committee. We believe the second sentence in the section that refers to keeping records for FCA review is redundant and therefore, we propose its deletion in § 617.7315.

E. What Are the Distressed Loan Restructuring Notice Options? [§ 617.7410]

1. What Notices May a Qualified Lender Send to a Distressed Borrower? [§ 617.7410(a) and (b)]

Once a qualified lender determines a loan is distressed, the lender must notify the borrower that: (1) The loan is distressed; (2) the borrower has the right to request a restructure of the loan and what to include in the application for restructuring; and (3) an alternative to restructure may be foreclosure. In 1993, we clarified that qualified lenders had the option of sending two distinctly different notices.[14] One notice, the ''non-foreclosure notice,'' would include items (1) and (2) above, while the other notice, the ''45-day notice,'' would include all three items. A qualified lender may send the non-foreclosure notice when it is not considering foreclosure. The 45-day notice must be sent when foreclosure is a consideration. To initiate foreclosure, the qualified lender must have sent the 45-day notice.

A System institution commented that the 45-day notice requirement does not provide enough time for a qualified lender to consider an application for restructuring and to make a sound decision. We believe the commenter has misinterpreted the 45-day requirement. There is no requirement that a qualified lender complete a restructuring or make a restructuring decision in 45 days. The qualified lender should take the time necessary to thoroughly consider the application and work with the borrower.

We are consolidating the notice requirements in §§ 614.4516(a) and 614.4519(a) into proposed § 617.7410(a) and (b).

2. What Is the Purpose of Each Notice? [§ 617.7410(a) and (b)]

The non-foreclosure notice informs the borrower that a loan is distressed and may be suitable for restructuring. The 45-day notice puts the borrower on notice that if a loan is not restructured, the qualified lender may initiate foreclosure.

The FCC commented that the lender should not have to send another notice if the borrower defaults within 12 months of the original notice. As we understand the comment, the FCC is concerned about sending more than one distressed loan notice before the qualified lender can begin foreclosure proceedings. In response, we clarify that a qualified lender need only send a second notice if the initial notice did not mention that the alternative to restructuring may be foreclosure. If the qualified lender sends the 45-day notice and the borrower does not apply, or is not granted, a restructuring, the lender may proceed with foreclosure. However, we expect lenders to comply with the spirit of borrower rights and have ongoing communications with the borrower so that a foreclosure proceeding is not a surprise.

3. What Notice Should Be Sent to a Borrower Who Is a Debtor in a Bankruptcy Proceeding? [§ 617.7410(c) and (d)]

Section 4.14A(b) of the Act requires a qualified lender to notify a borrower that a loan may be suitable for restructuring. If the borrower is in bankruptcy, the required notice may be construed as a demand for payment, which is prohibited by the automatic stay provision of the Bankruptcy Code. We are proposing in § 617.7410(c) and (d) to change the notice requirements in existing §§ 614.4516(a) and 614.4519(a). A qualified lender should use alternative language for a borrower who is a debtor in a bankruptcy proceeding by restating language from the automatic stay provision. The qualified lender should send the notice to the borrower's counsel.

4. What Notices Are Required if a Borrower's Loan Becomes Distressed Following a Restructuring? [§ 617.7410(e)]

The Act is silent on what notices are required when a borrower's loan is restructured, but the loan remains, or again becomes, distressed. The FCC and several System institutions requested that we provide additional regulatory guidance on how many times a qualified lender must provide a distressed loan restructuring notice to a borrower who has defaulted on a previously restructured loan. The comments varied from requesting limits on the number of times a loan could be restructured to giving a distressed borrower only one opportunity to restructure the loan in a calendar year or operating cycle.

We agree that additional guidance appropriate to assist a qualified lender in determining when another distressed loan notice must be sent after the loan has been restructured. We considered what distinguishing event would differentiate whether another restructuring opportunity should be offered. We believe that a borrower's performance under the current restructuring agreement is key in a qualified lender's determination of whether the restructure cured the reason(s) the loan was originally distressed. We propose in § 617.7410(e) to define performance as 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semiannual payments, or 2 consecutive annual payments, depending on the payment scheduled in the current restructuring agreement. For purposes of judging performance, the borrower may be considered in default if payment is not received within 30 days of the date the payment is due. We reasoned that if the borrower is not able to perform under the restructured loan agreement, the loan remains distressed and the qualified lender may proceed directly to foreclosure without further notice, provided the qualified lender sent the 45-day notice to the borrower. If, however, the borrower performs under the restructure agreement, the reason for

[14] 58 FR 62513 (November 29, 1993).

the original distress is cured. Any subsequent problem with the loan that causes the loan to meet the definition of a distressed loan requires the qualified lender to provide the borrower with a new distressed loan notice and opportunity to restructure, regardless of the number of times the loan was previously restructured.

The current notice requirement in existing § 614.4519(a) provides only two options, restructure or possible foreclosure. We propose in § 617.7425(b) to modify the 45-day notice to ensure that borrowers are informed that if they do not perform under the restructure, the qualified lender could proceed with foreclosure without further notification.

5. May a Qualified Lender Propose Restructuring if the Borrower Did Not Submit an Application? [§ 617.7410(g)]

It is the borrower's responsibility to respond to the distressed loan notice by submitting an application for restructuring. Section 4.14A(d)(2) of the Act provides that nothing shall prevent a qualified lender from proposing an application for restructuring for an individual borrower in the absence of an application for restructuring from the borrower. We reaffirm that the qualified lender may submit a restructuring proposal for consideration if the borrower fails to do so. We believe that Congress provided this option as a means of ensuring that all borrowers are considered for a loan restructuring regardless of whether the borrower provides an application for restructuring.

We are proposing to move § 614.4516(c) into § 617.7410(g).

What Is a Qualified Lender's Process When Determining Whether to Restructure or Foreclosure? [§ 617.7415]

Section 4.14A(e) of the Act and existing §§ 614.4517(a) and 614.4512(c) provide that certain factors should be taken into consideration when a qualified lender determines whether the cost of restructuring is equal to or less than the cost of foreclosure. The FCC commented that in calculating the cost of restructuring, a borrower's ability to perform under a restructuring plan is an integral, but not necessarily calculable, part of the analysis. The FCC went on to state that unrealistic borrower projections make calculating the cost of restructuring difficult, particularly when the regulations do not permit much analysis or questioning of the financial inputs provided by the borrower. We agree and propose in § 617.7415 regulatory amendments identified below to address the responsibilities of both the borrower and the qualified lender in developing the restructuring plan.

1. What Is the Process for Considering the Restructuring Application? [§ 617.7415(c)]

To develop the application for restructuring, the qualified lender and borrower should work together to determine the most realistic financial inputs. These inputs are the backbone of the application for restructuring. Because the Act requires a qualified lender to restructure the loan if the cost of restructuring is equal to or less than the cost to foreclose, it is imperative that the lender work with the most reliable inputs to determine the cost of restructuring. As such, we propose in § 617.7415(c) that when developing and negotiating the application for restructuring, the qualified lender may use benchmarks to determine the financial input costs and chattel security values if the borrower and lender are unable to reach agreement. Benchmarks may include the borrower's 5-year production average, averages in the county where the farming operation is located, or other such support. We expect the qualified lender and borrower to engage in good faith negotiations with the intended purpose of determining reasonable financial input costs for the borrower's operation. It is only when the borrower and lender are unable to agree on reasonable financial input values that the lender should look to benchmarks.

2. What Criteria Does the Qualified Lender Use When Determining Whether To Restructure or Foreclose? [§ 617.7415]

Through our examination process and review of borrower complaints, questions have arisen about how qualified lenders apply the criteria in section 4.14A(d) and (e) of the Act. Specifically, many qualified lenders apply the criteria in paragraph (d) that the borrower must return to viability, as the controlling criterion. As a result, an application for restructuring may have been denied when the cost of restructuring was less than the cost of foreclosure. Although we believe a rule change is unnecessary, we are clarifying in § 617.7415(d) that section 4.14A(e) of the Act specifically requires the qualified lender to restructure the loan if the cost of restructuring is less than or equal to the cost of foreclosure.

This approach gives full meaning to section 4.14A and allows consideration of all relevant factors in evaluating a restructuring. We recognize this interpretation may result in approval of an application for restructuring because it is the least cost option but unlikely to ultimately reestablish viability.

3. May a Qualified Lender Include the Borrower's Performance Under a Previous Restructuring When Determining the Cost of Restructuring the Loan Again? [§ 671.7415(a)]

Section 4.14A(d)(1) of the Act provides criteria to consider when the qualified lender determines whether or not to restructure a loan. One of the criteria is the borrower's ability to work out of the existing financial difficulties. The Act balances Congress's desire for the System to assist borrowers and not cause financial harm to the qualified lender. The qualified lender should carefully consider the reasons why a prior restructuring was not successful when it analyzes whether a subsequent restructuring would make it probable that the borrower will become financially viable. If the qualified lender determines that deficient management by the borrower contributed to the current problem, then this deficiency should weigh heavily in the qualified lender's evaluation of the future viability of the borrower's operation. However, if the borrower's inability to perform under a prior restructuring was the result of a natural disaster, for example, and not management deficiencies, the qualified lender should take this into consideration when determining the likelihood that a new restructuring would be successful.

Although it is permissible for the qualified lender to analyze and quantify why prior restructuring efforts were not successful, the qualified lender is not permitted to include the costs of prior restructuring efforts in the cost of subsequent restructure requests.

4. What Type of Foreclosure Action Should Be Used in Calculating the Cost of Foreclosure? [§ 617.7415(b)]

The FCC commented that we should specify whether the cost of foreclosure should be calculated based on a contested or uncontested foreclosure proceeding. We do not agree that we need to add this level of specificity. The cost of foreclosure varies on a case-by-case basis and, when calculating the cost of foreclosure, qualified lenders should have the flexibility to adjust the costs according to each situation.

G. How Would a Decision on an Application for Restructuring Be Issued? [§§ 617.7420 to 617.7425]

1. When Must a Decision on an Application of Restructuring Be Issued? [§ 617.7420(a)]

Existing § 614.4518 requires a qualified lender to issue a restructuring decision in an expeditious manner. We believe a specific timeframe is necessary and propose in § 617.7420(a) that restructuring decisions be issued within 15 days from the conclusion of negotiations between the qualified lender and borrower on the application for restructuring.

2. What Should the Notice Include When the Restructuring Request Is Denied? [§ 617.7420(c)]

Section 4.13B(b) of the Act requires qualified lenders to send written notice of actions taken to restructure distressed loans. The Act requires the notice to include the reasons for any denial of restructuring and to inform the borrower of the right to have the decision reviewed. Existing § 614.4518 explains that the notice denying restructuring must include the critical assumptions and relevant information behind the decision. Although we do not propose in § 617.7420(c) to amend existing § 614.4518, we wish to provide clarification.

We expect the notice to contain sufficient information for the borrower to understand the exact reasons for the denial, so that the borrower can decide whether or not to request a review of the decision. This includes providing every reason for a denial, not just one. For example, when a lender denies a restructuring application based on financial and managerial weaknesses, and inadequate collateral, all of these reasons should be provided in the notice. Otherwise, the qualified lender is depriving the borrower of the opportunity to know the full reason for the denial.

H. How Are Borrower Rights Applied for Chronically Delinquent Borrowers? [§ 617.7425]

Section 4.14D(c) prohibits a qualified lender from enforcing acceleration of the borrower's repayment schedule because the borrower did not timely make one or more principal or interest payments. This prohibition has resulted in some borrowers abusing the process by repeatedly defaulting on loans and paying the amounts due at the last minute to avoid foreclosure. We refer to borrowers who repeatedly default as chronically delinquent. Two institutions requested that we modify our rules to address chronically delinquent borrowers. Another suggested that our rules not require a qualified lender to send out distressed loan notices every time a chronically delinquent borrower defaults before foreclosure proceedings are commenced, so long as borrowers are given an opportunity to seek restructuring once during a year or operating cycle. Finally, a fourth System institution requested we revise the rules so that borrowers cannot abuse borrower rights protections with repeated delinquencies after bringing accounts current.

We do not propose in § 617.7425 to change existing § 614.4514 in this area. The Act requires notice to be sent to a borrower 45 days or more before foreclosure proceedings begin. No exceptions are provided in the Act for borrowers who are chronically delinquent or are believed to have the funds to pay on time. A qualified lender is required to send a notice each time a borrower's loan is identified as distressed, notwithstanding previous restructuring opportunities, as long as the borrower had been current before that payment was due.[15]

I. When May a Qualified Lender Foreclose on a Loan Without Providing Borrower Rights? [§ 617.7425(a)]

Section 4.14A(j) of the Act provides that a qualified lender may foreclose on a loan if the lender has reasonable grounds to believe that the loan collateral will be destroyed, dissipated, consumed, concealed, or permanently removed from the state in which the collateral is located. Some institutions are concerned that restructuring notices must be given prior to starting foreclosure proceedings initiated due to a threat to collateral. If a qualified lender believes that collateral is at risk of being destroyed, the qualified lender may proceed with foreclosure without providing a restructuring notice to the borrower. The lender should, however, carefully document the reasons the collateral is at risk.

We propose moving the language on this issue in existing § 614.4519(b) to § 617.7425(c).

J. May Borrower Rights Be Waived When Using State Mediation Programs? [§ 617.7430]

The FCC commented that we should consider authorizing a waiver of borrower rights when the borrower pursues available state mediation rights (including mandatory mediation situations). The FCC commented that many borrowers elect to pursue state mediation over borrower rights, and those borrowers should be able to elect mediation over borrower rights through a waiver. The Act clearly provides for federal borrower rights and the borrower's right to pursue state mediation. We are proposing no substantive changes to existing § 614.4521. We propose to redesignate it at § 617.7430 and reword it slightly to emphasize that state mediation may proceed concurrently with borrower rights.

K. Are Borrower Rights Set Aside as a Result of Arbitration?

The FCC commented that if the lender and the borrower agree to arbitration, the arbitrator should be free to reach a final decision that negates borrower rights. We encourage qualified lenders and borrowers to consider alternative methods for settling disputes, such as arbitration. However, we do not believe that borrower rights may be set aside as a result of the arbitration process. We believe that Congress could have chosen arbitration as the means for resolving disputes between borrowers and lenders. Because Congress instead adopted a very specific process for dealings between borrowers and lenders in a distressed loan situation, we do not believe it is appropriate for the arbitration process to take the place of borrower rights or for an arbitrator to have the authority to make a binding decision that contravenes the Act and regulations.

L. What Is a Borrower Rights Directive? [§ 617.7500 et seq.]

Section 4.14A(i) of the Act authorizes us to enforce compliance with section 4.14A of the Act by issuing a borrower rights directive. Directives provide another supervisory tool to us to take action when an institution violates the law. Violations of a directive may result in civil money penalties or a court order enforcing the directive. We are proposing in part 617, subpart F, regulatory procedures to issue directives to ensure that a qualified lender fully complies with the terms of section 4.14A of the Act.

These procedures are similar to our existing capital directive regulations found in part 615, subpart M. The procedures require notice to the qualified lender of the specific noncompliance, providing a 30-day period for the qualified lender to respond to the notice, evaluation of the qualified lender's response, and finally a decision on whether or not to issue the directive as proposed or modified.

[15] See the discussion in section E.4. of this preamble to determine when a previously restructured loan is current.

M. How Is the Right of First Refusal Applied? [§ 617.7600 et seq.]

Section 4.36 of the Act provides a previous owner the right of first refusal to repurchase property when a System institution forecloses or a borrower voluntarily conveys agricultural real estate because the borrower did not have the financial resources to avoid foreclosure.

1. Does the Right of First Refusal Apply When the System Institution Acquires Agricultural Real Estate Through a Bankruptcy Liquidation? [§ 617.7600]

The right of first refusal does apply to agricultural real estate acquired through a bankruptcy proceeding. When a System institution gets relief from the automatic stay, or the borrower conveys the property as part of a bankruptcy plan, the right of first refusal applies because the System institution gains possession of the property through foreclosure or voluntary conveyance.

2. Who Is the Previous Owner? [§ 617.7600]

Existing § 614.4522(a)(2) defines a previous owner as a prior record holder who was a borrower or whose land was used as collateral for a loan to a System borrower. The FCC commented that we should clarify that a previous owner does not include a mortgagor or grantor of an equivalent interest in agricultural real estate unless such person is also the borrower. As previously stated, the term refers to the legal title holder of the agricultural real estate used as collateral for the loan. The right of first refusal is not transferable and belongs only to the legal title holder. We invite the FCC to comment further if we have not adequately responded to the comment.

3. May the Previous Owner Waive the Right of First Refusal as a Part of a Debt Settlement?

Borrower rights, which include the right of first refusal, were enacted by Congress to address an unequal bargaining position that exists between a borrower and a qualified lender. In most debt settlement situations, the borrower is in an unequal bargaining position. Thus, permitting waivers for this borrower would contradict Congress's intent.

4. Must a System Institution Document Whether the Previous Owner Had the Financial Resources To Avoid Foreclosure or Voluntary Conveyance? [§ 617.7605]

Whether the borrower had the financial resources to avoid either foreclosure or voluntarily conveying the agricultural real estate is a condition in the Act that must be met before the right of first refusal may be offered. We continue to require each System institution to document whether the borrower did or did not have the financial resources to avoid foreclosure or voluntary conveyance.

We propose moving existing § 615.4522(b) to § 617.7605.

5. May a System Institution Require a Previous Owner To Pay an Escrow Deposit When Buying the Property at a Public Auction? [§ 617.7620]

If an escrow deposit is an advertised requirement of the successful bidder in a public auction, then the previous owner, as the successful bidder, must also provide this escrow payment. The previous owner must be given an equal opportunity to repurchase the property in a public auction and should be subject to the same conditions as any other successful bidder.

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 609

Agriculture, Banks, banking, Electronic commerce, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government Securities, Investments, Rural areas.

12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

For the reasons stated in the preamble, parts 609, 614, 615, and 617, chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 609—ELECTRONIC COMMERCE

1. The authority citation for part 609 continues to read as follows:

Authority: Sec. 5.9 of the Farm Credit Act (12 U.S.C. 2243); 5 U.S.C. 301; Pub L. 106–229 (114 Stat. 464).

Subpart A—General Rules

2. Amend § 609.910(c) by revising the fourth sentence to read as follows:

§ 609.910 Compliance with the Electronic Signatures in Global and National Commerce Act (Public Law 106–229) (E–SIGN).

* * * * *

(c) * * * Thus, System institutions cannot use electronic notification to deliver some notices that must be provided under part 617, subparts A, D, E, and G of this chapter. * * *

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

3. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart H—Loan Purchases and Sales

§ 614.4336 [Removed]

4. Remove § 614.4336.

Subpart L—Actions on Applications; Review Credit Decisions

Subpart L [Removed]

5. Remove subpart L, consisting of §§ 614.4440 through 614.4444.

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

§§ 614.4514–614.4522 [Removed]

6. Remove §§ 614.4514 through 614.4522 in subpart N.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

7. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart J—Retirement of Equities

8. Section 615.5280(h) is revised to read as follows:

§ 615.5280 Retirement in event of default.

* * * * *

(h) The requirements of this section may be satisfied by notices given pursuant to §§ 617.7405, 614.7410, 617.7420, and 617.7425 of this chapter that contain the information required by this section.

9. Amend § 615.5290 by revising paragraphs (a) and (b) to read as follows:

§ 615.5290 Retirement of capital stock and participation certificates in event of restructuring.

(a) If a Farm Credit Bank or agricultural credit bank forgives and writes off, under § 617.7415, any of the principal outstanding on a loan made to any borrower, where appropriate the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and to the extent provided for in the bylaws of the Bank relating to its capitalization, the Farm Credit Bank or agricultural credit bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) If a production credit association or merged association forgives and writes off, under § 617.7415, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

* * * * *

PART 617—BORROWER RIGHTS

10. The authority citation for part 617 continues to read as follows:

Authority: Secs. 4.13, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2243, 2252(a)(9)).

Subpart A—General

11. Amend § 617.7000 by adding the following definitions alphabetically to read as follows:

§ 617.7000 Definitions.

* * * * *

Adverse credit decision means a credit decision where a qualified lender:

(1) Decides not to make a loan to an applicant;

(2) Makes a loan in an amount less than the applicant requested; or

(3) Denies an application for restructuring.

Applicant means any person who completes and executes a loan application from a qualified lender.

Application for restructuring means a written request from a borrower to restructure a distressed loan. The request must be:

(1) Submitted on the appropriate forms prescribed by the qualified lender and accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision; or

(2) A borrower's bankruptcy plan of reorganization.

Distressed loan means a loan that the borrower does not have the financial capacity to pay according to its terms, as determined by the qualified lender, and exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends.

(2) The loan is delinquent or past due under the terms of the loan contract.

(3) One or both of the factors listed in paragraphs (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the qualified lender.

* * * * *

Foreclosure proceeding means:

(1) A foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a noninterest-earning asset or distressed loan; or

(2) The seizing of and realizing on non-real property collateral, other than collateral subject to a statutory lien arising under title I and II of the Act, to effect collection of a nonaccrual or distressed loan.

Independent evaluator means an individual who is a qualified evaluator and who satisfies the standards of § 614.4260, subpart F of this chapter, and the standards set by the qualified lender for the type of property to be evaluated. The independent evaluator may not be an employee or agent of a qualified lender or have a relationship with the lender or any of its officers or directors in contravention of part 612 of this chapter.

* * * * *

Loan application means a complete oral or written request for an extension of credit made in accordance with a qualified lender's procedures for the type of credit requested. An application is complete when the qualified lender receives all the information normally obtained and used in evaluating applications for credit. This information may include credit reports, supporting information for the credit requested, and reports by governmental agencies or other persons necessary to guarantee, insure, or provide security for the credit or collateral.

* * * * *

Restructure and restructuring of a loan means a reamortization, renewal, deferral of principal or interest, monetary concessions, or the taking of any other action to modify the terms of, or forebear on, a loan in any way that will provide the best opportunity for the borrower to have a reasonable probability of retiring debts and returning to a viable operation.

* * * * *

12. Amend subpart A by adding new §§ 617.7005, 617.7010, and 617.7015 to read as follows:

§ 617.7005 When may electronic communications be used in the borrower rights process?

Qualified lenders may use, with the parties' agreement, electronic commerce (E-commerce) including electronic communications for borrower rights disclosures. Part 609 of this chapter addresses when a qualified lender may use E-commerce. Consistent with these rules, a qualified lender should interpret part 617 broadly to allow electronic transmissions, communications, records, and submissions. However, electronic communications may not be used for a notice of default, acceleration, repossession, foreclosure, eviction, or the right to cure when an applicant's or borrower's primary residence secures the loan. In these instances, a qualified lender must use paper disclosures.

§ 617.7010 May borrower rights be waived?

(a) A qualified lender may not obtain a waiver of borrower rights, except as indicated in paragraph (b) of this section.

(b) A borrower may waive the following rights:

(1) Rights relating to distressed loan restructuring, credit reviews, and the right of first refusal when a loan is guaranteed by the Small Business Administration.

(2) In connection with a loan sale as provided in § 617.7015.

(c) All waivers must be voluntary and in writing. The qualified lender must first clearly explain the rights the borrower is being asked to waive and provide a written explanation of such rights.

§ 617.7015 What happens to borrower rights when a loan is sold?

(a) A loan made by a qualified lender and subsequently sold, in whole or in part, to another qualified lender is subject to the borrower rights provisions of title IV of the Act.

(b) What happens when a qualified lender sells a loan into the secondary market?

(1) Except as provided in paragraph (b)(2) of this section, the borrower rights provisions of sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36 of the Act do not apply to a loan made on or after February 10, 1996, and designated for sale into a secondary market at the time the loan was made.

(2) Borrower rights apply to a loan designated for sale under paragraph (b)(1) of this section but not sold into a secondary market during the 180-day period that begins on the date of designation. The provisions of paragraph (b)(1) of this section will subsequently apply on the date of sale if the loan is later sold into a secondary market.

(c) What happens when a qualified lender sells a loan to a non-qualified lender?

(1) Except for loans sold to another qualified lender or designated for sale into a secondary market, a qualified lender must comply with one of the following requirements before selling a loan or interest in a loan subject to borrower rights:

(i) The qualified lender and borrower must agree to include provisions in the loan contract with the borrower, or a written modification thereto, that ensure that the buyer of the loan will be obligated to provide the borrower the same rights a qualified lender must provide; or

(ii) The qualified lender must obtain from the borrower a signed written consent to the sale, which clearly states the borrower waives statutory borrower rights.

(2) Before the qualified lender obtains the borrower's consent to the sale of the loan and the waiver of borrower rights under paragraph (c)(1)(ii) of this section, the qualified lender must disclose in writing to the borrower:

(i) A complete description of the statutory rights the borrower will waive;

(ii) Any changes in the loan terms or conditions that will occur if the qualified lender does not sell the loan;

(iii) That waiving borrower rights will not become effective unless the qualified lender sells the loan; and

(iv) That borrower rights will become effective again if any qualified lender repurchases the loan or any interest in the loan.

(3) The consent to the loan sale and waiver of borrower rights shall have no effect until the qualified lender sells the loan. Borrower rights become effective again if any qualified lender repurchases the loan or any interest in the loan.

(4) A qualified lender may not make a loan conditioned on the borrower consenting to the loan's sale and a waiver of borrower rights.

13. Amend part 617 by adding new subparts D, E, F, and G to read as follows:

Subpart D—Actions on Applications; Review of Credit Decisions

Sec.

617.7300 When acting on a loan application, what are the notice requirements and review rights?
617.7305 What is a CRC and who are the members?
617.7310 What is the review process of the CRC?
617.7315 What records must the qualified lender maintain on behalf of the CRC?

Subpart D—Actions on Applications; Review of Credit Decisions

§ 617.7300 When acting on a loan application, what are the notice requirements and review rights?

Each qualified lender must make its decision on a loan application as quickly as possible. The qualified lender must provide prompt written notice of its decision to the applicant. The qualified lender is required to notify all primary applicants. If a loan application has more than one primary applicant, the qualified lender may send the original notice to the applicant designated to receive notices and may send copies to all other applicants. If the qualified lender makes an adverse credit decision on a loan application, the notice must include:

(a) The specific reasons for the qualified lender's decision;

(b) A statement that the applicant may request a review of the decision;

(c) A statement that a written request for review must be made within 30 days after the applicant receives the qualified lender's notice; and

(d) A brief explanation of the process for seeking review of the decision, including the independent collateral evaluation review process, whom to contact for access to information, and the applicant's right to appear in person before the credit review committee (CRC).

§ 617.7305 What is a CRC and who are the members?

The board of directors of each qualified lender must establish one or more CRCs to review adverse credit decisions made by a qualified lender. The CRC may only review adverse credit decisions at the request of the applicant or borrower. The CRC has the ultimate decision making authority on the loan or application under review. CRC members are selected by the board of directors of each qualified lender and must include at least one of the qualified lender's farmer-elected board members. The loan officer involved in the adverse credit decision being reviewed may not serve on the CRC when it reviews that loan.

§ 617.7310 What is the review process of the CRC?

(a) *How will an applicant or borrower know when the CRC will consider the review request?* The qualified lender must inform the applicant or borrower 15 days in advance of the CRC meeting where the applicant or borrower's request will be reviewed.

(b) *Who may make a personal appearance before the CRC?* Each applicant or borrower who has requested a review may appear in person before the CRC. The applicant or borrower may be accompanied by counsel or other representative when seeking a reversal of a decision on a loan or an application for restructuring.

(c) *What documents may the CRC consider?* An applicant or borrower may submit any documents or other evidence to support the information contained in the loan or application for restructuring. The documents should demonstrate that the application for a loan or restructuring satisfies the credit standards of the qualified lender and is an eligible loan or application for restructuring. Additionally, the applicant or borrower is entitled to a copy of each independent collateral evaluation used by the qualified lender.

(d) *May an applicant obtain a new collateral evaluation even if collateral was not a reason for the adverse credit decision?* As part of a CRC review, an applicant may request an independent collateral evaluation of the agricultural real estate securing the loan or being offered as security, regardless of

whether collateral was an identified reason for the adverse credit decision. The independent collateral evaluation may be for any interest(s) in the property securing the loan, except stock or participation certificates issued by the qualified lender and held by the applicant or borrower.

(1) *Who may conduct an independent collateral evaluation?* The independent collateral evaluation must be conducted by an independent evaluator. The CRC must provide the applicant or borrower with a list of three independent evaluators approved by the qualified lender within 30 days of the request for an independent collateral evaluation. The applicant or borrower must select and engage the services of an evaluator from the list. The evaluation must comply with the collateral evaluation requirements of part 614, subpart F, of this chapter. The qualified lender must provide the applicant or borrower a copy of part 614, subpart F, for presentation to the selected independent evaluator. A copy of part 614, subpart F, signed by the evaluator is a required exhibit in the subsequent evaluation report.

(2) *When must an applicant or borrower obtain the independent collateral evaluation and who pays for the evaluation?* The applicant or borrower must enter into a contractual arrangement for evaluation services within 30 days of receiving the names of three approved independent evaluators. The evaluation must be completed within a reasonable period of time, taking into consideration any extenuating circumstance. The applicant or borrower must pay for the independent evaluation.

(3) *How does the CRC use an independent collateral evaluation when making a decision?* The CRC will consider the results of any independent collateral evaluation before making a final determination with respect to the loan or restructuring, except the CRC is not required to consider a collateral evaluation that does not conform to the collateral evaluation standards described in section 614, subpart F, of this chapter.

(e) *When must the CRC issue a decision?* The CRC shall reach a decision, and it shall be the final decision of the qualified lender, not later than 30 days after the meeting on the request under review. The CRC must make every reasonable effort to conduct reviews and render decisions in as expeditious a manner as possible. After making its decision, the committee must promptly notify the applicant or borrower in writing of the decision and the reasons for the decision.

§ 617.7315 What records must the qualified lender maintain on behalf of the CRC?

A qualified lender must maintain a complete file of all requests for CRC reviews, including participation in state mediation programs, the minutes of each CRC meeting, and the disposition of each review by the committee.

Subpart E—Distressed Loan Restructuring; State Agricultural Loan Mediation Programs

Sec.

617.7400 What protections exist for borrowers who meet all loan obligations?
617.7405 On what policies are loan restructurings based?
617.7410 When and how does a qualified lender notify a borrower of the right to seek loan restructuring?
617.7415 How does a qualified lender decide to restructure a loan?
617.7420 How will a decision on an application for restructuring be issued?
617.7425 What type of notice should be given to a borrower before foreclosure?
617.7430 Are institutions required to participate in state agricultural loan mediation programs?

Subpart E—Distressed Loan Restructuring; State Agricultural Loan Mediation Programs

§ 617.7400 What protections exist for borrowers who meet all loan obligations?

(a) A qualified lender may not foreclose on a loan because the borrower failed to post additional collateral when the borrower has made all accrued payments of principal, interest, and penalties on the loan.

(b) A qualified lender may not require a borrower to reduce the outstanding principal balance of a loan by any amount that exceeds the regularly scheduled principal installment when due and payable, unless:

(1) The borrower sells or otherwise disposes of part, or all, of the collateral without the prior approval of the qualified lender and the proceeds from the sale or disposition are not applied to the loan; or

(2) The parties agree otherwise in a written agreement.

(c) After a borrower has made all accrued payments of principal, interest, and penalties on a loan, the qualified lender may not enforce acceleration of the borrower's repayment schedule due to the borrower's untimely payment of those principal or interest payments.

(d) If a qualified lender places a loan in noninterest-earning status and this results in an adverse action being taken against the borrower, such as revoking any undisbursed loan commitment, the lender must document the change of status and promptly notify the borrower in writing of the action and the reasons for taking it. If the borrower was not delinquent on any principal or interest payment at the time of such action and the borrower's request to have the loan placed back into accrual status is denied, the borrower may obtain a review of the denial before the CRC pursuant to § 617.7310 of this part. The borrower must request this review within 30 days after receiving the lender's notice.

§ 617.7405 On what policies are loan restructurings based?

Loan restructurings must be made in accordance with the policy adopted by the supervising bank board of directors under section 4.14A(g) of the Act.

§ 617.7410 When and how does a qualified lender notify a borrower of the right to seek loan restructuring?

(a) When a qualified lender determines that a loan is, or has become, distressed, the lender must provide one of the following written notices to the borrower stating that the loan may be suitable for restructuring.

(1) A notice stating that the loan has been identified as distressed and that the borrower has the right to request a restructure of the loan (non-foreclosure notice).

(2) A notice that the loan has been identified as distressed, that the borrower has the right to request a restructure of the loan, and that the alternative to restructuring may be foreclosure (45-day notice). The qualified lender must provide this notice to the borrower no later than 45 days before the qualified lender begins foreclosure proceedings with respect to any loan outstanding to the borrower. This notice must specifically state that if the loan is restructured and the borrower does not perform under the restructuring agreement (as described in § 617.7410(e)), the qualified lender may initiate foreclosure proceedings without further notice.

(b) *What should each notice include?*

(1) A copy of the policy the qualified lender established governing the treatment of distressed loans; and

(2) All materials necessary for the borrower to submit an application for restructuring.

(c) *What notice should a qualified lender send to a borrower who is a debtor in a bankruptcy proceeding?* The qualified lender should send a notice that identifies the loan as distressed and the statutory right to file an application for a restructuring. The notice may also restate the language from the automatic stay provision to emphasize that the notice is not intended as an attempt to collect, assess, or recover a claim.

(d) *Whom should the qualified lender notify?* The qualified lender is required to notify all primary obligors. If the obligors identify one party to receive notices, the qualified lender should send the original notice to that person and send copies to the other obligors. For borrowers in a bankruptcy proceeding, the qualified lender should send the notice to the borrower's counsel.

(e) *When is a qualified lender required to send another restructure notice to a borrower whose loan was previously restructured?* A qualified lender should notify a borrower of the right to file another application to restructure the loan only if the borrower has performed on the previous restructure agreement. Performance means by 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semiannual payments, or 2 consecutive annual payments. Notice is also required when the borrower has not performed and the qualified lender did not initially send the borrower the 45-day notice.

(f) *Does the borrower have the opportunity to meet with the qualified lender after sending the restructure notice?* The qualified lender must provide any borrower to whom a notice has been sent with a reasonable opportunity to meet personally with a representative of the lender. The borrower and lender may meet to review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring. A meeting to discuss a loan that is in a noninterest-earning status may also involve developing a plan for restructuring, if the qualified lender determines the loan is suitable for restructuring.

(g) *May the qualified lender voluntarily consider restructuring for a borrower who did not submit one?* A qualified lender may, in the absence of an application for restructuring from a borrower, propose restructuring to an individual borrower.

§ 617.7415 How does a qualified lender decide to restructure a loan?

(a) *What criteria does a qualified lender use to evaluate an application for restructuring?* The qualified lender should consider the following:

(1) Whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure, considering all relevant criteria. These criteria include:

(i) The present value of interest and principal foregone by the lender in carrying out the application for restructuring;

(ii) Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the application for restructuring;

(iii) Whether the borrower's application for restructuring included a preliminary restructuring plan and cashflow analysis, taking into account income from all sources to be applied to the debt and all assets to be pledged, that show a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring; and

(iv) Whether the borrower has furnished, or is willing to furnish, complete and current financial statements in a form acceptable to the qualified lender.

(2) Whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(3) Whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

(4) Whether the borrower is capable of working out existing financial difficulties, taking into consideration any prior restructuring of the loan, re-establishing a viable operation, and repaying the loan on a rescheduled basis; and

(5) In the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not have to be placed into noninterest-earning status in the future.

(b) *What should be included in determining the cost of foreclosure?*

(1) The difference between the outstanding balance due, as provided by the loan documents, and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;

(2) The estimated cost of maintaining a loan classified as a high-risk asset;

(3) The estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs;

(4) The estimated cost of value changes in collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(5) All other costs incurred as the result of the foreclosure or liquidation of a loan.

(c) *What should the qualified lender do if the borrower and the qualified lender cannot agree on the financial inputs used in the application for restructuring?* If the borrower and lender are not able to agree on supportable or realistic financial inputs, the lender may use benchmarks to determine the operational input costs and chattel security values. These benchmarks may include, but are not limited to, the borrower's 5-year production average; averages in the county where the farming operation is located based on data from United States Department of Agriculture offices, local colleges or universities, or other recognized authority; and other such reasonable sources.

(d) *How does the qualified lender decide whether to restructure or foreclose?* If a qualified lender determines the potential cost to the lender of restructuring the loan as proposed in the application for restructuring is less than or equal to the potential cost of foreclosure, the qualified lender must restructure the loan. If two or more restructuring alternatives are available, the qualified lender must restructure the loan using the alternative that results in the least cost to the lender.

(e) *What documentation should the qualified lender retain?* In the event that an application for restructuring is denied, a qualified lender must maintain sufficient documentation to demonstrate compliance with paragraphs (a), (b), and (c) of this section, as applicable.

§ 617.7420 How will a decision on an application for restructuring be issued?

(a) *When must a qualified lender make a decision on an application for restructuring?* Each qualified lender must provide a written decision on an application for restructuring and provide this decision to the borrower within 15 days from the conclusion of the negotiations used to develop the application for restructuring.

(b) *How does a qualified lender notify the borrower of the decision?* On reaching a decision on an application for restructuring, the qualified lender must provide written notice in any manner that requires a primary obligor to acknowledge receipt of the lender's decision. In the case of a loan involving one or more primary obligors, the original notice may be provided to the primary obligor identified to receive such notice, with copies provided by regular mail to the other obligors.

(c) *What notice is required if the restructuring request is denied?* When

an application for restructuring is denied, the notice must include:

(1) The reason(s) for the denial and any critical assumptions and relevant information on which the reasons are based, except that any confidential information shall not be disclosed;

(2) A statement that the borrower may request a review of the denial;

(3) A statement that any request for review must be made in writing within 7 days after receiving such notice.

(4) A brief explanation of the process for seeking review of the denial, including the appraisal review process and the right to appear before the CRC, pursuant to § 617.7310 of this part, accompanied by counsel or any other representative, if the borrower so chooses.

§ 617.7425 What type of notice should be given to a borrower before foreclosure?

Not later than 45 days before any qualified lender begins foreclosure proceedings, the qualified lender must notify the borrower in writing that the loan may be suitable for restructuring. The notice must inform the borrower that the qualified lender will review any suitable loan for possible restructuring and must include a copy of the policy and the materials described in § 617.7410(b). The notice must also state that if the loan is restructured, the borrower must perform under this restructured loan agreement. If the borrower does not perform, the qualified lender may initiate foreclosure.

(a) *Does the notice have to inform the borrower that foreclosure is possible?* The notice must inform the borrower that the alternative to restructuring may be foreclosure. If the notice does not inform the borrower of potential foreclosure, then the qualified lender must send a second notice at least 45 days before foreclosure is initiated.

(b) *How are borrowers who are debtors in a bankruptcy proceeding notified?* A qualified lender must restate the language from the automatic stay provision to emphasize that the notice is not intended to be an attempt to collect, assess, or recover a claim. The qualified lender should send the notice to the borrower's counsel.

(c) *May a qualified lender foreclose on a loan when there is a restructuring application on file?* No qualified lender may foreclose or continue any foreclosure proceeding with respect to a distressed loan before the lender has completed consideration of any pending application for restructuring and CRC consideration, if applicable. This section does not prevent a lender from taking any action necessary to avoid the dissipation of assets or the destruction, diversion, or deterioration of collateral if the lender has reasonable grounds to believe that such dissipation, destruction, diversion, or deterioration may occur.

§ 617.7430 Are institutions required to participate in state agricultural loan mediation programs?

(a) If initiated by a borrower, System institutions must participate in state mediation programs certified under section 501 of the Agricultural Credit Act of 1987, and present and explore debt restructuring proposals advanced in the course of such mediation. If provided in the certified program, System institutions may initiate mediation at any time.

(b) System institutions must cooperate in good faith with requests for information or analysis of information made in the course of mediation under any loan mediation program.

(c) No System institution may make a loan secured by a mortgage or lien on agricultural property to a borrower on the condition that the borrower waive any right under the agricultural loan mediation program of any state.

(d) A state mediation may proceed at the same time as the loan restructuring process of § 617.7415 or at any other appropriate time.

Subpart F—Distressed Loan Restructuring Directive

Sec.

617.7500 What is a directive used for and what may it require?
617.7505 How will the qualified lender know when FCA is considering issuing a distressed loan restructuring directive?
617.7510 What should the qualified lender do when it receives notice of a distressed loan restructuring directive?
617.7515 How does the FCA decide whether to issue a directive?
617.7520 How does the FCA issue a directive and when will it be effective?
617.7525SUBJECT≤May FCA use other enforcement actions?

Subpart F—Distressed Loan Restructuring Directive

§ 617.7500 What is a directive used for and what may it require?

(a) A distressed loan restructuring directive is an order issued to a qualified lender when FCA has determined that the lender has violated section 4.14A of the Act.

(b) A distressed loan restructuring directive requires the qualified lender to comply with the specific distressed loan restructuring requirements in the Act.

(c) A distressed loan restructuring directive is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order that has become final. Any violation of a distressed loan restructuring directive may result in FCA assessing civil money penalties or seeking a court order pursuant to section 5.31 or 5.32 of the Act.

§ 617.7505 How will the qualified lender know when FCA is considering issuing a distressed loan restructuring directive?

When FCA intends to issue a distressed loan restructuring directive, it will notify the qualified lender in writing. The notice will state:

(a) The reasons FCA intends to issue a distressed loan restructuring directive;

(b) The proposed contents of the distressed loan restructuring directive; and

(c) Any other relevant information.

§ 617.7510 What should the qualified lender do when it receives notice of a distressed loan restructuring directive?

(a) A qualified lender should respond to the notice by stating why FCA should not issue a distressed loan restructuring directive, by proposing changes to the directive, or by seeking other suitable relief. The response must include any information, documentation, or other relevant evidence that supports the qualified lender's position. The response may include a plan for achieving compliance with the distressed loan restructuring requirements of the Act. The response must be in writing and delivered to FCA within 30 days after the date on which the qualified lender received the notice. In its discretion, FCA may extend the time period for good cause. FCA may shorten the 30-day period with the consent of the qualified lender or when FCA determines that providing the full 30 days would result in a borrower not receiving distressed loan restructuring rights.

(b) If the qualified lender fails to respond within 30 days or such other time period specified by FCA, this failure shall constitute a waiver of any objections to the proposed distressed loan restructuring directive.

§ 617.7515 How does the FCA decide whether to issue a directive?

After the closing date of the qualified lender's response period, or following receipt of the qualified lender's response, FCA must decide if there is sufficient information to support the issuance of a directive or if additional information is necessary. Once FCA has received sufficient information, it must decide whether to issue a directive as originally proposed or as modified.

§ 617.7520 How does the FCA issue a directive and when will it be effective?

A distressed loan restructuring directive is effective immediately on receipt by the qualified lender, or on such later date as may be specified by FCA, and shall remain effective and enforceable until it is stayed, modified, or terminated by FCA.

§ 617.7525 May FCA use other enforcement actions?

FCA may issue a distressed loan restructuring directive in addition to, or instead of, any other action allowed by law, including cease and desist proceedings, civil money penalties, or the granting or conditioning of any application or other requests by the System institution.

Subpart G—Right of First Refusal

Sec.

617.7600 What are the definitions used in this subpart?
617.7605 How should System institutions document whether the borrower had the financial resources to avoid foreclosure?
617.7610 What should the System institution do when it decides to sell acquired agricultural real estate?
617.7615 What should the System institution do when it decides to lease acquired agricultural real estate?
617.7620 What should the System institution do when it decides to sell acquired agricultural real estate at a public auction?
617.7625 Whom should the System institution notify?
617.7630 Does this Federal requirement affect any state property laws?

Subpart G—Right of First Refusal

§ 617.7600 What are the definitions used in this subpart?

In addition to the definitions in § 617.7000, the following definitions apply to this subpart.

Acquired agricultural real estate or property means agricultural real estate acquired by a System institution as a result of a loan foreclosure or a voluntary conveyance by a borrower who, as determined by the institution, does not have the financial resources to avoid foreclosure.

Previous owner means:

(1) The prior record owner who was a borrower from a System institution and did not have the financial resources, as determined by the institution, to avoid foreclosure on acquired agricultural real estate; or

(2) The prior record owner who is not a borrower and whose acquired agricultural real estate was used as collateral for a loan to a System borrower.

System institution means a System institution, except a bank for cooperatives, that makes loans as defined in § 617.7000.

§ 617.7605 How should System institutions document whether the borrower had the financial resources to avoid foreclosure?

The right of first refusal applies only to borrowers who did not have the financial resources to avoid foreclosure or voluntary conveyance. A System institution must clearly document in its files whether the borrower had the resources to avoid foreclosure or voluntary conveyance.

§ 617.7610 What should the System institution do when it decides to sell acquired agricultural real estate?

(a) Notify the previous owner,

(1) By certified mail and within 15 days of the System institution's decision to sell acquired agricultural real estate, the institution must notify the previous owner, of the property's appraised fair market value as established by an accredited appraiser and of the previous owner's right to:

(i) Buy the property at the appraised fair market value, or

(ii) Offer to buy the property at a price less than the appraised value.

(2) That any offer must be received within 30 days of receipt of the notice.

(b) Act on an offer to buy the acquired agricultural real estate at the appraised value. Within 15 days after the receipt of the previous owner's offer to buy the acquired agricultural real estate at the appraised value, the System institution must accept the offer and sell the property to the previous owner, if the offer was received within 30 days of the notice required in paragraph (a)(2) of this section.

(c) Act on an offer to buy the acquired agricultural real estate at less than the appraised value.

(1) The System institution must consider the offer if it was received within 30 days of the notice required in paragraph (a) of this section.

(2) If the System institution accepts this offer, it must notify the previous owner of the decision and sell the acquired agricultural real estate to the previous owner within 15 days of receiving the offer to buy the acquired agricultural real estate at a value less than the appraised value.

(3) If the System institution rejects this offer, it must notify the previous owner of the decision within 15 days of receiving the offer to buy the acquired agricultural real estate at a value less than the appraised value. The previous owner has 15 days from receipt of the notice to submit an offer to buy at such price or under such terms and conditions. The System institution may not sell the acquired agricultural real estate to any other person:

(i) At a price equal to, or less than, that offered by the previous owner; or

(ii) On different terms or conditions than those extended to the previous owner without first notifying the previous owner by certified mail and providing an opportunity to buy the property at such price or under such terms and conditions.

(d) For purposes of this section, financing by the System institution is not a term or condition of the sale of acquired agricultural real estate. A System institution is not required to provide financing to the previous owner for purchase of acquired agricultural real estate.

§ 617.7615 What should the System institution do when it decides to lease acquired agricultural real estate?

(a) Notify the previous owner,

(1) Within 15 days of the System institution's decision to lease, it must notify the previous owner, by certified mail, of the property's appraised rental value, as established by an accredited appraiser, and of the previous owner's right to:

(i) Lease the property at a rate equivalent to the appraised rental value of the property, or

(ii) To offer to lease the property at rate that is less than the appraised rental value of the property.

(2) The notice must inform the previous owner that any offer must be received within 15 days of receipt of the notice.

(b) Act on an offer to lease the acquired agricultural real estate at a rate equivalent to the appraised rental value of the property.

(1) Within 15 days after receipt of such offer, the System institution may accept the offer to lease the property at the appraised rental value and lease the property to the previous owner, or

(2) Within 15 days after receipt of such offer, the System institution may reject the offer to lease the property at the appraised rental value when the institution determines that the previous owner:

(i) Does not have the resources available to conduct a successful farming or ranching operation; or

(ii) Cannot meet all the payments, terms, and conditions of such lease.

(c) Act on an offer to lease the acquired agricultural real estate at a rate that is less than the appraised rental value of the property.

(1) The System institution must consider the offer to lease the property at a rate that is less than the appraised rental value of the property. Notice of

the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of the offer.

(2) If the System institution accepts the offer to lease the property at less than the appraised rental value, it must notify the previous owner and lease the property to the previous owner.

(3) If the institution rejects the offer, the System institution must notify the previous owner of this decision. The previous owner has 15 days after receipt of the notice in which to agree to lease the property at such rate or under such terms and conditions. The System institution may not lease the property to any other person:

(i) At a rate equal to or less than that offered by the previous owner; or

(ii) On different terms and conditions than those that were extended to the previous owner without first informing the previous owner by certified mail and providing an opportunity to lease the property at such rate or under such terms and conditions.

§ 617.7620 What should the System institution do when it decides to sell acquired agricultural real estate at a public auction?

System institutions electing to sell or lease acquired agricultural real estate or a portion of it through a public auction, competitive bidding process, or other similar public offering:

(a) Must notify the previous owner, by certified mail, of the availability of such property. The notice must contain the minimum amount, if any, required to qualify a bid as acceptable to the institution and any terms or conditions to which such sale or lease will be subject;

(b) If the System institution receives two or more qualified bids in the same amount, the bids are the highest received, and one of the qualified bids is from the previous owner, the institution must accept the offer by the previous owner; and

(c) The System institution must not discriminate against a previous owner in these proceedings.

§ 617.7625 Whom should the System institution notify?

Each certified mail notice requirement in this section is fully satisfied by mailing one certified mail notice to the last known address of the previous owner or owners.

§ 617.7630 Does this Federal requirement affect any state property laws?

The rights provided under section 4.36 of the Act and this section do not affect any right of first refusal under the law of the state in which the property is located.

Dated: January 29, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–2506 Filed 2–3–03; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–178–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747SP, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747SP, and 747SR series airplanes. This proposal would require repetitive inspections to find fatigue cracking between the seal ribs of the front spar web of the wing, and repair of cracked structure. This proposal also provides for an optional modification of a certain area. This action is necessary to find and fix such fatigue cracking, which could result in fuel leakage into the area of the inboard engines, and consequent increased risk of a fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–178–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, 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: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; 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 2001–NM–178–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an operator found a 24-inch crack in the front spar web of the right wing between front spar station inboard (FSSI) 637 through 662 on a Boeing Model 747–100 series airplane having accumulated 14,830 total flight cycles and 85,116 total flight hours. Metallurgical analysis of the cracked section of the web revealed three cracks originating from a hole common to a rib post located on the front spar at FSSI 656 (wing station 642). The cracks were initiated by fatigue at the hole and were spread by fatigue for a short distance; then the cracks separated by a combination of fatigue and ductile separation. The cracks resulted in a fuel leak which was found after post-flight inspection revealed fire damage to the exhaust sleeve of the inboard engine turbine. Another operator reported finding a crack in the web at approximately FSSI 694, just outboard of a web section recently replaced per AD 99–10–09, amendment 39–11162 (64 FR 25194, June 15, 1999). Such fatigue cracking, if not found and fixed, could result in fuel leakage into the area of the inboard engines and consequent increased risk of a fire.

Related Rulemaking

This AD is related to the following rulemaking actions, which require the actions in the related service bulletins specified in Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002:

- AD 95–10–16, amendment 39–9233 (60 FR 27008, June 21, 1995). That AD references Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, as the appropriate source of service information for accomplishment of the modification of the nacelle strut and wing structure. That AD is applicable to certain Boeing Model 747 series airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines). The AD requires modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. The modification specified in the AD also constitutes terminating action for the repetitive inspections required by certain other ADs, including AD 98–15–21, amendment 39–10672 (63 FR 39487, July 23, 1998), which references Boeing Service Bulletin 747–57A2266 as the appropriate source of service information for accomplishment of the specified actions; and AD 90–17–18, amendment 39–6702 (55 FR 33279, August 15, 1990), which references Boeing Service Bulletin 747–57A2259 as the appropriate source of service information for accomplishment of the specified actions.
- AD 99–10–09, amendment 39–11162. That AD references Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997, as the appropriate source of service information for accomplishment of the actions specified. That AD is applicable to certain Boeing Model 747–100, –200, and 747–SP series airplanes and military type E–4B airplanes, and requires repetitive inspections to detect cracking of the wing front spar web, and repair of cracked structure. That AD also provides for optional terminating action for the repetitive inspections.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002. The service bulletin describes procedures for repetitive inspections to find fatigue cracking of the front spar web of the wing, and repair of cracked structure, as follows:

- For airplanes on which the optional modification specified in AD 99–10–09 has not been done, the affected area is divided into two zones (A and B). Zone A is the area previously modified per the requirements specified in AD 95–10–16 for the wing front spar; and Zone B is the remaining area between FSSI 628 and 711.
- For airplanes on which the optional modification specified in AD 99–10–09 has been done, the affected area is divided into three zones (A, B, and C). Zone A is the area previously modified per the requirements specified in AD 95–10–16 for the wing front spar, and is not affected by the requirements specified in AD 99–10–09; Zone C is the area affected by AD 99–10–09; and Zone B is the remaining area between FSSI 628 and 711.
- The inspection specified in Part 1 of the service bulletin is for Zone A, B, or C, as applicable. If no cracking is found, the inspections are repeated at the intervals specified in Figure 1 of the service bulletin. If cracking is found, the inspections are also repeated at the intervals specified in Figure 1 after the cracking is repaired.
- The modification specified in Part 2 of the service bulletin is for Zone B only. The modification includes removing the existing fasteners of the web to chord, web to rib post, and web to stiffener; straightening the holes; and doing an open-hole rotating probe high frequency eddy current inspection for cracking in the web. If no cracking is found, the service bulletin directs oversizing the holes and installing tension type fasteners in the holes; if any cracking is found, the service bulletin specifies contacting the manufacturer for repair instructions.

The service bulletin recommends prior or concurrent accomplishment of Boeing Service Bulletins 747–57A2259, 747–57A2266, and 747–54A2159. Those service bulletins are referenced in the related rulemaking described previously.

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 above, except as discussed below.

Difference Between Service Information and Proposed Rule

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be done 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 109 airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 25 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $88,500, or $1,500 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.

Should an operator elect to do the optional modification of Zone B, it would take approximately 480 work hours to accomplish at an average labor rate of $60 per work hour. Parts cost would be approximately $16,652. Based on these figures, the cost impact of the proposed modification is estimated to be $45,452 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:

BOEING: Docket 2001–NM–178–AD.

Applicability: Model 747–100, 747SP, and 747SR series airplanes, as listed in Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking between the seal ribs of the front spar web of the wing, which could result in fuel leakage into the area of the inboard engines, and consequent increased risk of a fire; accomplish the following:

Compliance Times

(a) Where the compliance times in the service bulletin specify a compliance time interval calculated ''after the release of this service bulletin,'' this AD requires compliance within the interval specified in the service bulletin ''after the effective date of this AD.'' In addition, where the compliance time for the initial inspection in Tables 1 through 3 of Figure 1 of the service bulletin specifies ''flight hours,'' this AD requires a compliance time of ''total flight hours.''

Initial and Repetitive Inspections

(b) Do detailed, high frequency eddy current and ultrasonic inspections to find cracking of the front spar web of the wing as specified in paragraphs (b)(1) and (b)(2) of this AD, per the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002.

(1) Do the applicable initial or post-modification inspection at the times specified for the inspections in Tables 1 through 3 of Figure 1 of the Accomplishment Instructions or Appendix A of the service bulletin.

(2) After doing the applicable initial or post-modification inspection specified in paragraph (b)(1) of this AD: Repeat that inspection within the applicable intervals specified in Tables 1 through 3 of Figure 1 of the Accomplishment Instructions or Appendix A of the service bulletin.

Repair

(c) If any cracking is found during any inspection required by this AD: 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.

Optional Modification

(d) Accomplishment of the modification of Zone B per Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002, would extend the threshold recommended in Tables 1 through 3 of Figure 1 of the Accomplishment Instructions or Appendix A of the service bulletin for the repetitive inspections of Zone B, to the new threshold specified in Tables 1 through 3 of Figure 1 of the service bulletin.

Previously Accomplished Inspections and Modifications

(e) Inspections and modifications done before the effective date of this AD per Boeing Special Attention Service Bulletin 747–57–2313, including Appendices A and B, dated April 19, 2001, are considered acceptable for compliance with the applicable actions specified in this AD.

Note 2: Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002, recommends prior or concurrent accomplishment of Boeing Service Bulletins 747–57A2259; 747–57A2266; and 747–54A2159. The modifications in those service bulletins are required by AD 95–10–16, amendment 39–9233.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

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

Issued in Renton, Washington, on January 29, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2495 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–2]

RIN 2120–AA66

Proposed Modification of the Tampa Class B Airspace Area; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 18, 1998. In that action, the FAA proposed to modify the Tampa, FL, Class B airspace area by renaming two existing subareas, configure the boundaries of three subareas, and create an additional subarea. However, the conditions that prompted the development of the proposal did not fully materialize. Therefore, the FAA has determined that withdrawal of the proposed rule is warranted in order to best serve aviation safety and the efficient management of aircraft operations in the Tampa terminal area.

DATES: This withdrawal is made as of February 4, 2003.

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

SUPPLEMENTARY INFORMATION:

Background

The basis for the proposed modification of the Tampa Class B airspace area was a 1991 recommendation by the Defense Base Realignment and Closure Commission that MacDill Air Force Base (AFB) be closed and the 56th Tactical Fighter Wing located there be deactivated. That action prompted the FAA to conduct a staff study of the Tampa terminal area to determine if any modifications to the Tampa Class B airspace area were warranted. The staff study resulted in a recommendation to raise the floor of Class B airspace over Tampa Bay south of MacDill AFB to the boundary of Sarasota-Brandenton Class C airspace area from the current 1,200 feet mean sea level (MSL) to 3,000 feet MSL. The airspace floor in that area was established at 1,200 feet MSL in 1990 as an additional safety measure between civil aircraft operating in the vicinity of Tampa International Airport and the F–16 fighter aircraft based at MacDill AFB.

In 1995, however, the Commission amended its findings and recommended that MacDill AFB remain open and continue to host an active flying mission. The F–16 unit, formerly assigned to the base, was replaced by an air refueling wing comprised of KC–135 heavy jet aircraft.

The decision that MacDill AFB would remain open with a continuing flying mission was acknowledged in the NPRM. The FAA elected to proceed with the proposal to modify the Class B airspace area because it was anticipated that the termination of the fighter mission would lead to fewer operations at MacDill AFB, as well as less high-speed, low-altitude military aircraft operations over Tampa Bay.

It is with this in mind that, on November 18, 1998, the FAA published an NPRM in the **Federal Register** (63 FR 64016) proposing to amend 14 CFR part 71 to modify the Tampa, Florida Class B airspace area. Interested parties were invited to participate in the rulemaking process by submitting written data, views, or arguments regarding the proposal.

The FAA received a total of nine comments on the proposal. The Aircraft Owners and Pilots Association (AOPA) wrote in support of the proposal stating that the elimination of Class B airspace below 3,000 feet MSL as proposed would result in more efficient use of the airspace by segments of the general aviation community. The United States Air Force (USAF) submitted two comments opposing the proposal. The USAF was concerned that the proposal to raise the floor of Class B airspace area, from 1,200 feet MSL to 3,000 feet MSL, south of MacDill AFB would pose a hazard to flight operations in the area. Another commenter also opposed the proposal stating that the existing 1,200-foot floor is necessary based on the amount of aircraft operations in the area, the number of airports located within a few miles of each other, and weather conditions over Tampa Bay that reduce long-range visibility much of the time. Five other commenters supported the proposal stating that the changes would benefit general aviation.

As a result of the NPRM, however, questions arose regarding the impacts of the change on the efficiency and safety of operations in the Tampa terminal area if the floor of Class B airspace area was raised from the current 1,200 feet MSL to 3,000 feet MSL, as proposed. These concerns were based on the fact that MacDill AFB did not close and that the airspace over Tampa Bay encompasses high density traffic operating to and from six airports in the vicinity.

Airspace Study

In January 2002, the FAA conducted a thorough review of the proposed Tampa, FL, Class B airspace area modifications to better evaluate these concerns. The review included an analysis of traffic flows within the Tampa Approach Control airspace, with special emphasis given to that segment of Class B airspace from MacDill AFB south to the boundary of the Sarasota-Bradenton Class C airspace area. In its review, the FAA considered the following information: MacDill AFB remains open and hosts a variety of aircraft operations including KC–135 heavy jets, aviation elements of the National Oceanic and Atmospheric Administration and the Department of Agriculture, and routine transient aircraft. In addition, fighter aircraft from other locations frequently deploy to, and operate from, MacDill AFB to conduct training in the nearby off-shore and over-land military special use airspace areas. The MacDill AFB aircraft operations count for the year 2001 totaled more than 30,000 operations, contributing to the overall complexity of airspace in the Tampa terminal area.

The Tampa Class B airspace area was configured to provide Class B airspace protection for air carrier aircraft serving the Tampa International Airport (the primary airport) and to enhance the management of air traffic operations in this high-density terminal area. Air traffic control makes extensive use of the Class B airspace segment over Tampa Bay to ensure the safe and efficient management of aircraft operations in the terminal area. Raising the floor of Class B airspace to 3,000 feet MSL, as proposed, would place a significant portion of traffic in the Tampa terminal area outside of Class B airspace during critical phases of flight. For example, arrivals to Runways 36L/36R at Tampa International Airport are descended to 2,600 feet MSL to be at the approach intercept altitude. This altitude is 1,000 feet above the approach intercept altitude of 1,600 feet MSL used for Runway 04 at MacDill AFB. This altitude difference provides the required instrument flight rules separation between Tampa and MacDill arrivals. Aircraft departing Runway 22

at MacDill AFB are initially stopped at 1,600 feet MSL, southbound, in order to provide separation from Tampa arrivals and departures. When multiple aircraft are being vectored in the radar pattern for Runway 04 at MacDill AFB, the pattern often extends to the southwest of MacDill AFB as far as the Skyway Bridge and beyond.

In addition to the Tampa International Airport and MacDill AFB operations described above, the same general airspace is used by other aircraft descending into, or departing from, the Albert Whitted (SPG), St. Petersburg-Clearwater International (PIE), Peter O. Knight (TPF), and Sarasota-Bradenton International (SRQ) Airports. Arrivals to these airports are normally descended to 2,000 feet MSL to intercept the approach. The final approach paths for these airports lie within 10 nautical miles of each other.

The airspace segment from MacDill AFB southward to the Sarasota-Bradenton Class C airspace boundary contains a high volume of aircraft operations and a widely varied mix of instrument flight rules and visual flight rules aircraft operations.

Decision

Based on this latest study, the FAA has concluded that the current configuration of the Tampa Class B airspace area best provides for the safety and efficiency of operations within the Tampa terminal area.

In light of these considerations, the FAA has reexamined the proposed modification of the Tampa Class B airspace area and has decided to withdraw the proposal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 97–AWA–2, as published in the **Federal Register** on November 18, 1998 (63 FR 64016), is hereby withdrawn.

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

Issued in Washington, DC, on January 29, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–2526 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD14–03–001]

RIN 2115–AA97

Security Zones; Oahu, Maui, Hawaii, and Kauai, HI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI. These security zones and a related amendment to regulations for anchorage grounds in Mamala Bay are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature during operations and will extend from the surface of the water to the ocean floor. Entry into the proposed zones would be prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI.

DATES: Comments and related material must reach the Coast Guard on or before April 7, 2003.

ADDRESSES: You may mail comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Blvd., Honolulu, Hawaii 96813. Marine Safety Office Honolulu maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Honolulu between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG E. G. Cantwell, U.S. Coast Guard Marine Safety Office Honolulu, Hawaii at (808) 522–8260.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD14–03–001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

To provide additional notice, we will place a notice of our proposed rule in the local notice to mariners. You may request a copy of this notice via facsimile by calling (808) 522–8260.

In our final rule, we will include a concise general statement of comments received and identify any changes from the proposed rule based on the comments. If, as we expect, we will make the final rule effective in less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Honolulu at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Terrorist attacks in New York City, New York and on the Pentagon Building in Arlington, Virginia, on September 11, 2001, have called for the implementation of additional measures to protect national security. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. This proposed rule is similar to a temporary rule published October 30, 2002, creating security zones in these areas until April 19, 2003.

Discussion of Proposed Rule

The Coast Guard proposes designated security zones in the waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI. These security zones are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature during operations. In addition to creating security zones, this proposed rule would also amend an anchorage grounds regulation by adding the requirement that permission of the Captain of the Port be obtained before entering anchorage grounds in Mamala Bay.

These proposed security zones extend from the surface of the water to the ocean floor.

Entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI. Representatives of the Captain of the Port Honolulu will enforce these security zones. The Captain of the Port may be assisted by other federal or state agencies. Periodically, by Broadcast Notice to Mariners, the Coast Guard will announce the existence or status of the security zones in this proposed rule.

These proposed security zones are intended to provide for the safety and security of the public, maritime commerce, and transportation, by creating security zones in designated harbors, anchorages, facilities, and adjacent navigable waters of the United States.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that vessels will be able to freely transit the areas outside of any security zones. In addition, the COTP can allow vessels to transit the security zones on a case-by-case basis.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. No small business impacts are anticipated due to the small size of the zones.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Because we did not anticipate any small business impacts, we did not offer assistance to small entities in understanding the rule.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard proposes to

amend 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. In § 110.235 add a new paragraph (c) to read as follows:

§ 110.235 Pacific Ocean (Mamala Bay), Honolulu Harbor, Hawaii (Datus: NAD 83)

* * * * *

(c) Before entering into the anchorage grounds in this section you must first obtain permission from the Captain of the Port Honolulu.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

4. A new § 165.1407 is added to read as follows:

§ 165.1407 Security Zones; Oahu, Maui, Hawaii, and Kauai, HI

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones:

(1) All waters of Honolulu Harbor and entrance channel, Keehi Lagoon, and General Anchorages A, B, C, and D as defined in 33 CFR 110.235 that are shoreward of the following coordinates: The shoreline at 21°–17.68′N/157°–52.0′W; thence due south to 21°–16.0′N/157–52.0′W, thence due west to 21°–16.0′N/157°–55.58′W, thence due north to Honolulu International Airport Reef Runway at 21°–18.25′N/157°–55.58′W.

(2) The waters around the Tesoro Single Point and the Chevron Conventional Buoy Moorings beginning at 21°–16.43′N/158°–6.03′W thence northeast to 21°–17.35′N/158°–3.95′W thence southeast to 21°–16.47′N/158°–3.5′W thence southwest to 12°–15.53′N/158°–5.56′W thence north to the beginning point.

(3) The Kahului Harbor and Entrance Channel, Maui, HI consisting of all waters shoreward of the COLREGS DEMARCATION line. (See 33 CFR 80.1460).

(4) All waters within the Nawiliwili Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line (See 33 CFR 80.1450).

(5) All waters of Port Allen Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line (See 33 CFR 80.1440).

(6) The waters within a 100-yard radius centered on each cruise ship in Hilo Harbor, Hawaii, HI and Entrance Channel shoreward of the COLREGS DEMARCATION (See 33 CFR 80.1480). This is a moving security zone when the cruise ship is in transit and becomes a fixed zone when the cruise ship is anchored or moored.

(7) The waters extending out 500 yards in all directions from cruise ships anchored or position keeping within 3 miles of:

(i) Lahaina Harbor, Maui, between Makila Point and Puunoa Pont.

(ii) Kailua-Kona Harbor, Hawaii, between Keahulolu Point and Puapuaa Point.

(8) All waters contained within the Barbers Point Harbor, Oahu, enclosed by a line drawn between Harbor Entrance Channel Light 6 and the jetty point day beacon at 21°–19.5′N/158°–07.3′W.

(b) *Designated Representative:* A designated representative of the Captain of the Port is any Coast Guard commissioned officer, warrant or petty officer that has been authorized by the Captain of the Port Honolulu to act on his behalf.

(c) *Cruise ship:* For the purposes of this section, the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. A ''voyage'' in this section means the cruise ship's entire course of travel, from the first port at which the cruise ship embarks passengers until its return to that port or another port where the majority of passengers are disembarked and terminate their voyage.

(d) *Regulations.* (1) In accordance with § 165.33, entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his designated representatives. Section 165.33 also contains other general requirements.

(2) The existence or status of the security zones in this section will be announced periodically by Broadcast Notice to Mariners.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at command center telephone number (808) 541–2477 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his designated representatives.

Authority: In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: January 17, 2003.

G.A. Wiltshire,

Captain, U.S. Coast Guard, Commander, Fourteenth Coast Guard District (Acting).

[FR Doc. 03–2523 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–151; MB Docket No. 02–263; RM–10498, RM–10606]

Radio Broadcasting Services; Eagar and Safford, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses the petition for rule making filed by Graham County FM Associates, requesting the allotment of Channel 246C3 to Safford, Arizona, as that community's second local aural transmission service. No expression of interest was filed requesting the allotment of Channel 246C3 at Safford, Arizona. It is Commission's policy to refrain from making a new allotment to a community absent an expression of interest. A counterproposal was filed by Eagar Broadcasting proposing the allotment of Channel 246C at Eagar, Arizona, as that community's first local aural transmission service. On December 30, 2002, Eagar Broadcasting filed a Request for Approval of Withdrawal for its counterproposal filed in this proceeding. This document grants the Request for Approval of Withdrawal and dismisses the counterproposal filed by Eagar Broadcasting proposing the allotment of Channel 246C at Eagar, Arizona, as that community's first local aural transmission service.

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

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–263, adopted January 15, 2003, and released January 21, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference

Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2474 Filed 2–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–142; MB Docket No. 02–330, RM–10588]

Radio Broadcasting Services; Jasper, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division dismisses a petition for rule making filed by JEM Broadcasting Company, Inc., requesting the allotment of Channel 245A to Jasper, Arkansas, as that community's first local aural transmission service. *See* 67 FR 69703, November 19, 2002. JEM Broadcasting Company, Inc, or no other party, filed comments in support of the allotment of Channel 245A to Jasper, Arkansas. It is the Commission's policy to refrain from making a new allotment to a community absent an expression of interest.

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

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–330, adopted January 15, 2003, and released January 17, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2475 Filed 2–3–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 23
Tuesday, February 4, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Crook County Resource Advisory Committee, Sundance, Wyoming, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Tuesday February 18, 2003 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on February 18, begins at 6:30 PM, at US Forest Service, Bearlodge Ranger District Office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include reviewing NEPA requirements and project proposals. A public forum will begin at 8:30 PM (MT).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Office, at (307) 283–1361.

Dated: January 28, 2003.

Steve Kozel,

Bearlodge District Ranger.

[FR Doc. 03–2631 Filed 2–3–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD DECEMBER 20, 2002—JANUARY 22, 2003

Firm name	Address	Date petition accepted	Product
Mauston Tool Corporation	1015 Parker Drive, Mauston, WI 53948.	12/20/02	Injection molds for plastics.
Nu-Way Industries, Inc.	555 Howard Avenue, Des Plaines, Il 60018.	12/20/02	Outdoor metal enclosures used to house cellular telecommunications equipment.
ChipBlaster, Inc.	P. O. Box 1057, Meadville, PA 16335.	01/02/03	High pressure coolant machinery.
Dan River, Inc.	P. O. Box 261, Danville, VA 24543.	01/08/03	Fabric for the apparel, home fashion and automobile industries.
Fielding Manufacturing	780 Wellington Avenue, Cranston, RI 02910.	01/08/03	Miniature zinc die castings, and plastic injection molded parts.
Moldmaster Engineering, Inc.	187 Newell Street, Pittsburgh, MA 01202.	01/15/03	Injection molds for plastic and plastic parts.
Harbor Furniture Manufacturing, Inc, dba Table Topics.	27418 Highway 98E, Elberta, AL 36530.	01/15/03	Table tops for institutional and restaurant furniture.
Lisa Marie, Inc.	P. O. Box 48001, Chignik, AK 99548.	01/21/03	Salmon.
Wainwright Industries, Inc.	17 Cermak Boulevard, St. Peters, MO 63376.	01/21/03	Metal stampings, fixtures for tools and custom machining.
Bethel Furniture Stock, Inc.	515 West Bethel Road	01/22/03	Wooden furniture parts-seats, panels, *etc.*

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: January 27, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 03–2486 Filed 2–3–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–827]

Certain Cased Pencils From the People's Republic of China: Initiation of Antidumping New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping New Shipper Review.

SUMMARY: The Department of Commerce (the Department) has received a request from Beijing Dixon Ticonderoga Stationery Company, Ltd. (Beijing Dixon) to conduct a new shipper review of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). In accordance with 19 CFR 351.214(d) of the Department's regulations, we are initiating this new shipper review.

EFFECTIVE DATE: February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Crystal Scherr Crittenden or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0989 or (202) 482–5193 respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2002 the Department received a request, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain cased pencils (cased pencils) from the PRC.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), Beijing Dixon's December 30, 2002 request for review certified that it did not export the subject merchandise to the United States during the period of investigation (POI) and that, since the initiation of the cased pencils investigation, it has never been affiliated with any exporter or producer which did export subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Beijing Dixon's request certified that its export activities are not controlled by the central government of the PRC.

In addition, pursuant to 19 CFR 351.214(b)(2)(iv), Beijing Dixon's request contained documentation establishing : the date on which the subject merchandise first entered the United States; the volume of that and other shipments; and, the date of the first sale to an unaffiliated customer in the United States.

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 provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 65 FR 17257 (March 31, 2000). Accordingly, we will issue a separate-rates questionnaire to the above-named respondent. If the respondent provides sufficient evidence that it is not subject to either *de jure* or *de facto* government control with respect to its exports of cased pencils, this review will proceed. If, on the other hand, Beijing Dixon does not demonstrate its eligibility for a separate rate, then Beijing Dixon will be deemed to be affiliated with other companies that exported cased pencils during the POI. This review will then be terminated due to failure of the exporter or producer to meet the requirements of section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(B).

Initiation of Review

The antidumping duty order on cased pencils from the PRC has a December anniversary month. *See Antidumping Duty Order: Certain Cased Pencils From the People's Republic of China*, 59 FR 66909 (December 28, 1994). The Department received Beijing Dixon's request for review on December 30, 2002. The Department's regulations provide that it will initiate a new shipper review in the calendar month immediately following the anniversary month if the request for the review is made during the six-month period ending with the end of the anniversary month. *See* 19 CFR 351.214(d)(1).

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on cased pencils from the PRC. We intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

Pursuant to 19 CFR 351.214(g)(1)(i)(A), 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 this new shipper is:

Antidumping duty proceeding	Period to be reviewed
Certain Cased Pencils from the PRC, A-570–827:.	
Beijing Dixon Ticonderoga Stationery Company, Ltd.	12/1/01–11/30/02

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Beijing Dixon in accordance with 19 CFR 351.214(e). Because Beijing Dixon certified that it both produces and exports the subject merchandise, the sale of which is the basis for this new shipper review request, we will apply the bonding privilege only to subject merchandise for which Beijing Dixon is both the producer and the exporter.

Interested parties must submit applications for disclosure under administrative protective order 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.

Dated: January 28, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–2595 Filed 2–3–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description, obtain a copy of the mission statement from the Project Officer indicated below.

Explore BC

Vancouver, Canada
February 25–26, 2003

Recruitment closes on February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Schell, U.S. Department of Commerce, telephone 604–642–6679, or e-mail to *Cheryl.Schell@mail.doc.gov*.

Explore BC

Vancouver, Canada
June 10–11, 2003

Recruitment closes on May 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Schell, U.S. Department of Commerce, telephone 604–642–6679, or e-mail to *Cheryl.Schell@mail.doc.gov*.

Tourism Infrastructure and Development Exhibition and Conference

Athens, Greece
October 17–20, 2003

Recruitment closes on March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Bradley, U.S. Department of Commerce, telephone 202–482–2085, or e-mail to *Phyllis.Bradley@mail.doc.gov*—or, in Greece, Ms. Irene Ralli, U.S. Embassy, Athens, telephone 30–1–720–2224 or e-mail to *Irene.Ralli@mail.doc.gov*.

Explore BC

Vancouver, Canada
November 18–19, 2003

Recruitment closes on October 10, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Schell, U.S. Department of Commerce, telephone 604–642–6679, or e-mail to *Cheryl.Schell@mail.doc.gov*.

Recruitment and selection of private sector participants for these trade missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Nisbet, U.S. Department of Commerce, telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov*.

Dated: January 30, 2003.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 03–2605 Filed 2–3–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of public hearing.

SUMMARY: This notice provides information concerning a public hearing to be held by the National Oceanic and Atmospheric Administration in Connecticut. The hearing involves an administrative appeal filed with the Department of Commerce by the Islander East Pipeline Company (Consistency Appeal of islander East Pipeline Company, L.L.C.).

DATES: NOAA will conduct the hearing during the public comment period for the appeal which runs through May 8, 2003. A specific date has not yet been confirmed. Additional information concerning the hearing will be available within approximately 30 days from the publication of this announcement.

ADDRESSES: A public hearing for the Islander East administrative appeal will take place in the State of Connecticut, at a site to be determined. The location will be announced in a subsequent **Federal Register** notice. Comments on issues relevant to the Secretary's decision of this appeal may be submitted by e-mail to *IslanderEast.comments@noaa.gov.* Comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record will be available at the Internet site *www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services. Also, public filings made by the parties to the appeal will be available at the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, CT.

FOR ADDITIONAL INFORMATION CONTACT: Branden Blum, Senior Counselor, NOAA Office of the General Counsel, via email at *gcos.inquiries@noaa.gov,* or at (301) 713–2967, extension 186.

SUPPLEMENTARY INFORMATION: Islander East Pipeline Company, L.L.C. (Islander East) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.,* asking that the Secretary override the State of Connecticut's objection to Islander East's proposed natural gas pipeline. The project would extend from an interconnection with an existing pipeline near North Haven, Connecticut, to a terminus on Long Island, New York, affecting the natural resources or land and water uses of Connecticut's coastal zone.

The National Oceanic and Atmospheric Administration, on behalf of the Secretary of Commerce, will conduct a public hearing for the Islander East appeal, at a location in the State of Connecticut. The purpose of the hearing is to obtain information relevant to issues to be decided by the Secretary in the appeal. A summary of relevant issues, as well as additional background information concerning the appeal, appears in a January 24, 2003, **Federal Register** announcement. *See* 68 FR 3513. A copy of the announcement also can be found on the Department of Commerce CZMA Consistency Appeals Web site located at *http://www.ogc.doc.gov/czma.htm.*

The public hearing is expected to be held during the Spring of 2003. Initial details concerning the hearing, such as the date and a specific locale, should be available within approximately 30 days from the publication of this announcement, via the Internet at the Web site address listed above and through a subsequent **Federal Register** notice.

Questions concerning the hearing may be sent via e-mail to *gcos.inquires@noaa.gov* or made by telephone to (301) 713–2967, extension 186.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: January 29, 2003.

James R. Walpole,

General Counsel.

[FR Doc. 03–2468 Filed 2–3–03; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

January 29, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.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 limits for certain categories are being adjusted for swing, carryover, and carryforward.

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 68 FR 1599, published on January 13, 2003). Also see 67 FR 72921, published on December 9, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 29, 2003.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on February 4, 2003, you are directed to adjust the limits for the following categories, as provided for in the agreement between the Governments of the United States and Cambodia:

Category	Adjusted twelve-month limit [1]
331/631	547,912 dozen pairs.
334/634	253,253 dozen.
335/635	105,859 dozen.
338/339	4,187,637 dozen.
340/640	1,221,446 dozen.
345	113,967 dozen.
347/348/647/648	4,696,415 dozen.
352/652	939,283 dozen.
435	23,976 dozen.
438	115,194 dozen.
445/446	140,793 dozen.
638/639	1,465,735 dozen.
645/646	343,465 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of 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. 03–2519 Filed 2–3–03; 8:45 a.m.

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

In the Matter of the New York Mercantile Exchange, Inc. Petition for Interpretation Pursuant to Section 1a(12)(C) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: In response to a petition from the New York Mercantile Exchange, Inc. (NYMEX or Exchange) the Commodity Futures Trading Commission (Commission), pursuant to section 1a(12)(C) of the Commodity Exchange Act (Act), is issuing an order that deems, subject to certain conditions, Exchange floor brokers and floor traders who are registered with the Commission, when acting in a proprietary trading capacity, to be ''eligible contract participants'' as that term is defined in section 1a(12) of the Act. Accordingly, subject to certain conditions as set forth in the Commission's order, NYMEX floor brokers and floor traders (collectively referred to hereafter as floor members), when acting for their own accounts, are permitted to enter into certain specified over-the-counter (OTC) transactions in exempt commodities pursuant to section 2(h)(1) of the Act. In order to participate, the floor member must have its OTC trades guaranteed by, and cleared at NYMEX by, an Exchange clearing member that is registered with the Commission as a futures commission merchant (FCM) and that meets certain minimum working capital requirements. The order is effective for a two-year period.

DATES: This order is effective February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202–418–5492. E-mail: *dandresen@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 1a(12) of the Act, as amended by the Commodity Futures Modernization Act of 2000 (CFMA), Pub. L. 106–554, which was signed into law on December 21, 2000, defines the term ''eligible contract participant'' (ECP) by listing those entities and individuals considered to be ECPs.[1] Under sections 2(d)(1), 2(g), and 2(h)(1) of the Act, OTC transactions [2] entered

[1] Included generally in Section 1a(12) as ECPs are financial institutions; insurance companies and investment companies subject to regulation; commodity pools and employee benefit plans subject to regulation and asset requirements; other entities subject to asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; governmental entities; brokers, dealers, and futures commission merchants (FCM) subject to regulation and organized as other than natural persons or proprietorships; brokers, dealers, and FCMs subject to regulation and organized as natural persons or proprietorships subject to total asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; floor brokers or floor traders subject to regulation in connection with transactions that take place on or through the facilities of a registered entity or an exempt board of trade; individuals subject to total asset requirements; an investment adviser or commodity trading advisor acting as an investment manager or fiduciary for another ECP, and any other person that the Commission deems eligible in light of the financial or other qualifications of the person.

[2] OTC transactions are transactions that are not executed on a trading facility. As defined in Section 1a(33)(A) of the Act, the term ''trading facility'' generally means ''a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.''

into by ECPs in an ''excluded commodity'' or an ''exempt commodity,'' as those terms are defined by the Act,[3] are exempt from all but certain requirements of the Act.[4] Floor brokers and floor traders are explicitly included in the ECP definition only to the extent that the floor broker or floor trader acts ''in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades.'' [5]

The Act, however, gives the Commission discretion to expand the ECP category as it deems appropriate. Specifically, section 1a(12)(C) provides that the list of entities defined as ECPs shall include ''any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.''

II. The NYMEX Petition

A. Introduction

By letter dated May 23, 2002, NYMEX submitted a petition for a Commission interpretation pursuant to section 1a(12)(C) of the Act.[6] Specifically, NYMEX, acting on behalf of Exchange floor members and member clearing firms, requested that the Commission make a determination pursuant to section 1a(12)(C) of the Act that floor members, when acting in a proprietary capacity, may enter into certain specified OTC transactions in exempt commodities pursuant to section 2(h)(1) of the Act if such Commission registrants have obtained a financial guarantee for such transactions from an Exchange clearing member that is registered with the Commission as an FCM.[7] NYMEX suggested that the permissible OTC transactions be limited to trading in a commodity that either (1) is listed only for clearing at the Exchange,[8] or (2) is listed for trading and clearing at the Exchange and where Exchange rules provide for the exchange of futures for swaps (EFS) in that contract.[9] NYMEX further proposed that such transactions would be subject to additional conditions and restrictions detailed in the petition and described below.[10]

The NYMEX petition was published in the **Federal Register** for public comment on June 19, 2002. [11] The Commission received comments from NYMEX and from the Intercontinental Exchange, an ECM. In its comment letter of July 17, 2002, NYMEX reaffirmed its strong interest in the determination requested in the petition and its strong belief that such a determination would have numerous pro-competitive results.[12]

B. Public Interest Considerations

In its petition, NYMEX stated that the requested determination is best considered against the overall context of the connection between the OTC and exchange markets, and that it is good public policy for the Commission to permit the strengthening of these ties when it is possible to do so. The petition stated that NYMEX has concluded that the ability of its floor members to trade OTC transactions pursuant to an FCM guarantee, particularly OTC swaps involving NYMEX or NYMEX ''look-alike'' products, is a pivotal component, for the four reasons described below, of the Exchange's business strategy to better serve its customers.

First, NYMEX stated that permitting its floor members to enter into OTC swaps would enhance their ability to provide liquidity to the Exchange's markets. Second, NYMEX stated that access to OTC markets would enhance floor members' ability to make tight markets in new Exchange products that would compete against the standardized look-alike contracts traded in the OTC markets.[13] Third, NYMEX stated that permitting its floor members to enter into EFS transactions with OTC counterparties would expand the pool of potential counterparties for OTC market participants and facilitate liquidity in the OTC marketplace. Finally, with respect to the clearing of OTC transactions, the Exchange intends that the open positions in futures

[3] Section 1a(14) defines the term ''exempt commodity'' to mean a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(13) defines the term ''excluded commodity'' to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt instrument, measure of inflation, or other macroeconomic index or measure. Although the term ''agricultural commodity'' is not defined in the Act, Section 1a(4) enumerates a non-exclusive list of several agricultural-based commodities and products. The broadest types of commodities that fall into the exempt category are energy and metals products.

[4] OTC transactions in excluded commodities entered into by ECPs pursuant to Section 2(d)(1) are generally not subject to any provision of the Act. OTC transactions in exempt or excluded commodities that are individually negotiated by ECPs pursuant to section 2(g) are generally not subject to any provision of the Act. OTC transactions in exempt commodities entered into by ECPs pursuant to section 2(h)(1) are generally not subject to any provision of the Act other than anti-manipulation provisions and anti-fraud provisions in certain situations.

[5] Section 1a(12)(A)(x) of the Act.

[6] In its petition, NYMEX also requested that the Commission make a determination pursuant to section 1a(11)(C) of the Act that floor members, when acting in a proprietary capacity, may also be considered to be eligible commercial entities (ECE) when they enter into certain specified transactions. Such a determination would permit NYMEX floor members to enter into transactions in exempt commodities on exempt commercial markets (ECM) pursuant to Section 2(h)(3) of the Act. On January 9, 2003, the Commission issued an order that deems, subject to certain conditions, floor brokers and floor traders who are registered with the Commission, when acting in a proprietary trading capacity, to be ECEs as that term is defined in Section 1a(11) of the Act. That order was published in the **Federal Register** on January 16, 2003. 68 FR 2319 (January 16, 2003).

[7] To qualify for the Section 2(h)(1) exemption, the transaction must: (1) Be in an exempt commodity, (2) be entered into by ECPs, and (3) not be entered into on a trading facility.

[8] By letter dated May 24, 2002, NYMEX filed rule changes that would implement an initiative to provide clearing services for specified energy contracts executed in the OTC markets. NYMEX certified that the rules comply with the Act and the Commission's regulations. Under the provision, NYMEX initially listed 25 contracts that are entered into OTC and accepted for clearing by NYMEX, but are not listed for trading on the Exchange. In connection with the NYMEX initiative, on May 30, 2002, the Commission issued an order pursuant to section 4d of the Act. The order provides that, subject to certain terms and conditions, the NYMEX Clearing House and FCMs clearing through the NYMEX Clearing House may commingle customer funds used to margin, secure, or guarantee transactions in futures contracts executed in the OTC markets and cleared by the NYMEX Clearing House with other funds held in segregated accounts maintained in accordance with section 4d of the Act and Commission Regulations thereunder.

[9] EFS transactions are permitted at the Exchange pursuant to NYMEX Rule 6.21A, Exchange of Futures for, or in Connection with, Swap Transactions. The swap component of the transaction must involve the commodity underlying a related NYMEX futures contract, or a derivative, by-product, or related product of such a commodity. In furtherance of its effort to permit OTC clearing at the Exchange, NYMEX amended the rule to include as eligible EFS transactions ''any contract executed off the Exchange that the Exchange has designated as eligible for clearing at the Exchange.''

[10] NYMEX also suggested a further limitation on floor members' permissible transactions by not permitting, initially, any transactions in electricity commodities.

[11] 67 FR 41698 (June 19, 2002). In that same **Federal Register** release, the Commission also requested comments with respect to NYMEX's request that the Commission make a determination pursuant to section 1a(11)(C) of the Act that floor members, when acting in a proprietary capacity, may also be considered to be ECEs when they enter into certain specified transactions, as well as a petition filed by the Intercontinental Exchange, Inc., requesting that the Commission issue an order pursuant to section 1a(11) that would expand the ECE category to include floor brokers and floor traders registered as such in the U.S. or with the U.K. Financial Services Authority. As previously noted, on January 9, 2003, the Commission issued an order that deems, subject to certain conditions, floor brokers and floor traders who are registered with the Commission, when acting in a proprietary trading capacity, to be ECEs as that term is defined in section 1a(11) of the Act.

[12] The Commission also received a comment letter, dated September 27, 2002, from the Managing Member of Hudson Capital Group, L.L.C., an options trading group. The commenter strongly supported the petition to allow NYMEX members to trade OTC energy products.

[13] In this regard, the petition states that 80 to 90 percent of energy swaps transactions involve standardized economic terms.

contracts created by the exchange of an OTC swap for a NYMEX future would be offset by an opposite transaction in the OTC market, thus providing a larger pool of market participants who would enter into a transaction initiating or liquidating a position on the Exchange.

With respect to the economic impact on OTC markets, the petition stated that permitting floor members to trade OTC transactions would increase competition and efficiency, enhance price discovery, and reduce the liquidity risk and the resultant increased market risk that arises from artificial barriers to entry in the markets. NYMEX stated that floor members participating in the OTC markets would perform the same functions they perform in the Exchange market including, among others, enhancing price discovery through the speed and efficiency of market adjustment to new fundamentals and facilitating adjustment of the market price to new information.

C. NYMEX's Analysis of the ECP Definition

In its petition, NYMEX contended that section 1a(12) of the Act supports its requested treatment of floor members as ECPs for a number of reasons. First, NYMEX stated that the treatment of floor members under the section 1a(12) ECP definition appears to be inconsistent in that it treats floor members differently based upon how they organize their businesses. Specifically, floor members who operate as natural persons are only considered ECPs if they satisfy a total asset standard.[14] By comparison, floor members that are organized as partnerships or proprietorships are considered ECPs if they are guaranteed by a specified entity and are not required to meet any total asset requirement.[15] The Exchange represented that floor trader registrations are generally made in the name of the individual and that exchange membership or seat ownership historically has been held in the name of one individual.[16]

Second, the petition stated that the treatment of floor members under Section 1a(12) is inconsistent with the treatment of brokers or dealers or foreign persons (performing similar roles or functions subject to foreign regulation) who are natural persons or proprietorships. Under section 1a(12)(viii), these persons may be considered to be ECPs by meeting either the total assets test of section 1a(12)(xi) or satisfying one of the provisions of 1a(12)(v). Thus, under section 1a(12)(v) a broker or dealer or foreign person operating as a natural person, but not a floor member similarly operating, is permitted to trade OTC products with a guarantee from one of the specified entities and without meeting any total asset requirements.

Third, NYMEX contended that floor members with FCM guarantees should be considered ECPs because the Act permits other entities to use guarantees as a substitute for meeting a total assets requirement. Specifically, NYMEX stated that section 1a(12)(v) of the Act permits a corporation, partnership, proprietorship, organization, trust, or other entity to obtain a guarantee or support via a letter of credit from a financial institution, insurance company, investment company, commodity pool, or governmental entity.

Finally, NYMEX argued that it is reasonable for floor members to rely on FCMs as guarantors.[17] Under section 1a(12)(A)(v), ''a corporation, partnership, proprietorship, organization, trust, or other entity'' may be considered an ECP if it is guaranteed by a commodity pool with more than $5 million in total assets. NYMEX pointed out that commodity pools generally are not in the business of conducting risk management for or providing guarantees in connection with trading in the OTC markets. NYMEX stated that if commodity pools are allowed to provide guarantees, then FCMs, who are in the business of monitoring trading by the Exchange members that they guarantee, should be permitted to provide such guarantees for floor members. NYMEX stated that its rules provide that each Exchange clearing member registered as an FCM must maintain minimum working capital of at least $5 million.[18]

D. Trading Restrictions and Exchange Oversight

In its petition, NYMEX represented that it would have appropriate compliance systems in place to monitor OTC trading by Exchange floor members. Because all the permissible OTC trading subsequently would be cleared at the Exchange, NYMEX would be able to obtain information concerning the OTC transactions as part of a review of the exchange of futures for physicals (EFP) or the EFS transaction bringing the transaction to the Exchange for clearing. Failure to comply with a request to provide such information pursuant to the Exchange's EFP or EFS rules would result in a referral to the Exchange's Business Conduct Committee for further action.

NYMEX also suggested that, consistent with the standards which already apply to floor members with respect to their trading on the Exchange, the Commission should provide that floor members' transactions in the permissible contracts that are not executed on a trading facility be executed only pursuant to the section 2(h)(1) exemption. As indicated above, all section 2(h)(1) transactions would be subject to the Commission's anti-manipulation provisions and, in certain situations, anti-fraud provisions.[19] Finally, the Exchange represented that it would agree, as a condition for its members participating in the OTC markets, to limit OTC trading by floor members such that the counterparties to their trades must not be floor members

[14] Section 1a(12)(A)(xi) provides that an individual who meets either of two total asset tests is an ECP. An individual must either have total assets in an amount in excess of $10,000,000, or of $5,000,000 and enter ''into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.''

[15] Section 1a(12)(A)(v) provides that a corporation, partnership, proprietorship, organization, trust, or other entity that meets one of three tests is an ECP. The entity must either (1) have total assets exceeding $10,000,000; (2) have its obligations guaranteed or otherwise supported by (subject to total assets or other requirements) a financial institution, insurance company, investment company, commodity pool, or governmental entity; or (3) have a net worth exceeding $1,000,000 and enter ''into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset owned or liability incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business.''

[16] NYMEX's argument on this point is premised on the assumption that floor brokers and floor traders may alternatively qualify as ECPs under provisions of the ECP definition that specifically refer to ''a corporation, partnership, proprietorship, organization, trust, or other entity'' (section 1a(12)(A)(v)) and to ''an individual'' (section 1a(12)(A)(xi)). At present, the Commission is neither accepting nor rejecting the Exchange's interpretation of the ECP definition, but is exercising the authority granted under section 1a(12)(C). As previously noted, the only provision of the ECP definition that specifically refers to floor brokers or floor traders is section 1a(12)(A)(x), which includes within the definition of ECP a floor broker or floor trader to the extent that the floor broker or floor trader acts in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades.

[17] The Commission believes that the FCM guaranteeing the OTC transactions should also have the obligation to clear the transactions at NYMEX.

[18] Pursuant to NYMEX Rule 9.21(B), each clearing member registered with the Commission as an FCM must have and maintain minimum working capital equal to or in excess of the greater of $5 million or the amount prescribed in Commission Regulation 1.17. As an additional safeguard for the clearing system, the Commission believes that a higher capitalization standard would be appropriate where the clearing member FCM is guaranteeing the OTC transactions of a floor member.

[19] *See supra* note 4.

for contracts that are listed for trading on the Exchange. Thus, for example, floor members could not be counterparties in connection with an OTC natural gas swap to be exchanged for a futures position in the NYMEX Natural Gas futures contract. NYMEX floor members could be counterparties in connection with a Chicago Basis swap that is subsequently cleared at NYMEX through EFS procedures because that contract is listed only for clearing at the Exchange.

IV. Conclusion

After consideration of the NYMEX petition and review of the comments, the Commission has determined that NYMEX floor members, subject to certain conditions and for a two-year period commencing on the date of publication of the order in the **Federal Register**, are eligible to be ECPs as that term is defined in section 1a(12) of the Act.[20] The floor members meet the financial qualifications of an ECP by having a financial guarantee for the OTC transactions from a NYMEX clearing member that is registered as an FCM and must satisfy certain minimum working capital requirements.

The Commission is aware that the execution and clearing of such transactions has financial implications for the clearing system.[21] Thus, the Commission is adding the following safeguards to limit the possibility of a trader entering into OTC transactions that could create financial difficulty for the guarantor FCM, the clearing entity or other clearing firms. First, the guarantor FCM must clear, at NYMEX, every OTC transaction for which it provides such a guarantee. Second, in order to assure that the guarantor FCM is adequately capitalized, the guarantor FCM must have and maintain at all times minimum working capital of at least $20 million; provided that, however, during the first 18 months following publication of the order a clearing member must have and maintain minimum working capital of at least:

(a) $5 million during the first twelve months of the two-year period; and

(b) $10 million during the thirteenth through eighteenth months of the two-year period.

If, during the 18-month period, a clearing member does not maintain working capital of at least $20 million, it must further reduce its working capital, to determine if it is in compliance with paragraphs (a) or (b) above, by 100 percent of the NYMEX margin requirements for the OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to the order. A clearing member must compute its working capital in accordance with exchange rules and generally accepted accounting principles consistently applied.[22]

Another qualification of floor members that the Commission finds significant with respect to the eligibility of floor members to be ECPs is trading expertise. The Commission believes that the participation of floor members in the OTC markets under the circumstances described here potentially could, among other things, increase liquidity on the Exchange and in the OTC marketplace, increase competition and efficiency, and expand the pool of counterparties for OTC market participants.

The Commission has determined to make the order effective for a two-year period in order to provide the opportunity to evaluate the impact of the OTC trading on both the OTC market and on NYMEX. Thus, the Commission is requiring that NYMEX submit a report reviewing its experiences and the experiences of its floor brokers, floor traders and clearing members with respect to OTC trading, including the levels of OTC trading and related clearing activity; the number of floor brokers, floor traders and clearing members who participated in these activities; and an evaluation of whether the Commission should extend this Order and, if so, whether any modifications should be made thereto. This report would address the first eighteen months of the two-year period, and must be submitted to the Commission no later than 30 days after the conclusion of eighteen months.

Accordingly, the Commission has determined, consistent with the NYMEX petition, that it is appropriate to issue an order, pursuant to section 1a(12)(C) of the Act, that includes, subject to certain conditions and for a two-year period commencing on the date of publication of the order in the **Federal Register**, NYMEX floor brokers and floor traders within the definition of ECPs who can enter into OTC transactions pursuant to section 2(h)(1) of the Act. Although this order applies only to NYMEX and NYMEX members, the Commission would welcome, in response to a petition so requesting, providing substantially similar relief to other designated contract markets and members of designated contract markets.

IV. Cost Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, section 15 does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The order is intended to reduce regulatory barriers to permit NYMEX members registered with the Commission as floor brokers or floor traders, when acting in a proprietary capacity, to enter into OTC transactions in exempt commodities pursuant to section 2(h)(1) of the Act if such floor members have obtained a financial guarantee for such transactions from an Exchange clearing member that is registered with the Commission as an FCM. The Commission has considered

[20] A NYMEX floor member who is determined to be an ECP based upon compliance with the provisions set forth in the Commission's order is an ECP only for the purpose of entering into transactions executed pursuant to Section 2(h)(1) of the Act and as described in the order.

[21] The Commission notes that the guarantor FCM could restrict or otherwise condition the trading for which the guarantee is provided. The guarantor could, for instance, limit trading to certain commodities, place financial limits on overall or daily positions, or restrict trading by number or size of acceptable transactions.

[22] The Commission believes that the guarantor FCM should ultimately have and maintain minimum working capital of $20 million, but is providing less-capitalized FCMs that wish to guarantee OTC transactions with the opportunity to do so during the 18-month transition period in which they increase their working capital. The Commission notes that the $20 million requirement is somewhat analogous to the eligible trader requirements for trading on a registered derivatives transaction execution facility (DTEF). Pursuant to section 5a(b)(3) of the Act, to trade on a DTEF, a person must either be an ECP or trade through an FCM that, among other things, has net capital of at least $20 million.

the costs and benefits of the order in light of the specific provisions of section 15(a) of the Act.

A. Protection of Market Participants and the Public

The order would permit, for a two-year period commencing on the date of its publication in the **Federal Register**, a registered floor broker or floor trader to participate in the OTC markets, subject to a guarantee from an Exchange clearing member registered as an FCM, as well as to Exchange oversight and certain trading restrictions. Accordingly, there should be no effect on the Commission's ability to protect market participants and the public.

B. Efficiency and Competition

The order is expected to benefit efficiency and competition by, among other things, increasing the flow of trading information to the Exchange, enhancing the ability of floor members to make tight markets in products that compete against standardized look-alike contracts traded in the OTC markets, and increasing the pool of potential counterparties for OTC market participants.

C. Financial Integrity of Futures Markets and Price Discovery

The order should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of the futures and options markets. The order may have a favorable effect in creating benefits with respect to the price discovery function of such markets.

D. Sound Risk Management Practices

The order should have no effect, from the standpoint of imposing costs, on the risk management practices of the futures and options industry. Clearing member FCMs that would, on a case-by-case basis, be extending guarantees to floor members for OTC trading have developed risk management practices in connection with extending similar guarantees to floor members for trading executed at the Exchange. Because the scope of permissible trading would be limited to OTC transactions that subsequently are cleared at the Exchange, clearing member FCMs could apply existing risk management practices and procedures. The order would enhance the ability of floor members to manage the risks associated with the positions they establish in Exchange contracts.

E. Other Public Interest Considerations

The order is consistent with one of the purposes of the Act as articulated in Section 3 in that it would promote responsible innovation and fair competition among boards of trade, other markets and market participants.

V. Order

Upon due consideration, and pursuant to its authority under section 1a(12)(C) of the Act, the Commission hereby determines that a NYMEX member who is registered with the Commission as a floor broker or a floor trader, when acting in a proprietary trading capacity, is deemed to be an eligible contract participant and may enter into Exchange-specified OTC contracts, agreements or transactions in an exempt commodity under the following conditions:

1. This Order is effective for two years commencing on the date of its publication in the **Federal Register**.

2. The contracts, agreements or transactions must be executed pursuant to section 2(h)(1) of the Act.

3. The floor broker or floor trader must have obtained a financial guarantee for the contracts, agreements or transactions from a NYMEX clearing member that:

(a) Is registered with the Commission as an FCM; and,

(b) Clears the OTC contracts, agreements or transactions thus guaranteed.

4. Permissible contracts, agreements or transactions must be limited to trading in a commodity that either:

(a) Is listed only for clearing at NYMEX or

(b) Is listed for trading and clearing at NYMEX and NYMEX's rules provide for exchanges of futures for swaps in that contract, and each OTC contract, agreement or transaction executed pursuant to the order must be cleared at NYMEX.

5. The floor broker or floor trader may not enter into OTC contracts, agreements or transactions with another floor broker or floor trader as the counterparty for contracts that are listed for trading on the Exchange.

6. NYMEX must have appropriate compliance systems in place to monitor the OTC contracts, agreements or transactions of its floor brokers and floor traders.

7. Clearing members that guarantee and clear OTC contracts, agreements or transactions pursuant to this Order must have and maintain at all times minimum working capital of at least $20 million; provided, however, that during the first 18 months following publication of the order a clearing member must have and maintain minimum working capital of at least:

(a) $5 million during the first twelve months of the two-year period; and

(b) $10 million during the thirteenth through eighteenth months of the two-year period.

If, during the 18-month period, a clearing member does not maintain working capital of at least $20 million, it must further reduce its working capital, to determine if it is in compliance with paragraphs 7(a) or 7(b) of the order, by 100 percent of the NYMEX margin requirements for the OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to the order. A clearing member must compute its working capital in accordance with exchange rules and generally accepted accounting principles consistently applied.

8. NYMEX will submit a report to the Commission reviewing its experiences and the experiences of its floor brokers, floor traders and clearing members under this Order, including the levels of OTC trading and related clearing activity; the number of floor brokers, floor traders and clearing members who participated in these activities; and an evaluation of whether the Commission should extend this Order and, if so, whether any modifications should be made thereto. This report will address the first eighteen months of this Order's two-year period, and must be submitted to the Commission no later than 30 days after the conclusion of those eighteen months.

This Order is based upon the representations made and supporting material provided to the Commission by NYMEX. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the provisions set forth herein are appropriate. Further, if experience demonstrates that the continued effectiveness of this Order would be contrary to the public interest, the Commission may condition, modify, suspend, terminate or otherwise restrict the provisions of this Order, as appropriate, on its own motion.

Issued in Washington, DC, on January 29, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–2507 Filed 2–3–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on February 20, 2002, an arbitration panel rendered a decision in the matter of *Arthur Stevenson* v. *Oregon Commission for the Blind (Docket No. R–S/01–08).* This panel was convened by the U.S. Department of Education under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by petitioner, Arthur Stevenson.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute alleged that the Oregon Commission for the Blind, the State licensing agency (SLA), denied Mr. Arthur Stevenson, complainant, due process by refusing to grant him a State fair hearing concerning the operation and administration of the Oregon Randolph-Sheppard vending facility program in violation of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: Since 1986, complainant operated vending facilities in the Oregon Randolph-Sheppard vending facility program. In 1998, he was selected to operate a vending facility route in Multnomah County, Oregon. The vending route was comprised of vending machines that dispensed sodas and other beverages located in county buildings.

Later, after complainant began managing the Multnomah County vending route, he requested that the SLA place snack machines in the county buildings on his route. The complainant alleged that the SLA denied his request due to lack of funds to purchase the snack machines. Then, complainant alleged that he asked for, and the SLA agreed to pay him, a monthly amount as ''fair minimum return'' to assist in increasing his income. The SLA denied his request when complainant asked that the monthly amount be retroactive to April 1998, the date of his initial request for a ''fair minimum return.''

Next, the complainant asked that the SLA add vending machines at the Sheridan Federal Prison to his vending route. This request was also denied. On August 9, 1999, the complainant requested that the SLA provide him with a State fair hearing on the denial of adding vending machines at the Sheridan Federal Prison. On June 13, 2000, the SLA responded to the complainant by denying his request for a fair hearing on the basis that the issue of facility assignment was the sole discretion of the SLA.

In November 2000, the SLA added the snack machines to complainant's vending route, and, in December 2000, the SLA submitted the complainant's August 1999 complaint to the State's hearing office. The hearing officer ruled that, according to Oregon Law, a nonattorney could not represent complainant at the State fair hearing.

Subsequently, complainant filed for a Federal arbitration hearing alleging that the SLA failed to provide due process to him regarding his grievance as provided by the Act and implementing regulations. A hearing on this matter was held on December 3, 4, and 5, 2001.

Arbitration Panel Decision

The issues heard by the panel were—(1) whether the SLA prevented the complainant from exercising his right to administrative remedy by refusing to proceed with a State fair hearing; and (2) whether the SLA failed to administer properly the Randolph-Sheppard vending facility program by denying the complainant's request to add vending machines from the Sheridan Federal Prison and other locations to his vending route. For his remedy, the complainant requested $59,800 in damages for loss of income and an additional $2000 per month for every month a resolution of his grievance was not attained.

Following the December 2001 Federal arbitration hearings, the parties entered into discussions on possible settlement options. Subsequently, both the complainant and the SLA signed a settlement agreement in January 2002.

The terms of the settlement agreement were— (1) the SLA would pay the complainant a money settlement in the amount of $22,500 for damages and costs; (2) the SLA agreed to secure additional vending routes for complainant; and (3) the SLA agreed to make all reasonable and diligent efforts to formalize existing permit agreements or secure new permit agreements for additional vending machines to be operated by complainant.

After reviewing all of the evidence and hearing testimony, the panel found that the SLA had acknowledged financial responsibility to complainant for not securing additional vending routes for him. Also, the panel found that the SLA failed to exercise its best efforts to obtain additional permits for the operation of vending machines by complainant.

Concerning the settlement agreement, the panel determined that two of the original issues brought by the complainant were moot as the result of both parties signing the settlement agreement. The issues were—(1) the adding of vending machines at the Sheridan Federal Prison to complainant's vending route; and (2) the complainant's allegation that the SLA had prevented him from exercising his right to administrative remedy by refusing him a State fair hearing because he was represented by a nonattorney.

Finally, the panel ruled that the settlement agreement was reasonable and fair and that both parties had entered into the settlement agreement in good faith. Therefore, the panel adopted the settlement agreement as the panel's final opinion and award.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3232, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–8536. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

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Dated: January 29, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–2476 Filed 2–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on January 23, 2002, an arbitration panel rendered a decision in the matter of *J. Allen Tharp* v. *Texas Commission for the Blind Docket No. R–S/99–9).* This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by petitioner, J. Allen Tharp.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged failure of the Texas Commission for the Blind, the State licensing agency (SLA), to properly administer the Randolph-Sheppard vending facility program in violation of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: Complainant, J. Allen Tharp, is a contract manager for a large cafeteria food service operated by the SLA and Food Service, Inc., under a teaming agreement at Lackland Air Force Base in San Antonio, Texas.

On October 13, 1998, complainant filed a complaint with the SLA asserting his dissatisfaction with actions taken by the SLA in the operation of the cafeteria. Complainant requested a State fair hearing, which was denied by the SLA. In denying complainant's request for a hearing, the SLA determined that the complainant did not identify the actions taken by the SLA to which he objected, nor had the complainant indicated the timeframe in which they occurred. Therefore, in finding that the complaint did not comply with State regulations, the SLA refused to refer the complaint to the Texas State Office of Administrative Hearings (SOAH).

On November 4, 1998, the complainant filed a second demand for a hearing. Again, the SLA determined that the complaint did not comply with State regulations. On November 10, 1998, the SLA requested that SOAH rule on whether it could request complainant to identify the facts of his complaint and the timeframe in which they occurred before the SLA referred the complaint to SOAH.

On February 10, 1999, the Administrative Law Judge (ALJ) affirmed the SLA's decision. The SLA dismissed the case without prejudice and adopted the hearing officer's decision as final agency action. On March 2, 1999, the complainant filed a request for arbitration with the Secretary of Education. Following the previous events, telephone conference calls occurred among attorneys for the complainant, the SLA, and representatives and counsel for the U.S. Department of Education (ED). The complainant and the SLA agreed that the complainant would submit a detailed grievance to SOAH, which the complainant filed on January 28, 2000. In a ruling dated August 16, 2000, the ALJ held that the statute of limitations required that a blind vendor file a grievance within 15 days following the occurrence of the action that is being grieved.

Subsequently, complainant filed an amended complaint for Federal arbitration, which was received by ED on November 16, 2000. The amended complaint incorporated by reference the issues stated in the original complaint filed on March 2, 1999, and also included an appeal of the ALJ's August 16, 2000, ruling on his grievance.

A hearing on this matter was held on November 29, 2001, and was limited to the only issue that was decided at the State fair hearing level.

Arbitration Panel Decision

The issue heard by the panel was whether the 15-working-day limitation period established by the Texas Commission for the Blind for blind vendors to file a grievance when they are dissatisfied with an action arising from the operation or administration of the Randolph-Sheppard vending facility program as provided by the Act and implementing regulations constituted a denial of due process to complainant, J. Allen Tharp.

After reviewing all of the record, the arbitration panel concluded that—(1) the 15-working-day limitation period is part of an administrative process, not part of a judicial process; (2) it is important that grievances be processed and resolved in a timely manner; and (3) the submission of a request for a State fair hearing is a simple and straightforward action. The hearing itself is held at a later time, giving ample time to prepare witnesses and to sort out legal issues. Finally, the panel ruled that the 15-working-day limitation period was mandatory.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3232, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–8536. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

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Dated: January 29, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–2477 Filed 2–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed on or before March 6, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to the OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3084. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 426–1068, FAX at (202) 426–1081, or e-mail at *Grace.Sutherland@eia.doe.gov.*

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collections submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–846 A/B/C, ''Manufacturing Energy Consumption Survey''.
2. Energy Information Administration.
3. OMB Number 1905–0169.
4. Three-year extension.
5. Mandatory.
6. EIA–846 (A), (B), and (C) will be used to collect data on energy consumption and related subjects for the manufacturing sector of the U.S. economy. In addition to being used for the National Energy Modeling System, the MECS is used to augment a database on the manufacturing sector. Respondents are manufacturing establishments. In addition to the changes proposed in an earlier August 26, 2002 **Federal Register** notice (67 FR 54797) soliciting public comments on MECS, EIA is proposing to add questions to the MECS regarding the production of steam and other thermal output. The first two items will be located in what was Section 3 of 1998 MECS questionnaires. The first question will ask for the amount of steam produced within onsite combined-heat-power/cogeneration units and the second question will ask for the amount of steam produced in steam only (or hot water only) boilers. These changes mirror what is currently asked on Section 2, Electricity. The MECS has always asked for the amount of steam and hot water produced from renewable energy, such as from solar and geothermal means, and will continue to do so.

Another related change is a modification to the end-use matrix. EIA proposes to subdivide the current end-use category ''boiler fuel'' into consumption used for ''boiler fuel in a combined-heat-power/cogeneration process'' and ''any boiler fuel not included (in the previous category). Please note that in those questions and others, no end-use categorization of steam and hot-water is required.

These additional changes are proposed because of the increasing focus on issues related to combined heat and power and the need for information on this topic. As steam and electricity production leave the direct control of the manufacturing plant, EIA needs a better understanding of the effects on energy consumption.

7. Business or other for-profit.
8. 55,291 (18,000 respondents X 1 response per year X 9.22 hours) With a 3-year approval, the burden is prorated over the three-year period and averaged from a total of 165,873 hours.

Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, January 21, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–2509 Filed 2–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Record of Decision, Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Trapp, Clark County, KY

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (DOE) has prepared an environmental impact statement (EIS) (DOE/EIS–0318) to assess the environmental impacts associated with a proposed project that would be cost-shared by DOE and Kentucky Pioneer Energy, LLC (KPE) under DOE's Clean Coal Technology (CCT) Program. The project would provide a commercial scale application of a modified version of the British Gas Lurgi (BGL) integrated gasification combined cycle (IGCC) technology utilizing a co-feed of coal and Refuse Derived Fuel (RDF). The proposed project location is a previously disturbed site owned by East Kentucky Power Cooperative (EKPC) approximately 3.2 kilometers (2.0 miles) west of Trapp, Kentucky. After careful consideration of the potential environmental impacts, along with program goals and objectives, DOE has decided that it will provide approximately $60 million in Federal funding support (about 15% of the total cost of approximately $414 million) to design, construct, and demonstrate the commercial scale operation of the technology proposed by KPE.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the project or the EIS, contact Mr. Roy Spears, National Environmental Policy Act (NEPA) Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, Morgantown, WV 26507; telephone: (304) 285–5460; fax: (304) 285–4403; or e-mail: *rspear@netl.doe.gov.* For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue,

SW., Washington, DC 20585; telephone: (202) 586–4600; leave a message at (800) 472–2756; or fax: (202) 586–7031.

SUPPLEMENTARY INFORMATION: DOE has prepared this Record of Decision pursuant to Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations [CFR] parts 1500–1508) and DOE NEPA regulations (10 CFR part 1021). This Record of Decision is based on DOE's Final EIS for the Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project (DOE/EIS–0318, December 2002).

NEPA Strategy for the Clean Coal Technology Program

DOE developed a strategy for the CCT Program that includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a proposed project. This strategy, called tiering (40 CFR 1508.28), refers to the consideration of general issues in a broader EIS (*e.g.*, for the CCT Program), followed by more focused environmental impact statements or other environmental analyses that incorporate by reference the general issues and concentrate on those issues specific to the proposals under consideration.

As part of the NEPA strategy, the EIS for the Kentucky Pioneer IGCC Demonstration Project tiers from the Clean Coal Technology Programmatic Environmental Impact Statement (CCT PEIS) that DOE issued in November 1989 (DOE/EIS–0146). The CCT PEIS evaluated two alternatives, the No Action Alternative, and the Proposed Action. The No Action Alternative assumed the CCT Program would not continue and that conventional coal-fired technologies with flue gas desulfurization and nitrogen oxide controls that met New Source Performance Standards (NSPS) would continue to be used. The NSPS (40 CFR part 60) were established under the 1970 amendments to the Clean Air Act (CAA) to adopt emission standards for major new industrial facilities. The Proposed Action assumed that the clean coal projects would be selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

The CCT Program began in 1986 as a collaborative effort among the federal government, state governments, and industry representatives to develop environmentally friendly solutions for using the Nation's abundant coal resources. The Program's goal is to demonstrate innovative technologies emerging from global engineering laboratories at a scale large enough to demonstrate the commercial merit of the new processes. Originally, the CCT Program was a response to concerns over acid rain, which is formed by reaction of water with oxides of sulfur and nitrogen emitted by coal-burning power plants. Industry-proposed projects were selected for further consideration through a series of five national competitions aimed at attracting promising technologies that had not yet been proven commercially.

The Kentucky Pioneer IGCC Demonstration Project was selected for further consideration under the fifth solicitation (CCT–V) authorized under Pub. L. 102–154. The CCT Program relies on substantial funding from sources other than the federal government, as the participant supports the majority of the project cost. The Department of the Interior and Related Agencies Appropriations Act of 1986, a section of Pub. L. 99–190, introduced and defined cost-sharing for the program. The participant must agree to repay the government's financial contribution, with the basis for the repayment negotiated between the participant and the government, to ensure that taxpayers benefit from a successful project. Congress has directed that projects in the CCT Program should be industry projects assisted by the government and not government-directed demonstrations.

EIS Process

On April 14, 2000, DOE published in the **Federal Register** (65 FR 20142) a Notice of Intent (NOI) and Notice of Floodplain Involvement for the Kentucky Pioneer IGCC Demonstration Project. The NOI announced a public scooping meeting and invited comments and suggestions on the proposed scope of the EIS. DOE held a public scoping meeting in Trapp, Kentucky, on May 4, 2000, at which 36 individuals signed in and five participants provided a total of 19 oral comments. Three individuals submitted eight written comments during the public comment period, which ended May 31, 2000. The comments helped DOE to establish the issues to be analyzed in the EIS and the level of analysis warranted for each issue.

On November 16, 2001, DOE published a Notice of Availability for the Kentucky Pioneer IGCC Demonstration Project Draft EIS in the **Federal Register** (66 FR 57717). The original comment period for the Draft EIS began on November 16, 2001, and would have ended on January 4, 2002. To accommodate requests from the public, DOE extended the public comment period on the Draft EIS to January 25, 2002. The total comment period was 71 days. Public meetings were held on December 10, 2001, in Lexington, Kentucky, and on December 11, 2001, in Trapp, Kentucky. DOE received 118 oral comments and 255 written comments, which helped to improve the quality and usefulness of the EIS.

In December 2002, DOE issued the Final EIS and the Environmental Protection Agency published a Notice of Availability of the Final EIS in the **Federal Register** on December 13, 2002 (67 FR 76740). In the Final EIS, DOE considered and, as appropriate, responded to public comments on the Draft EIS. Among the issues raised in the comments were concerns about (1) The applicability of and compliance with state and local solid waste statutes; (2) the need for more details of the facility and BGL process; (3) the potential of the vitreous frit (a solid waste stream) to be hazardous; (4) the need for power in central Kentucky; (5) the impacts of the related transmission line; (6) impacts to the Kentucky River; (7) impacts of plant operation on air resources, including acid rain and greenhouse gases; (8) impacts of facility discharges on local drinking water; (9) potential impacts from spills; (10) impacts to the aesthetic and scenic resources of the area; (11) impacts to Kentucky Highway 89 and local traffic levels; and (12) cumulative impacts of the proposed project and other potential local developments.

Project Location and Description

The Kentucky Pioneer IGCC Demonstration Project facility will be located in Clark County, Kentucky on a 121-hectare (300-acre) site within the 1,263-hectare (3,120-acre) J.K. Smith Site, owned by EKPC. The J.K. Smith Site is 34 kilometers (21 miles) southeast of the city of Lexington, 13 kilometers (8 miles) southeast of the city of Winchester, and 1.6 kilometers (1 mile) west of the community of Trapp, Kentucky. The plant will be located approximately 1.6 kilometers (1 mile) west of the J.K. Smith Site boundary closest to the community of Trapp. The 121-hectare (300-acre) project site was previously disturbed by preliminary construction activities in the mid-1980s, when EKPC began construction of the J.K. Smith Power Station. EKPC had completed preliminary grading, primary foundations, fire protection piping, and rail spur access infrastructure installation before the project was canceled in the early 1990s, when the

projected demand for electricity in the area failed to materialize. The Kentucky Pioneer IGCC Demonstration Project will be built on the portion of the site that was previously cleared and graded. The site is reached by Kentucky Highway 89 and accessed through a gated perimeter fence and access road. The access road is approximately 1.6 kilometers (1 mile) long from Kentucky Highway 89 to the project site. Plant access by rail would be from a freight rail line owned by CSX Transportation, Inc., which crosses the eastern side of the station. An existing railroad loop approximately 5 kilometers (3.1 miles) long will be used for raw material delivery and product transportation around the 121-hectare (300-acre) project site.

To support the project, EKPC plans to construct a new 138-kilovolt (kV) electric transmission line. The proposed line would extend northeasterly from the project site to the Spencer Road Terminal in Montgomery County, Kentucky, where it would interconnect with the existing local power grid. This transmission line would provide additional capacity adequate to accommodate the addition of the Kentucky Pioneer IGCC Demonstration Project and is consistent with the master plan for transmission outlets required for existing and future generation at EKPC's J.K. Smith Site. The proposed new transmission line would be approximately 27 kilometers (17 miles) in length, though the specific route for the line has yet to be determined. However, in the FEIS, DOE has examined, as appropriate, the general impacts that would be expected from this type of line.

The U.S. Department of Agriculture, Rural Utility Service (RUS), has approval authority for the capacity upgrade of the transmission line. Under RUS NEPA policies and procedures (7 CFR part 1794), RUS will prepare appropriate NEPA analysis of the impacts associated with the transmission line.

The proposed project will be comprised of two parts: the ''power island'' and the ''gasification island.'' The power island will be comprised of two combined cycle turbine units that would generate most of the electricity at the site. These units could run on a natural gas feed or a synthesis gas (syngas) feed generated from Refuse Derived Fuel (RDF) pellets and coal in BGL gasifier units. The gasification island will consist of the following major facility components: (1) RDF pellet and coal receipt and storage sheds; (2) gasification plant; (3) sulfur removal and recovery facility; and (4) air separation plant. The production of syngas in the BGL process occurs in the gasification plant and utilizes the sulfur removal and recovery facility and air separation plant.

The syngas firing process consists of the following four steps: (1) Generation of syngas from RDF pellets and coal reacting with steam and oxygen in a high temperature chemically reducing atmosphere; (2) removal of contaminants, including particulates and sulfur in the sulfur removal and recovery facility; (3) clean syngas combustion in a gas turbine generator to produce electricity; and (4) recovery of residual heat in the hot exhaust gas produced by the gas turbine. The residual heat will be used to generate steam in a heat recovery steam generator that produces additional electricity in a steam turbine, which is the combined cycle aspect of the plant.

The solid fuel source for the Kentucky Pioneer IGCC Demonstration Project will be high sulfur coal and RDF pellets. RDF pellets will be procured from a RDF pellet manufacturer. The two fuel sources will be shipped by rail directly to on-site storage. At a minimum, 50 percent of the feed will consist of high-sulfur coal from the Kentucky region during the one-year demonstration period.

KPE intends to use high sulfur coal for direct delivery to the project site. Western Kentucky coal is generally considered the high-sulfur coal region; however, Eastern Kentucky may also provide high-sulfur coal supplies. Project economics will determine the supplier and the type of coal supplied. The facility will require approximately 1,125 kilograms (2,500 tons) per day of coal, which equates to about 25 railcars per day. Compared to entirely coal-fired electric generation technologies, this project will require less coal consumption to generate 540 MW.

RDF is manufactured in a process that includes controlled steps for the processing of municipal solid waste (MSW) or common household waste. RDF pellets are stable and durable because they are made with relatively low moisture content. The process results in pellets with a relatively uniform size and shape and generally uniform energy content. RDF pellets also have a relatively low ash content and good handling and storage life before use. The RDF pellets will be procured from an existing manufacturer. RDF pellets are typically extruded into a uniform dense shape that makes them well suited to transportation and storage. The Kentucky Natural Resources and Environmental Protection Cabinet has determined that the pellets to be used in this facility qualify as RDF.

The production of syngas in the Kentucky Pioneer IGCC Demonstration Project facility will occur in a carefully controlled environment. Gasification technology is known to produce a very consistent syngas product, regardless of the variability of the feed. Though the RDF pellet composition is expected to be relatively constant, slight variations in the composition would have no effect on the composition of the syngas produced. The resulting syngas is expected to be 55 percent carbon monoxide (CO), 30 percent hydrogen gas, 10 percent carbon dioxide, 5 percent methane and ethane, with a relatively small amount of sulfur in the form of hydrogen sulfide.

Alternatives

Congress directed DOE to pursue the goals of the CCT Program by means of partial funding of projects owned and controlled by non-federal sponsors. This statutory requirement places DOE in a much more limited role than if the federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for siting the project. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted because DOE must focus on alternative ways to accomplish its purpose that reflect both the application before it and the role DOE plays in the decisional process. It is appropriate in such cases for DOE to give substantial weight to the applicant's needs in establishing a project's reasonable alternatives.

Based on the foregoing principles, the only reasonable alternative to the proposed action is the no-action alternative. The EIS includes two no-action alternative scenarios, which are discussed below. Other alternatives that did not meet the goals and objectives of the CCT Program, or the applicant, were dismissed from further consideration.

Proposed Action

Under the Proposed Action, DOE will provide, through a Cooperative Agreement with KPE, financial assistance for the design, construction, and operation of the proposed Kentucky Pioneer IGCC Demonstration Project. All associated facilities for the power and gasification islands, including fuel storage, rail car unloading sites, and air emissions control equipment, will be constructed under the Proposed Action. In addition, EKPC plans to construct an electric transmission line. The proposed project would be designed for at least 20

years of commercial operation, beginning with a one-year CCT Program demonstration period. The proposed project would cost $414 million, of which DOE's share would be approximately $60 million, or 15 percent.

The proposed project includes the design, construction, and operation of BGL gasification technology and associated facilities to provide a fuel source for the two planned turbines. Under the Proposed Action, the turbines would be fired using the syngas product generated by the gasification technology. The Proposed Action would demonstrate the following innovative technologies: (1) Gasification of RDF pellets and coal; and (2) use of a syngas product as a clean fuel in combined cycle turbine generator sets. This project would be the first commercial scale application of this modified co-feed version of the BGL gasification technology in the United States. The facility is expected to be operational for 20 years, with the first year committed to the demonstration of these technologies.

No Action Alternative

An analysis of the No Action Alternative is included in the EIS, as required under NEPA. Under No Action Alternative 1, DOE would not provide $60 million in cost-shared funding for the project and no plant would be constructed as a result. DOE believes that this scenario is unlikely to occur but it is presented in the EIS because it serves as an analytical baseline for comparison of the environmental effects of the project.

Under No Action Alternative 2, DOE would not provide $60 million cost-shared funding for the project; however, KPE would construct a natural gas-fired combined cycle plant, the power island portion of the overall project without the gasification component, at the proposed project location. This alternative includes all associated facilities required for the operation of the power island, including administrative offices, on-site utilities, steam-generating units, required air emissions control equipment, and wastewater treatment equipment. All water for the plant would be supplied from existing EKPC intake structures at the J.K. Smith Site. The EKPC transmission line would also be required to support this action.

Major Environmental Impacts and Mitigation Measures

No Action Alternative 1 would not result in any adverse environmental impacts because no construction or change in activities would occur. Under No Action Alternative 1, however, beneficial socioeconomic impacts (jobs and revenue) would not be created and needs for electric power capacity in the region would not be supplied. This alternative would not meet CCT Program goals.

This section summarizes the expected environmental impacts of the Proposed Action and No Action Alternative 2 on potentially affected environmental resource areas and discusses mitigation measures. The resource areas include: land use, socioeconomics, cultural resources, aesthetic and scenic resources, geology, air quality, water resources and water quality, ecological resources, noise, traffic and transportation, occupational and public health and safety, and waste management.

Land Use

No Action Alternative 2 would disturb approximately 5 to 8 hectares (12 to 20 acres) of previously disturbed land for project construction activities. The foundation of the power island would occupy approximately 4.8 hectares (12 acres). All land use impacts from No Action Alternative 2 would also occur under the Proposed Action. In addition, the Proposed Action would disturb a maximum of 2.8 hectares (7 acres) of previously disturbed land for storage and rail car loading and unloading facilities. No effects are expected on surrounding land uses or local land use plans and policies under either alternative.

Socioeconomics

No Action Alternative 2 would employ an average of 120 workers, with a maximum of 200, during construction. This would indirectly lead to the creation of another 138 to 230 jobs depending on the duration of peak construction levels. The facility operation would require 24 employees for the 20-year life cycle of the plant; an additional 54 jobs would be created indirectly as a result.

The Proposed Action would employ an average of 600 workers, with a maximum of 1,000 during construction. This would indirectly lead to the creation of another 690 to 1,150 jobs depending on the duration of peak construction levels. The 20-year demonstration and operation period would require 120 employees; an additional 270 jobs would be created indirectly as a result. Property values for land tracts in the viewshed of the gasifier units may decrease.

Cultural Resources

The J.K. Smith Site has been previously disturbed and cultural resources were identified and excavated during the initial development of the discontinued J.K. Smith Power Station in the early 1980s. The Kentucky State Historic Preservation Office (SHPO) has confirmed that the Section 106 Review process was completed for the Kentucky Pioneer IGCC Demonstration Project's Area of Potential Effect in December of 1980. The terms of the Memorandum of Agreement drawn up in conjunction with the Advisory Council on Historic Preservation for the J.K. Smith Station have been met under the Kentucky Pioneer IGCC Demonstration Project and no further identification, evaluation, mitigation, and consultation activities are required. In accordance with 36 CFR 800.4(d), the SHPO finds that there is no effect on historic properties from No Action Alternative 2 or the Proposed Action.

Deeply buried archaeological resources, including human remains, could be discovered during construction activities. To minimize the potential adverse effects to unanticipated discoveries during construction, basic information will be provided to workers involved in ground disturbing activities regarding the recognition of archaeological resources and Native American cultural items and the procedures to be followed upon discovery. The construction contractor will be required to assure that discovery procedures are implemented in all applicable cases.

Aesthetic and Scenic Resources

The combined-cycle units that would be constructed under No Action Alternative 2 and the Proposed Action would not be visible from outside the site area and would have no visible plumes associated with them. The gasifier facility stacks installed under the Proposed Action would be approximately 65 meters (213 feet) tall and would be visible from as far away as Winchester, located 13.3 kilometers (8.3 miles) northwest of the project site. Fugitive dust emissions may temporarily affect visibility during construction at the site and would be mitigated with standard dust control measures. The visibility of the plumes associated with the Proposed Action would be dependent on weather and wind pattern; however, they would likely be visible from up to 12.8 kilometers (8 miles) from the facility location.

Geology

Minor impacts on the geologic resources, notably loss of prime farmland soils, are expected from the construction and operation of the No Action Alternative 2 and the Proposed Action. However, the impacts are expected to be minor, because the site has been previously graded and disturbed. The Proposed Action would have a slightly greater impact on geologic resources due to the additional support facilities required for operation. Disturbances associated with construction would be mitigated with runoff, erosion, and dust controls. Geologic hazards are not expected to have any effects on either No Action Alternative 2 or the Proposed Action.

Air Resources

Air emissions would be similar in quantity under No Action Alternative 2 and the Proposed Action. Increases would occur in annual air emissions of nitrogen oxides (NO_X), carbon monoxide (CO), sulfur oxides (SO_X), particulate matter, and reactive organic gases. Under the Proposed Action, the greatest quantity of emissions would be from NO_X (approximately 1,100 tons per year [TPY]), CO (approximately 800 TPY), and SO_X (approximately 500 TPY). The Proposed Action would also result in increases in hazardous air pollutant emissions of approximately 9 TPY for all hazardous pollutants combined. More than half of this figure is attributable to the increase in nickel emissions; however, the overall increase would present little risk to human health and the environment (see Occupational and Public Health and Safety section, below). Pollutant emissions would be well within applicable standards; however, annual average emissions for NO_X and particulate matter would approach the Prevention of Significant Deterioration (PSD) Rule for Significant Impact Level Limits. The levels of particulate matter would also approach the 24-hour PSD limits.

Emission control requirements (equipment design requirements and operational procedures requirements) for the proposed project have been established by the Kentucky Division for Air Quality and the EPA as part of the PSD permit approval process. Emission controls included as part of the PSD permit include enclosed storage of raw materials; fabric filters on limestone storage silos; covered conveyors for raw material transfer; drift eliminators on the cooling tower; and steam injection or other combustion controls on the gas turbines. During construction activities, fugitive dust will be minimized using standard dust control measures such as watering. Railcars will be covered to minimize fugitive dust from coal and RDF pellet transport to the site.

Water Resources

No Action Alternative 2 would require 3.8 million liters per day (MLD) (1 million gallons per day [MGD]) of surface water from the Kentucky River for facility operations and would generate less than 1.5 MLD (0.4 MGD) of wastewater. The Proposed Action would require 15.1 MLD (4 MGD) of surface water from the Kentucky River for facility operations and would generate 1.5 MLD (0.4 MGD) of wastewater. Treated wastewater would be discharged into the Kentucky River. The remaining 13.6 MLD (3.6 MGD) would be used during the operation of the gasifier, turbine condensers, and fuel gas saturation process, as well as for other miscellaneous uses. It is expected that no significant impacts would occur to water levels as the amount of the intake required for the Proposed Action represents approximately 0.1 percent of the average calculated daily flow and 4 percent of the low flow conditions of the Kentucky River near the site. Coal and RDF pellets would be unloaded, stored, and conveyed in enclosed structures with concrete floors and would not impact water resources. No use of or discharge to groundwater resources is expected to occur during construction and operation of either facility.

Potential water resources and water quality impacts for facility discharges will be minimized by pretreatment in a new wastewater treatment facility. Federal and state-issued permits regulating water usage and wastewater discharge would specify site-specific criteria to minimize potential impacts. The facility will be designed to minimize water usage, and any discharges would comply with federal and state wastewater and stormwater discharge permits.

During low flow conditions, potential conflicts could exist between competing users of the river. To help minimize such conflicts, KPE will cease water withdrawals if drought conditions warrant or if requested by the state.

Under the proposed action, minor activity to extend the water intake structure would be required alongside the river channel, however, no impacts to the floodplain would result. No wetlands have been identified in the project area and no impacts to wetlands would result.

Ecological Resources

The construction of the facilities for No Action Alternative 2 would result in the loss of approximately 4.8 hectares (12 acres) while the Proposed Action would result in a loss of 7.6 hectares (19 acres) of old-field vegetation and its respective habitat. No federal- or state-listed protected, sensitive, rare, or unique species have been identified at the project site location and suitable habitat for the federally-endangered running buffalo clover is not present. Therefore, there would be no impacts to any federal- or state-listed protected or endangered species from either No Action Alternative 2 or the Proposed Action. The thermal plume from wastewater discharge into the Kentucky River would likely not have an impact on aquatic organisms.

Post construction mitigation landscaping will consist of a control program for non-native invasive plant species such as non-native thistles, fescue, and mustard. The site will be revegetated with a blend of native grasses and forbs. Due to the height of the emissions stacks, the Federal Aviation Administration requires stack lighting. To minimize bird strike mortality, the U.S. Fish and Wildlife Service (USFWS) has developed a set of voluntary recommendations for tower siting, construction, operation, and decommissioning. The gasifier stacks lighting system will be designed in consideration of the USFWS recommendations.

Noise

The construction and operation of both No Action Alternative 2 and the Proposed Action would result in minor noise increases over existing background noise levels beyond the borders of the J.K. Smith Site. Vehicle and rail traffic associated with both alternatives would cause minor noise increases of less than 2 decibels over background noise levels in the nearby community of Trapp.

Mitigation measures necessary to minimize noise impacts will be implemented for the proposed action. Buildings housing the gas turbine units will be designed to ensure a substantial reduction in noise transmitted to the outside. A reduction of gas turbine noise to 95 dBA or less, adjacent to the outside of the building, is a basic design requirement. In addition, the building housing the gasifiers will be designed to ensure a significant reduction in noise transmitted to the outside. A reduction of gasifier noise to 65 dBA or less, adjacent to the outside of the building, is a basic design requirement.

Traffic and Transportation

Under No Action Alternative 2, approximately 100 to 200 vehicle trips, depending on the level of construction activity, would be made per shift change during facility construction. An additional 40 to 60 heavy-duty truck trips per day would be made to and from the project site and rail cars would move heavy equipment to and from the site as needed. Approximately 48 vehicle trips per day would be made during facility operation, all utilizing Kentucky Highway 89. Since the existing traffic near the project site is light, this would result in little impact to local traffic. No rail cars are expected to be required for facility operation under No Action Alternative 2.

Under the Proposed Action, approximately 500 to 1,000 vehicle trips, depending on the level of construction activity, would be made per shift change during facility construction. An additional 40 to 60 heavy-duty truck trips per day would be made to and from the project site and rail cars would move heavy equipment to and from the site as needed. Traffic congestion may be heavy during afternoons when school buses operate along Kentucky Highway 89. Approximately 160 to 240 vehicle trips per day would be made during facility operation, all utilizing Kentucky Highway 89. This would have a greater impact on local traffic than No Action Alternative 2 and mitigation measures, discussed below, will be implemented to ease the impact. KPE will be responsible for repairing any damage to local roads due to excessive use or overweight vehicles. Approximately one unit train (100 rail cars) would move in or out of the site each day during operation. Existing rail infrastructure onsite is sufficient to accommodate a full unit train, thus removing it from the mainline track. KPE will design and implement an Emergency Response Plan and a Spill Prevention, Control, and Countermeasure Plan that would detail response and clean up measures for any accidents resulting from fuel or waste transportation.

The addition of turning lanes and a traffic signal will assist in regulating traffic flows at the intersection of the site access road and Kentucky Highway 89. Any changes to Kentucky Highway 89 will be made in conjunction with the 7th District of the Kentucky Transportation Cabinet. To facilitate traffic in and out of the project site, the access road would be widened to four lanes, or directional controls would be implemented. Directional controls refer to having both lanes travel in the same direction during peak usage of the road. Appropriate warning signs will be put in place if this method is adopted. Aside from scheduling rail deliveries in coordination with other main rail line traffic, no mitigation is required for rail transportation.

Occupational and Public Health and Safety

Typical worker impacts present in the construction industry would be associated with facility construction under both No Action Alternative 2 and the Proposed Action. All noise and health impacts would be mitigated using standard industry safety measures. The Proposed Action would present a small increase in cancer risks to workers and the public due to hazardous air pollutant emissions associated with operation of the combustion turbines of the power island component. The estimated cumulative lifetime cancer risk, assuming continuous exposure for a 70-year period at the location of maximum annual average exposure which is within the J.K. Smith Site, is 5E–05 (*i.e.*, 50 per one million individuals) or a 0.005 percent increase in cancer risk per person. However, this cumulative lifetime cancer risk is a very conservative estimate due to assumptions and extrapolation procedures used in the analysis.

Waste Management

Facility construction and operation would generate small quantities of hazardous and non-hazardous wastes and wastewater under No Action Alternative 2. The construction of the Proposed Action would generate proportionately more wastes than No Action Alternative 2, as it would take four times as long to build. Operation of the Proposed Action would generate more wastewater and hazardous wastes than No Action Alternative 2. All wastewater will be treated before release into the Kentucky River. The gasifiers would generate vitrified frit and elemental sulfur, which DOE expects would be marketed. KPE will conduct appropriate tests to confirm the expectations that the frit is not hazardous. Ultimately, if the frit is found to be hazardous, KPE could decide to use a 100 percent coal feed, the impacts from which would be essentially the same as the impacts examined under the Proposed Action. Standard industry practices will be used to minimize the wastes produced during construction and operation of either facility. Hazardous wastes will be disposed of in approved hazardous waste landfills.

Environmentally Preferred Alternative

No Action Alternative 1 is environmentally preferable because it would result in no impacts on any of the resource areas in the vicinity of the project site. Under No Action Alternative 1, however, the need for expanded electric power capacity in the region would not be met and beneficial socioeconomic impacts (jobs and revenue) would not be created, nor would the goals of the CCT Program concerning the demonstration of this co-feed BGL technology be achieved. The primary impacts from No Action Alternative 2 and the Proposed Action would be to land use, socioeconomics, visual and aesthetic resources, air resources, and traffic and transportation. The impacts from the Proposed Action generally would be small, and would be relatively greater to socioeconomics (beneficial), visual and aesthetic resources, air resources, and traffic and transportation in comparison to No Action Alternative 2. Unavoidable adverse impacts from No Action Alternative 2 and the Proposed Action would occur to aesthetic and scenic resources (the presence of a new facility and additional transmission line), water resources (withdrawals from the Kentucky River), ecological resources (habitat removal), and traffic and transportation (increase in local vehicle trips taken). No environmental justice impacts are expected under any of the alternatives.

Comments on the Final EIS

The only comments that DOE received on the Final EIS were from the U.S. Environmental Protection Agency (EPA). EPA stated that, in the Final EIS, DOE had resolved in a satisfactory manner EPA's comments on the Draft EIS regarding wetlands, transmission lines and towers, cooling tower discharge, air permitting, wind direction data, and other regulatory matters. However EPA expressed continued concerns about some potential impacts, including water, waste, ecological, and noise components of the project. DOE believes that mitigation measures for the proposed action adequately address EPA's concerns. For example, KPE has agreed to work with the State of Kentucky during extremely low river flow conditions and cease operations if requested. KPE also will test the vitrified frit to determine whether it is a hazardous waste, and will ensure that noise levels are acceptable. DOE will ask RUS to share their NEPA document(s) regarding the electric transmission line with EPA. Further, DOE will prepare a Mitigation Action

Plan in accordance with its NEPA regulations (10 CFR 1021.331(a)), which will serve as a tool for monitoring mitigation commitments.

Decision

DOE will implement the Proposed Action of providing approximately $60 million in cost-shared federal funding support to design, construct, and demonstrate the co-feed BGL technology proposed by KPE. The project is intended to demonstrate the combined removal of SO_2, NO_X, and particulate matter in a BGL co-feed technology at a size (540 MW) approximately 40 to 50 percent larger than other currently operating, 100 percent coal-fed gasifier systems. The project is expected to generate sufficient data from design, construction, and operation to allow private industry to assess the potential for commercial application of the larger scale co-feed BGL technology. This decision to provide cost-shared funding for the proposed project was made after careful review of the potential environmental impacts, as analyzed in the EIS.

DOE's decision incorporates all practicable means to avoid or minimize environmental harm. In accordance with Section 1021.331(a) of the DOE NEPA regulations, DOE will prepare a Mitigation Action Plan that addresses mitigation commitments expressed in this ROD. Copies of the Mitigation Action Plan may be obtained from Roy Spears, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, Morgantown, WV 26507; telephone: (304) 285–5460.

Issued in Washington, DC on, this 29th day of January 2003.

Carl Michael Smith,

Assistant Secretary for Fossil Energy.

[FR Doc. 03–2512 Filed 2–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy, DOE.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, February 13, 2003; 6—9 p.m.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055. North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6 p.m. Call to Order
6:30—6:40 p.m. Chair's Remarks and Ex Officio Announcements
6:40—6:50 p.m. Feedback from SSAB Workshop
6:50—7:15 p.m. General Updates
7:15—7:30 p.m. Follow-up on Silos Roundtable
7:30—8 p.m. Long Term Stewardship Expectations
8—8:30 p.m. Purpose for Natural Resource Damages Roundtable Discussion
8:30—8:45 p.m. Next Steps for Stewardship
8:45—9 p.m. Public Comment

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on January 30, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–2510 Filed 2–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

High Energy Physics Advisory Panel

AGENCY: Department of Energy, DOE.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, March 6, 2003; 9 a.m. to 6 p.m. and Friday, March 7, 2003; 8:30 a.m. to 4 p.m.

ADDRESSES: Lawrence Berkeley National Laboratory, 1 Cyclotron Rd. Bldg. 54, Perserverance Hall, Berkeley, CA 94720.

FOR FURTHER INFORMATION CONTACT: Bruce Strauss, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–3705

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, March 6, 2003, and Friday, March 7, 2003

- Discussion of Department of Energy High Energy Physics Programs
- Discussion of National Science Foundation Elementary Particle Physics Program
- Discussion of the DOE/NSF High Energy Physics Advisory Panel, Subpanel on Long Range Planning for U.S. High Energy Physics
- Discussion of High Energy Physics University Programs
- Reports on and Discussion of U.S. Large Hadron Collider Activities
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to

file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Bruce Strauss, 301–903–3705 or *Bruce.Strauss@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 30, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–2511 Filed 2–3–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0018; FRL–7447–2]

Agency Information Collection Activities; Submission of EPA ICR No. 0658.08, OMB Number 2060–0004 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Pressure Sensitive Tape and Label Surface Coating (40 CFR part 60, subpart RR), (OMB Control No. 2060–0004, EPA ICR No. 0658.08). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 6, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division, Office of Enforcement and Compliance, Mailcode 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0018, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ECDIC is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Title: NSPS for Pressure Sensitive Tape and Label Surface Coating (40 CFR part 60, subpart RR) (OMB Control No. 2060–0004, EPA ICR Number 0658.08). This is a request of an existing approved collection expiring January 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for Pressure Sensitive Tape and Label Surface Coating, published at 40 CFR part 60, subpart RR were proposed on December 30, 1980, and promulgated on October 18, 1983. These regulations apply to each coating line used in the manufacture of pressure sensitive tape and label materials, and on which construction or reconstruction commenced after December 30, 1980. This information is being collected to assure compliance with 40 CFR part 60, subpart RR. Facilities that input 45 Mg of volatile organic compounds (VOC) or less per 12 month period are not subject to the emission limit established by the subpart. This information is being collected to assure compliance with 40 CFR part 60, subpart RR.

Owners and operators of the affected facilities must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of initial startup; notification of any physical change to an existing facility that may increase the regulated pollutant emission rate; notification of initial performance test and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of an affected facility, or any period during which the monitoring

system is inoperative. The recordkeeping requirements consist of the occurrence and duration of any start up and malfunctions as described. They include the initial performance test results including information necessary to determine conditions of the performance test; performance test measurements and results including, for affected facilities complying with the standard without the use of add-on controls, a weighted average of the mass of solvent used per mass of coating solids applied; the weighted average mass of VOC per mass of coating solids applied at facilities controlled by a solvent recovery device; the weighted average mass of VOC per mass of coating solids applied being used at a facility controlled by a solvent destruction device; and the results of the monthly performance and records of operating parameters.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 35 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of coating lines used in the manufacture of pressure sensitive tape and label materials.

Estimated Number of Respondents: 37.

Frequency of Response: Semiannual for all, every other year for excess emission report.

Estimated Total Annual Hour Burden: 3,179 hours.

Estimated Total Annual Labor Cost: $71,800.

Changes in the Estimates: There is a decrease of 35,925 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is the result of a search of the Agency's AFS database which identified a significantly lower number of respondents than was used in previous ICR burden estimates.

Dated: January 28, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–2537 Filed 2–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0023; FRL–7447–3]

Agency Information Collection Activities; Submission of EPA ICR No. 0997.07 (OMB No. 2060–0079) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Petroleum Dry Cleaners (40 CFR part 60, subpart JJJ) (OMB Control No. 2060–0079, EPA ICR No. 0997.07) The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 6, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joyce Chandler, Compliance Assistance and Sector Programs Divisions, Mailcode 2224A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202–564–7073; fax number: 202–564–0009; e-mail address: *chandler.joyce@epa.gov.*

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0023, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May

31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Petroleum Dry Cleaners (40 CFR part 60, subpart JJJ) (OMB Control No. 2060–0079, EPA ICR Number 0997.07). This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for the Petroleum Dry Cleaning industry (subpart JJJ) were proposed on December 14, 1982 and promulgated on September 21, 1984. These standards apply to the owners or operators of petroleum dry cleaning facilities constructed, reconstructed, or modified after December 14, 1982 whose total manufacturer's rated dryer capacity is equal to or greater than 38 kilograms (84 pounds). This information is being collected to assure compliance with 40 CFR part 60, subpart JJJ.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 16 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Petroleum Dry Cleaners.

Estimated Number of Respondents: 18.

Frequency of Response: initial.

Estimated Total Annual Hour Burden: 1,483 hours.

Estimated Total Annual Cost: $84,720, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is no change of 1,483 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: January 28, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–2538 Filed 2–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0020; FRL–7447–4]

Agency Information Collection Activities; Submission of EPA ICR No. 0659.09 (OMB No. 2060–0108) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Surface Coating of Large Appliances (40 CFR part 60, subpart SS), (OMB Control No. 2060–0108, EPA ICR No. 0659.09) The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 6, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division, Office of Enforcement and Compliance, Milked 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0020, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the NSPS for Surface Coating of Large Appliance (40 CFR part 60, subpart SS) Docket is (202) 566–1514). An electronic version of the public docket is available through EPA Dockets (DOCKET) at *http://www.epa.gov/edocket.* Use DOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using DOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code; 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in DOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in DOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in DOCKET. For further information about the electronic docket, see EPA's **Federal**

Register notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Title: NSPS for Surface Coating of Large Appliances (40 CFR part 60, subpart SS) (OMB Control No. 2060–0108, EPA ICR Number 0659.09). This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for Surface Coating of Large Appliances, published at 40 CFR part 60, subpart SS were proposed on December 24, 1980 and promulgated on October 27, 1982. These standards apply to each large appliance surface coating operation in which organic coatings are applied that commenced construction, modification or reconstruction after December 24, 1980. Approximately 72 sources are currently subject to the standards, and it is estimated that zero sources per year will become subject to the standard while an equal number will go off-line during this time period. Volatile Organic Compounds (VOCs) are the pollutants regulated under this subpart, and this information is being collected to assure compliance with 40 CFR part 60, subpart SS.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject; conduct and report on a performance test; demonstrate and report on continuous monitor performance; and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, maintenance reports, and records. The estimated total cost of this ICR will be $1,093,710 over the next three years (including labor hours, operating & maintenance costs, and start up costs; $365,570 per year x 3 years). All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of facilities manufacturing large appliances in which organic surface coatings are applied.

Estimated Number of Respondents: 72.

Frequency of Response: Semiannual/quarterly, every other year for excess emission report.

Estimated Total Annual Hour Burden: 6,288 hours.

Estimated Total Annual Cost: $365,570, which includes $5,400 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 23,276 hours and $613,000 in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is caused by several factors. The wage estimates were revised based on the current prevailing rates for both the Agency and the sources. This included the appropriate calculation of wage overhead in both categories. The number respondents were based on date collected for these same source categories for the development of a Maximum Achievable Control Technology (MACT) emission standard for hazardous air pollutants. This date showed a much smaller universe of sources and also revealed that a very small percentage of these respondents use thermal control devises (less than 5 percent). The total number of sources covered by this ICR has decreased greatly since the last renewal was prepared and no growth is occurring in the industry. These factors significantly reduced the burden on the facilities and the Agency.

Dated: January 28, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–2539 Filed 2–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CO–001–0073; FRL–7447–9]

Adequacy Status of the Fort Collins, Colorado Carbon Monoxide Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the Fort Collins, Colorado carbon monoxide (CO) maintenance plan, that was submitted by the Governor on August 9, 2002, are adequate for conformity purposes. On March 2, 1999, the DC Circuit Court ruled that budgets in submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the North Front Range Transportation & Air Quality Planning Council, the City of Fort Collins, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use the motor vehicle emissions budgets from this submitted maintenance plan for future conformity determinations.

DATES: This finding is effective February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6493. The letter documenting our finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp/conform/adequacy.htm.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'' are used we mean EPA.

This action is simply an announcement of a finding that we have already made. We sent a letter to the Colorado Air Pollution Control Division

on January 15, 2003, stating that the motor vehicle emissions budgets in the submitted Fort Collins CO maintenance plan are adequate. This finding has also been announced on our conformity Web site at *http://www.epa.gov/otaq/transp/conform/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review, and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

We've described our process for determining the adequacy of submitted SIP budgets in a memo entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' dated May 14, 1999. We followed this guidance in making our adequacy determination.

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

Dated: January 23, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–2535 Filed 2–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7447–1]

Notice of Availability for Draft Guidance on the Technical Support Document (TSD) for Title V Permitting of Printing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for notice of availability.

SUMMARY: We are making available for an additional 30 days of public review a draft of our pending guidance on the design of air permits for the printing sector. The public comment period will now be extended until March 6, 2003. This extension is in response to multiple requests for additional time to review the draft TSD.

A draft of this guidance is available for public review for downloading off the internet (see **ADDRESSES**). As before, we do not intend to respond to individual comments, but rather to consider comments and information from the public in the preparation of a final guidance document.

DATES: The review period for this document will close on March 6, 2003. Any comments on the draft guidance must be submitted to EPA by that date.

ADDRESSES: The draft guidance can be accessed at *http://www.epa.gov/ttn/oarpg/.* Comments should be sent to Michael Trutna, Information Transfer and Program Integration Division (C304–03), U.S. EPA, Research Triangle Park, NC 27711, (919) 541–5345, fax (919) 541–4028, or *trutna.mike@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Trutna at the above address or Gary Rust, Information Transfer and Program Integration Division (C304–04), U.S. EPA, Research Triangle Park, NC 27711, (919) 541–0358, fax (919) 541–4028, or *rust.gary@epa.gov.* For further information on monitoring or testing issues, please contact Barrett Parker at (919) 541–5635 or *parker.barrett@epa.gov.*

Dated: January 15, 2003.

William Harnett,

Director, Information Transfer and , Program Integration Division.

[FR Doc. 03–2536 Filed 2–3–03; 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 19, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Jeanie Kicklighter Beck, Glennville, Georgia; to acquire additional voting shares of First Citizens Bankshares, Inc., Glennville, Georgia, and thereby indirectly acquire additional voting shares of First Citizens Bank, Glennville, Georgia.

Board of Governors of the Federal Reserve System, January 23, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–2469 Filed 2–3–03; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et. seq.*) (BHC Act), Regulation Y (12 CFR part 225) and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Wayne Bancorp, Inc., Wooster, Ohio; to merge with Banc Services Corp., Orrville, Ohio, and thereby indirectly acquire voting shares of Savings Bank & Trust Company, Orrville, Ohio.

In addition Applicant has applied to acquire Banc Services Corp. Access Financial Corporation, Massillon, Ohio, and thereby engage in extending credit and servicing loans pursuant to sections 225.25(b)(1) and (2) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Morton Bancorp, Inc., Morton, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Morton, Morton, Mississippi.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Standard Bancshares, Inc., Hickory Hills, Illinois; to acquire 100 percent of the voting shares of East Side Bancorporation, Inc., Chicago, Illinois, and thereby indirectly acquire BankChicago, Chicago, Illinois.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. The Wakashio Bank, Ltd.; to become a bank holding company by merging with Sumitomo Mitsui Banking Corporation, both of Tokyo, Japan, and thereby indirectly acquire 100 percent of the voting shares of Manufacturers Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, January 23, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–2470 Filed 2–3–03; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 9 a.m., Friday, February 7, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 31, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–2678 Filed 1–31–03; 11:52 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, February 10, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 31, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–2797 Filed 1–31–03; 3:30 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 022 3249]

Educational Research Center of America, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 28, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Laura Mazzarella or Jessica Rich, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 29, 2003), on the World Wide Web, at ''*http://www.ftc.gov/os/2003/01/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed

to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Educational Research Center of America, Inc., (''ERCA'') and its officer Marian Sanjana (''Sanjana''), and Student Marketing Group, Inc., (''SMG'') and its officer Jan Stumacher (''Stumacher''). ERCA is a student survey company that provides student data, through SMG, to colleges and universities and other entities for recruitment and marketing purposes. SMG is a commercial list broker that supplies names for youth marketing campaigns.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns representations about how detailed, personal information collected from middle, junior high, and high school students through a survey would be used. The proposed respondents distribute a survey to middle, junior high, and high school teachers and guidance counselors with the request that they have their students complete the survey. The survey collects from students personal information including name, address, age, race, religious affiliation, and academic, career, and athletic interests. ERCA compiles personal information collected from high school students into a survey report that it provides to colleges and universities. It also provides personal information collected through the survey to SMG. SMG provides the survey information to colleges and universities, and also creates lists of students that it provides to commercial entities for use in marketing. Such entities include, but are not limited to, banks, insurance companies, consumer goods and services providers, and list brokers.

The Commission's complaint charges that the proposed respondents falsely represented that information collected from students through the survey is shared only with colleges, universities, and other entities providing education-related services when, in fact, such information is also shared with commercial entities for marketing purposes. The complaint also alleges that the proposed respondents falsely represented that information collected from middle and junior high school students through the survey is compiled into survey reports when, in fact, little if any such information is compiled into survey reports; instead it is primarily shared with commercial entities for marketing purposes.

Part I of the consent order prohibits the proposed respondents, in connection with the collection of personally identifiable information from an individual, from misrepresenting how such information is collected or will be used or disclosed. Part II of the order prohibits the proposed respondents, in connection with the collection of personally identifiable information from students for any ''noneducational-related marketing purpose,'' from using or disclosing such information unless they disclose (1) the existence and nature of such noneducational-related marketing purpose, (2) the types or categories of any entities to which the information will be disclosed, and (3) that the information used or disclosed is personally identifiable.

The proposed order defines ''noneducational-related marketing purpose'' to mean for the purpose of marketing products or services, or selling personally identifiable information from or about an individual for use in marketing products or services to individuals. The definition specifically excludes the use of personal information in connection with certain activities determined to be ''educational products or services'' under the No Child Left Behind Act of 2001, namely (a) college or postsecondary education recruitment, or military recruitment; (b) book clubs, magazines, and programs providing access to low-cost literary products; (c) curriculum and instructional materials used by elementary schools and secondary schools; (d) student recognition programs; or (e) any other activity expressly determined under the No Child Left Behind Act or its implementing regulations to be an ''educational product or service.'' In addition, the proposed order provides that when determining whether any specific activity is an ''educational product or service,'' any official, written, publicly-disseminated interpretation by the Department of Education regarding such activity shall be controlling.

Part III of the order prohibits the proposed respondents from using or disclosing for any noneducational-related marketing purpose any personally identifiable information that was collected through surveys distributed prior to July 30, 2002. In addition to the educational purposes excepted from the definition of ''noneducational-related marketing purpose,'' Part III also permits the proposed respondents to use such information for the purpose of (a) job recruitment, (b) the provision of student loans, or (c) the provision of standardized test preparation services.

To address respondents' collection of information from younger children, Part IV of the order requires the proposed respondents to delete all personally identifiable information collected through surveys from any student who was under the age of thirteen at the time of collection.

The remainder of the proposed order contains standard requirements that the proposed respondents maintain copies of privacy statements and other documents relating to the collection, use or disclosure of personally identifiable information; distribute copies of the order to certain company officials and employees; notify the Commission of any change in the corporation that may affect compliance obligations under the order; and file one or more reports detailing their compliance with the order. Part X of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondents. It is not the Commission's intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or

entities associated with the conduct described in the complaint.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–2531 Filed 2–3–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension of the Expiration Date of the Title VI Program Performance Report

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the Title VI Program Performance Report.

DATES: Submit written or electronic comments on the collection of information by April 7, 2003.

ADDRESSES: Submit electronic comments on the collection of information to: *Yvonne.Jackson@aoa.gov.* Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Yvonne Jackson; Director; Office for American Indian, Alaskan Native and Native Hawaiian Programs; Administration on Aging, Washington, DC; (202) 357–3501; *Yvonne.Jackson@aoa.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The purpose is to continue an existing information collection, Title VI Program Performance Report, from Title VI grantees to use in reporting information on programs funded by Title VI as required under section 202(a)(19), section 614(a)(2), and section 614(a)(3) of the Older Americans Act, as amended.

AoA estimates the burden of this collection of information as follows:

Frequency: Semi-Annually.

Respondents: Tribal Organizations.

Estimated Number of Responses: 486.

Estimated Burden Hours: 729.

Dated: January 30, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–2499 Filed 2–3–03; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Healthcare Infection Control Practices Advisory Committee, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through January 19, 2005.

FOR FURTHER INFORMATION CONTACT: Michele Pearson, M.D., Executive Secretary, Healthcare Infection Control Practices Advisory Committee, Centers for Disease Control and Prevention, of the Department of Health and Human Services, 1600 Clifton Road, NE, M/S E–68, Atlanta, Georgia 30333, telephone 404/6498–1266 or fax 404/498–1244.

The Director, Management and Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 29, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–2487 Filed 2–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center Health Statistics, Center for Diseases Control and Provention, of the Department of Health and Human Services, has been renewed for a 2-year period through January 19, 2005.

For information, contact Linda Blankenbaker, Executive Secretary, Board of Scientific Counselors, National Center for Health Statistics, Centers for Disease Control and Prevention, of the Department of Health and Human Services, Metro III, Presidential Building, 6525 Belcrest Road, Hyaattsville, Maryland 20782, telephone 301/458–4612 or fax 301/458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 29, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–2494 Filed 2–3–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee conference call meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Time and Date: 2 p.m.–2:30 p.m., Eastern Time, January 29, 2003.

Place: The conference call will originate at the National Immunization Program (NIP), in Atlanta, Georgia. Please see ''Supplementary Information'' for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The Advisory Committee on Immunization Practices will convene by conference call to discuss the number of needle pricks to use when administering the smallpox vaccine.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 2 p.m., Eastern Standard Time. To participate in the conference call, please dial 1–800–497–1934 and reference conference code 2978861. You will then be automatically connected to the call.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, (E–61), Atlanta, Georgia 30333, telephone 404/639–8096, fax 404/639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: January 29, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–2491 Filed 2–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0355]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Device Recall Authority'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 13, 2002 (67 FR 68876), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0432. The approval expires on January 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: January 28, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2600 Filed 2–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0534]

Medical Device User Fee and Modernization Act of 2002; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is establishing a public docket to obtain input on implementation of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA). FDA is establishing this docket in order to provide an opportunity for all interested persons to provide information and share views on the implementation of MDUFMA.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION: MDUFMA (Public Law 107–250) amends the Federal Food, Drug, and Cosmetic Act to provide FDA important new responsibilities, resources, and challenges. MDUFMA was signed into law October 26, 2002. MDUFMA has three particularly significant provisions:

• User fees for premarket reviews. Premarket approval applications (PMAs), product development protocols (PDPs), biologics license application (BLAs), premarket reports, certain supplements, and 510(k)s are now subject to fees. The revenues from these fees, and from additional appropriations for infrastructure, will allow FDA to pursue a set of ambitious performance goals that will provide patients earlier

access to safe and effective technology, and will provide more interactive and rapid review to the medical device industry. A small business (sales and receipts of $30 million or less) may pay a reduced fee.

• Establishment inspections may be conducted by accredited persons (third-parties) under carefully prescribed conditions.

• New regulatory requirements for reprocessed single-use devices, including provisions establishing a new category of premarket submission, the premarket report, and provisions requiring the submission of additional data on devices now being reprocessed.

MDUFMA makes several other significant changes that are less complex or have a narrower scope than the major changes discussed previously. These include the following:

• The review of combination products (products that combine elements of devices, drugs, or biologics) will be coordinated by a new office in the Office of the Commissioner of Food and Drugs.

• Electronic labeling is authorized for prescription devices intended to be used in health care facilities.

• FDA may require electronic registration of device establishments, when feasible.

• The law now explicitly provides for modular review of PMAs.

• New provisions concerning devices intended for pediatric use, including provisions for pediatric experts on advisory panels and the development of guidance for clinical trials involving pediatric populations.

• The manufacturer of a device must be identified on the device itself, with certain exceptions.

A letter from the Secretary of Health and Human Services that accompanies the user fee legislation sets forth the performance goals the agency has pledged to meet over the next 5 years. These goals represent the improvements FDA's device review program can achieve, monitor, and meet with industry cooperation. To help meet these performance goals, FDA will need to develop clear definitions of terms such as ''panel-track supplement,'' ''180-day supplement,'' and ''real-time supplement.'' The agency will also need to develop a policy to define when bundling multiple devices, device modifications, or indications for use into a single submission is appropriate versus when separate applications should be submitted.

FDA invites interested persons to submit comments on any or all of the previous issues, as well as other provisions of the new law. (A copy of the statute is available on the agency's MDUFMA Web site at *http://www.fda.gov/cdrh/mdufma/index.html*). FDA hopes this docket will become an important tool for receiving information from interested parties and for public availability of that information. In the future, FDA expects to use its MDUFMA Web site to request input to the docket from stakeholders on a variety of specific questions and issues related to MDUFMA.

At this time, the agency is particularly interested in receiving comments from stakeholders about several provisions that must be immediately implemented to track and monitor the performance goals FDA has pledged to meet over the next few years. Specifically, the agency is seeking input on the following: (1) Defining the various types of PMA supplements; (2) implementing the modular review program for PMAs; (3) establishing a bundling policy to determine when it is appropriate to bundle multiple devices, device modifications, or indications for use into a single submission; and (4) gathering information for the pediatric device guidance document.

On a related matter, MDUFMA also provides for the education and training of stakeholders to assist the agency in developing training programs. FDA invites comments on: (1) Possible subject matter or areas to be included in training programs for FDA employees or industry and (2) subject matter or courses that industry would be willing to provide to FDA employees. Past examples would include sterilization.

FDA will consider all information and views that it receives during the implementation process. FDA will continue to work with interested parties through a variety of means to obtain as much information as possible to assist in the implementation process.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 29, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2604 Filed 2–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration/Small Business Town Meeting for Pharmaceutical Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public town meeting.

SUMMARY: The Food and Drug Administration (FDA) (Center for Drug Evaluation and Research and the Central Region and Philadelphia District) is announcing a town meeting for small businesses on FDA requirements for approval and marketing of drug products. Topics for discussion include: Over-the-counter (OTC) monographs, labeling, registration, listing, FDA meetings process, imports and exports, financial incentives, and navigating the FDA Web site. This half day meeting targets small pharmaceutical concerns.

Date and Time: The town meeting will be held on Wednesday, March 5, 2003, from 12 noon to 4 p.m.

Location: The town meeting will be held at the William J. Green Federal Bldg., conference rooms A and B, 2d floor, Sixth and Arch St., Philadelphia, PA.

Contact: Marie Falcone, Industry and Small Business Representative, Food and Drug Administration, Central Region, room 900 U.S. Customhouse, 200 Chestnut St., Philadelphia, PA 19106, 215–597–2120, ext. 4003, FAX 215–597–5798, or e-mail: *mfalcone@ora.fda.gov*.

Registration: To access registration form, see *http://www.fda.gov/cder/meeting/pharmbus2003/default.html*. Send registration information (including name, title, firm name, address, telephone, and fax number) to Marie Falcone by February 14, 2003.

There is no registration fee, however, space is limited, therefore interested parties are encouraged to register early. Registration will close after the meeting slots are filled. Those accepted into the course will receive written confirmation. Registration at the site will be done on a space available basis on the day of the town meeting, beginning at 11 a.m. Please arrive early to ensure prompt registration. Bring photo identification for security check at building entrance. If you need special accommodations due to a disability, please contact Marie Falcone at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The ''FDA Small Business Town Meeting for Pharmaceutical Industry'' town meeting

helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by educating regulated industry on FDA requirements to produce safe and effective drug products. FDA has made assurance of safe and effective drug products a high priority.

The workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: January 28, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2603 Filed 2–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1540]

Withdrawal of Draft Guidance for Industry on Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a draft guidance entitled ''Guidance for Industry, 21 CFR Part 11; Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records.''

DATES: February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Randall L. Woods, Center for Drug Evaluation and Research (HFD–324), Food and Drug Administration, Metro Park North I, 7520 Standish Pl., rm. 265, Rockville, MD 20855, 301–827–0065.

SUPPLEMENTARY INFORMATION:

I. Background

On August 21, 2002, FDA announced that it was undertaking a new initiative to enhance FDA's current good manufacturing practice program (the CGMP initiative). This new initiative will focus FDA's resources and regulatory attention on those aspects of manufacturing that pose the greatest risk, ensure that FDA's work does not impede innovation, and enhance the consistency of FDA's regulatory approach among the various components. More information on FDA's announcement of this new initiative can be found on FDA's Web site at *www.fda.gov/bbs/topics/NEWS/2002/NEW00829.html*, or a copy of the press release (Ref. 1) may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please reference the docket number found in brackets in the heading of this document.

Under the new initiative, primary responsibility for implementing part 11 (21 CFR Part 11); Electronic Records; Electronic Signatures has shifted to the Center for Drug Evaluation and Research, with continued involvement from other Centers and the Office of Regulatory Affairs.

On November 12, 2002 (67 FR 68674), the agency issued a draft guidance for industry entitled ''Guidance for Industry, 21 CFR Part 11; Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records.'' The agency wishes to limit the time spent by industry reviewing and commenting on the guidance, which may no longer represent FDA's approach under the CGMP initiative. The agency may decide to reissue the draft guidance once it has reviewed it under the CGMP initiative.

II. Reference

The following reference is on display at the Dockets Management Branch (see section I of this document) and may be seen by interested parties between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Food and Drug Administration press release, ''FDA Unveils New Initiative To Enhance Pharmaceutical Good Manufacturing Practices,'' August 21, 2002.

Dated: January 28, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2602 Filed 2–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0023]

Guidance for Industry on Prussian Blue for Treatment of Internal Contamination With Thallium or Radioactive Cesium; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that we have concluded that prussian blue, when produced under conditions specified in approved new drug applications (NDAs), can be found to be safe and effective for the treatment of internal contamination with radioactive thallium, nonradioactive thallium, or radioactive cesium. We encourage the submission of NDAs for prussian blue drug products. We are also announcing the availability of a guidance for industry entitled ''Prussian Blue Drug Products—Submitting a New Drug Application.'' This guidance is intended to assist manufacturers who plan to submit NDAs for prussian blue.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit NDAs to the Food and Drug Administration, Center for Drug Evaluation and Research, Central Document Room, 12229 Wilkins Ave., Rockville, MD 20852. Submit requests for copies of draft labeling to the Division of Medical Imaging and Radiopharmaceutical Drug Products, (HFD–160), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510. Copies of the reports referred to in this document will be on display at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (address provided in third sentence of this paragraph). Submit electronic comments to http://www.fda.gov/dockets/ecomments. See

the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Kyong Kang, Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510.

SUPPLEMENTARY INFORMATION:

I. Background

A. Cesium

Cesium-137, a radioactive isotope of cesium, was discovered in 1941 by Glenn T. Seaborg and Margaret Melhase. Cesium-137 is a product of fusion and is found in the fallout from the detonation of nuclear weapons and the waste from nuclear power plants. Cesium-137 is one of the most common radioisotopes used in industry. It is used in various measuring devices, such as moisture-density gauges. Cesium-137 is also widely used as a source of gamma radiation for treatment of various forms of cancer. Cesium-137 has a half-life of 30.07 years.

Contamination with cesium-137 can cause serious illness or death, depending upon the dose, and has been associated with the development of cancer long after exposure. In addition to concerns about exposure to cesium-137 in industrial and medical environments, cesium-137 contamination is of particular concern because it has been mentioned as a potential component of a radiological dispersal device (RDD), commonly called a ''dirty bomb.'' An RDD is a conventional explosive or bomb containing radioactive material. The conventional bomb is used as a means to spread radioactive material, such as cesium-137. An RDD is not a nuclear bomb and does not involve a nuclear explosion.

B. Thallium

Thallium occurs naturally in several minerals and ores. It was discovered independently by both William Crookes and Claude Auguste Lamy in the early 1860s. Thallium is very toxic, and thallium sulfate has been used as a rat and ant poison in the past. Other thallium compounds are used in the manufacture of semiconductors, photocells, optical glass, and other items. Thallium-201, a radioactive isotope of thallium, is widely used in very small doses as an approved radioimaging drug. Thallium-201 has a half-life of 72.912 hours.

Acute exposure to high dose radioactive or nonradioactive thallium is generally characterized by severe gastrointestinal symptoms followed by neurological symptoms, which may lead to death. The toxicity resulting from chronic exposure to thallium is characterized by various neurological symptoms. Thallium-201 has also been mentioned as a potential component of a dirty bomb.

There are no approved treatments for internal contamination with thallium or radioactive cesium.

C. Prussian Blue

Prussian blue was first synthesized in 1704 by a Berlin color maker named Diesbach. It has been used as an industrial and artists' pigment ever since. The chemical name for prussian blue is ferric hexacyanoferrate(II).

Since the 1960s, prussian blue has been used investigationally as an orally ingested drug to enhance the excretion of isotopes of cesium and thallium from the body by means of ion exchange. However, there is currently no approved NDA for prussian blue. Prussian blue has a very high affinity for cesium and thallium. Cesium and thallium ions are ordinarily excreted into the intestine, reabsorbed from there into the bile, and then excreted again into the gastrointestinal tract. Orally administered prussian blue traps thallium or cesium in the intestine, interrupts its reabsorption from the gastrointestinal tract, and thereby increases fecal excretion of thallium and cesium. Prussian blue itself is not absorbed across the intestinal wall in significant amounts.

Prussian blue, in 500-milligram (mg) capsules, has been distributed by the Radiation Emergency Assistance Center/Training Site (REAC/TS) under investigational new drug application (IND) number 51,700. REAC/TS is part of the Oak Ridge Associated Universities (ORAU). ORAU operates the Oak Ridge Institute for Science and Education (ORISE) under a contract with the Department of Energy. ORISE owns the IND for prussian blue. The 500-mg capsules used under the IND are manufactured by HEYL Chemisch-pharmazeutische Fabrik GmbH & Co. KG (HEYL). HEYL uses the trade name Radiogardase-Cs for its 500-mg capsules of prussian blue.

II. Safety and Effectiveness of Prussian Blue Drug Products

We have concluded that prussian blue, when produced under conditions specified in approved NDAs, can be found to be safe and effective for the treatment of internal contamination with radioactive thallium, nonradioactive thallium, or radioactive cesium. As described in the following paragraphs, our conclusion is based upon our review of published information.

We encourage the submission of NDAs for prussian blue drug products. If you are interested in submitting an NDA for this product, please contact us. We also recommend that you consult the guidance ''Prussian Blue Drug Products—Submitting a New Drug Application,'' which is being made available with this notice.

A. Basis for Finding of Safety and Effectiveness

We have reviewed the published literature and have determined that 500–mg prussian blue capsules, when produced under conditions specified in an approved NDA, can be found to be safe and effective for the treatment of patients with known or suspected internal contamination with radioactive thallium, nonradioactive thallium, or radioactive cesium. Prussian blue increases the rate of elimination of thallium or radioactive cesium. Administration of prussian blue decreases the risk of death and major morbidity after exposure to radioactive thallium, nonradioactive thallium, or radioactive cesium.

In reaching our determination on the effectiveness of prussian blue, we evaluated published reports of a 1987 incident in Goiânia, Brazil, where approximately 250 people were contaminated with cesium-137 that had been abandoned after use in a cancer clinic (see International Atomic Energy Agency, 1998). Forty-six patients with heavy internal contamination were treated with prussian blue. Data on the whole-body effective half-life of cesium-137 during treatment and after treatment with prussian blue was completed on 33 of the 46 patients. The untreated mean whole-body effective half-life of cesium-137 is 80 days in adults, 62 days in adolescents, and 42 days in children. Prussian blue reduced the mean whole-body effective half-life of cesium-137 by 69 per cent in adults, by 46 per cent in adolescents, and by 43 per cent in children (see International Atomic Energy Agency, 1998). Data from additional literature articles, including a study of 7 human volunteers contaminated with trace doses of cesium-137 and reports on 19 patients contaminated with cesium-137 in other incidents, show a similar reduction in whole-body effective half-life after administration of prussian blue (see Madhus, 1968 and National Council on Radiation Protection and Measurement, 1979).

We also evaluated reports in the literature that describe 33 patients who

were treated with prussian blue for nonradioactive thallium poisoning. Prussian blue treatment reduced the mean serum biologic half-life of thallium from 8 days to 3 days (see Barbier, 1974; De Groot, 1985; Van Kesteren, 1980; and Vrij, 1995).

The primary adverse effects of prussian blue are constipation and nonspecific gastrointestinal distress. These side effects are more troublesome at high doses and respond to treatment with orally administered fiber (see Farina, 1991). Other rare adverse events are discussed in the published literature and in the draft labeling we have prepared.

B. Labeling for Prussian Blue

We have prepared draft labeling for orally administered drug products containing 500-mg prussian blue capsules. You can submit this draft labeling as part of an application for 500-mg prussian blue capsules that relies on our findings of safety and effectiveness. The draft labeling reflects our conclusion on the potential safety and effectiveness of 500-mg prussian blue drug products for the treatment of internal contamination with radioactive thallium, nonradioactive thallium, or radioactive cesium. If you wish to change the labeling to include a different or broader indication, different dosage, or make any other significant changes to the draft labeling, you should provide, as part of your application, additional literature or other studies to support your requested changes. If you submit an application for a prussian blue drug product that is not based on FDA's findings of safety and effectiveness of prussian blue, you may not use the draft labeling because it is based on our review of the published literature. If you submit such an application, your labeling must be based on the safety and effectiveness data contained in your NDA.

The draft labeling for applications based on this finding of safety and effectiveness is available on the Internet at http://www.fda.gov/cder/foi/label/2003/ind51700lbl.pdf. You may also contact the Center for Drug Evaluation and Research's Division of Medical Imaging and Radiopharmaceutical Drug Products for a copy of the draft labeling (see **ADDRESSES**).

III. Conclusions

We have determined that 500-mg prussian blue capsules can be safe and effective for the treatment of patients with known or suspected internal contamination with radioactive thallium, nonradioactive thallium, or radioactive cesium. We encourage the submission of NDAs for prussian blue drug products. The requirement under 21 U.S.C. 355(b)(1) for full reports of investigations to support these NDAs may be met by citing the published literature we relied on in preparing this notice. A list of the published literature and reprints of the reports will be available for public inspection in the Dockets Management Branch (see **ADDRESSES**). It is unnecessary to submit copies and reprints of the reports from the listed published literature. We invite applicants to submit any other pertinent studies and literature of which they are aware.

IV. Availability of a Guidance

A. Notice of Availability

In this notice, we are also announcing the availability of a guidance for industry entitled, ''Prussian Blue Drug Products—Submitting a New Drug Application.'' The guidance is intended to assist manufacturers who plan to submit NDAs for prussian blue.

This guidance is being issued as a level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). It is being implemented immediately without prior public comment because the agency believes it is in the interest of the public health to communicate this information to the public as quickly as possible. However, the agency welcomes comments on the guidance and, if comments are submitted, the agency will review them and revise the guidance if appropriate. The guidance represents the agency's current thinking on issues associated with the submission of NDAs for prussian blue. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

B. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (see **ADDRESSSES**). Two copies of any mailed comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

C. Electronic Access

Persons with access to the Internet may obtain the guidance at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

V. Published Literature on the Safety and Effectiveness of Prussion Blue

The published literature we have relied on in making the determinations regarding prussian blue contained in this notice is listed in this section of this document. Copies of the published literature will be on display in the Dockets Management Branch (see **ADDRESSES**) and can be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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15. International Atomic Energy Agency, *Dosimetric and Medical Aspects of the Radiological Accident in Goiania in 1987*, Vienna, IAEA–TECDOC–1009, 1998.

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17. Kargacin, B., and K. Kostial, ''Reduction of 85Sr, ^{137}Cs, ^{131}I and ^{141}Ce Retention in Rats by Simultaneous Oral Administration of Calcium Alginate, Ferrihexacyanoferrate(II) Ki and Zn-Dtpa,'' *Health Physics*, 5:859–864, 1985.

18. Kargacin, B. et al., ''The Influence of a Composite Treatment for Internal Contamination by Several Radionuclides on Certain Health Parameters in Rats,'' *Arhiv za Higijenu Rada i Toksikologiju*, 36:165–172, 1985.

19. Kostial, K. et al., ''Simultaneous Reduction of Radioactive Strontium, Caesium, and Iodine Retention by Single Treatment in Rats,'' *The Science of the Total Environment*, 22:1–10, 1981.

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21. Kostial, K., B. Kargacin, and I. Simonovic, ''Efficacy of a Composite Treatment for Mixed Fission Products in Rats,'' *Journal of Applied Toxicology*, 3:291–296, 1983.

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Dated: January 28, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2597 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Opioid Treatment Program Accreditation Evaluation—New—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies (DPT), is evaluating the new system of opioid treatment program (OTP) regulation, which relies on accreditation by independent organizations approved by CSAT. This replaces the former system of regulation by the Food and Drug Administration (FDA). Effective May 18, 2001, SAMHSA and CSAT, in conjunction with the FDA and other Federal agencies, issued ''final regulations for the use of narcotic drugs in maintenance and detoxification treatment of opioid addiction,'' 42 CFR part 8. To date, SAMHSA has approved four organizations to provide accreditation to or conduct accreditation surveys of programs that use methadone and other approved medications to treat opioid addiction: (1) The Commission on Accreditation of Rehabilitation Facilities (CARF), (2) the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), (3)

the Council on Accreditation for Children and Family Services (COA), and (4) the State of Washington Department of Health and Human Services, Division of Alcohol and Substance Abuse. The shift to an accreditation approach is expected to improve the quality of, and access to, OTPs.

An earlier, related study, conducted prior to accreditation, examined the experience of a pilot group of OTPs undergoing the accreditation process with extensive technical assistance provided through CSAT. Now that accreditation has become mandatory, the current study will assess its impact on OTPs, and the field of substance abuse treatment at a critical beginning phase.

The primary purposes of the proposed OTP Accreditation Evaluation are to assess the accreditation process and its cost and impact, and to provide input to CSAT concerning how the process might be improved. Specifically, the OTP Accreditation Evaluation will examine: (1) Processes, barriers, and costs associated with accreditation, (2) administrative and clinical impacts, (3) cost to the federal government for national implementation of the new regulations, and (4) potential policy changes affecting the accreditation-based oversight system.

The evaluation will be accomplished by secondary analysis of existing data as well as by collecting data before and after accreditation, from different sources and using several different data collection methods. Given the great diversity of this relatively small body of programs, the first data collection effort involves administering a questionnaire to all OTPs. The questionnaire is intended to elicit information about the resources programs need to prepare for accreditation and undergo the accreditation survey; services provided; the costs of providing these services; and staff perceptions of the accreditation process. Three vesions of the questionnaire will be used to accommodate OTPs' accreditation survey schedules: a pre-accreditation questionnaire, a post-accreditation questionnaire, and a post-only accreditation questionnaire. All OTPs will receive one or two questionnaires, depending on their accreditation survey status. OTPs that have not undergone an accreditation survey at the start of data collection will receive a pre-accreditation questionnaire. These OTPs will also receive a post-accreditation questionnaire six months after their accreditation survey. OTPs that have been accredited for less than four months at the start of data collection will receive a post-only questionnaire and a post-accreditation questionnaire at six months after their accreditation survey. OTPs that have been accredited for more than four months at the start of data collection will receive a post-only questionnaire.

In addition to the OTP survey, data will be obtained from existing sources including SAMHSA surveys such as the National Survey of Substance Abuse Treatment Services (N–SSATS) and the Treatment Episode Data Set (TEDS). These will provide an historical perspective on opioid treatment services and insight regarding the extent of opioid addiction service episodes. Information from the questionnaire administered to all OTPs will be supplemented and validated by more intensive data collection to be conducted with a small sample of OTPs that have not yet undergone accreditation, stratifying on factors determined by the earlier study to be related to OTPs' accreditation experience. Data will be collected from the smaller sample of OTPs through several means over the course of one year per program (six months before and six months after an accreditation survey): (1) A questionnaire administered on-site to patients to obtain patient perceptions about accreditation and level of satisfaction (2) chart abstraction by contractor staff of limited patient outcomes data, (3) activity logs to capture the amount of OTP staff time spent by OTP staff in various broad activities, and (4) interviews with OTP staff and related community organizations concerning their perceptions and experience.

The estimated response burden for the proposed OTP accreditation evaluation over a period of two years is summarized below.

Form	Number of respondents	Responses/respondent	Total responses	Hours/response	Total hour burden
Self-administered pre-accreditation questionnaire	600	1	600	1	600
Self-administered post-accreditation questionnaire	700	1	700	1	700
Self-administered post-accreditation-only questionnaire	500	1	500	1	500
Activity logs	240	312	74,880	.1	7,488
Activity summary worksheet	60	26	1,560	1	1,560
Chart abstraction (OTP staff spent pulling charts *etc.*)	60	2	120	1	120
Patient questionnaire	6,000	1	6,000	.3	1,800
OTP/CBO staff interview	300	2	600	.7	420
Total	7,700		84,960		13,188
2-year Annual Average	3,850		42,480		6,594

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 28, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–2489 Filed 2–3–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the

Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on March 4–5, 2003 is to convene the full Advisory Committee (appointed by Secretary Norton on April 1, 2002); and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: 8:30 a.m., Tuesday, March 4, 2003; and 8:30 a.m., Wednesday, March 5, 2003.

ADDRESSES: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005. Meetings on both days will be held in the State Suite.

FOR FURTHER INFORMATION CONTACT: Kelsey Passé, National Invasive Species Council Program Analyst; Phone: (202) 513–7243; Fax: (202) 371–1751.

Dated: January 30, 2003.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 03–2532 Filed 2–3–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Recovery Plan for the Plant Holy Ghost Ipomopsis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the Final Recovery Plan for the Holy Ghost Ipomopsis (*Ipomopsis sancti-spiritus*). This plant is known from only one site in the southern Sangre de Cristo Mountains on the Santa Fe National Forest in San Miguel County, New Mexico.

ADDRESSES: Recovery plans that have been approved by the U.S. Fish and Wildlife Service are available on the World Wide Web at *http://southwest.fws.gov*. Recovery Plans may also be obtained from the Field Supervisor, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, New Mexico 87113 (Telephone (505) 346–2525)

FOR FURTHER INFORMATION CONTACT: Anna Marie Munoz, Fish and Wildlife Biologist, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, New Mexico 87113, (phone 505/346–2525).

SUPPLEMENTARY INFORMATION:

Background

A primary goal of the endangered species program is to restore endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems. To help guide recovery, we prepare recovery plans for most endangered or threatened species native to the United States. Recovery plans describe needed conservation actions for the species, time and cost estimates for the actions, and recovery goals for downlisting or delisting.

The Endangered Species Act of 1973 (Act), as amended, (16 U.S.C. 1531 *et seq*.) requires that each endangered or threatened species be included in a recovery plan unless a plan would not promote a species' conservation. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. Information presented during the public comment period has been considered in the preparation of the final recovery plan, and is summarized in the appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

Holy Ghost ipomopsis was given endangered status under the Act on March 23, 1994 (59 FR 13840). It is known from a single canyon in the Santa Fe National Forest in northwestern San Miguel County, New Mexico. An estimated 2,500 plants occupy about 80 hectares (200 acres) along a U.S. Forest Service road. Impacts from road maintenance, recreation, and catastrophic forest fire are immediate management concerns. In the long term, present land uses influence management away from frequent disturbances that produce the preferred habitat for this species.

Recovery will focus on protecting and enhancing the existing population. Additional recovery work will include research to determine the biological and ecological requirements of the species, establishment of a botanical garden population and a seed bank, establishment of a management plan, and reintroduction into suitable habitat in the upper Pecos River Basin.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 11, 2002.

Geoffrey L. Haskett,

Acting Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. 03–2488 Filed 2–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: overall orientation to the restoration program, selection of officers, establishment of technical advisory committees, development of operating guidelines, and setting future meeting dates. Background information will be presented on the Trinity River Flow Evaluation, Final Environmental Impact Statement, Implementation Plan, Record of Decision, fiscal year 2003 program of work, approved budget, and status of major planning and construction projects. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 9 a.m. to 5 p.m. on Thursday, February 20, 2003, and from 8 a.m. to 5 p.m. on Friday, February 21, 2003.

ADDRESSES: The meeting will be held at the Victorian Restaurant, 1709 Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ellen Mueller of the U.S. Fish and Wildlife Service, California/Nevada Operations Office, 2800 Cottage Way, W–2606, Sacramento, California 95825, (916) 414–6464. Dr. Mary Ellen Mueller is the designee of the committee's Federal Official—Steve Thompson, Manager of the U.S. Fish and Wildlife Service, California/Nevada Operations Office.

SUPPLEMENTARY INFORMATION: For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity

River Restoration Program, PO Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623–1800.

For logistical questions related to the February 20–21, 2003 meeting contact Charlie Chamberlain, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521, (707) 822–7201.

Dated: January 27, 2003.

Dan Walsworth,

Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 03–2478 Filed 2–3–03; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–450]

Commercial Availability of Apparel Inputs (2003): Effect of Providing Preferential Treatment to Apparel From Sub-Saharan African, Caribbean Basin, and Andean Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: January 28, 2003.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on December 30, 2002, the Commission instituted investigation No. 332–450, Commercial Availability of Apparel Inputs (2003): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African, Caribbean Basin, and Andean Countries. The Commission instituted the investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide advice regarding the probable economic effect of granting preferential treatment for apparel made from fabrics or yarns that are the subject of petitions filed in 2003 with the Committee for the Implementation of Textile Agreements (CITA) under the ''commercial availability'' (previously informally known as ''short supply'') provisions of the African Growth and Opportunity Act (AGOA), the United States-Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA, Division D of the Trade Act of 2002). The Commission conducted similar investigations in 2001 and 2002 to provide advice with respect to requests filed those years under the AGOA and the CBTPA. The recently enacted ATPDEA contains a similar commercial availability mechanism.

FOR FURTHER INFORMATION CONTACT: For general information, contact Jackie W. Jones (202–205–3466, *jones@usitc.gov* of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091, *wgearhart@usitc.gov)* of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov.*

The Commission will follow procedures similar to those in the ''short supply'' reviews in 2001 and 2002 under investigation Nos. 332–428 and 332–436, respectively. Thus, during 2003, the Commission will provide advice for each commercial availability review under one investigation number. However, the Commission will be adjusting its procedure for notifying interested parties and the public on the initiation of commercial availability reviews. The Commission will not publish notices of the initiation of the reviews in the **Federal Register** and will no longer issue news releases as it has in the past. Instead, the Commission will post a notification letter announcing the initiation of each review on its Internet site (*http://www.usitc.gov*). The Commission also has developed a group list of facsimile addresses of interested parties or individuals who wish to be automatically notified via facsimile about any requests for which the Commission initiated analysis. Interested parties may be added to this list by notifying Jackie W. Jones (202–205–3466, *jones@usitc.gov*). The notification letter will specify the article(s) under consideration, the deadline for submission of public comments on the proposed preferential treatment, and the name, telephone number, and Internet e-mail address of a staff contact for additional information. CITA publishes a summary of each request from interested parties in the **Federal Register** and posts them on its Internet site (U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA), at *http://otexa.ita.doc.gov/fr.htm*). The Commission has developed a special area on its Internet site (*http://www.usitc.gov/332s/shortsup/shortsupintro.htm*) to provide the public with information on the status of each request for which the Commission initiated analysis.

The Commission will submit its reports to the USTR not later than the 42nd day *after receiving a request for advice.* The Commission will issue a public version of each report as soon thereafter as possible, with any confidential business information deleted.

Written Submissions

Because of time constraints, the Commission will not hold public hearings in connection with the advice provided under this investigation number. However, interested parties will be invited to submit written statements (original and 3 copies) concerning the matters to be addressed by the Commission in this investigation. The Commission is particularly interested in receiving input from the private sector on the likely effect of any proposed preferential treatment on affected segments of the U.S. textile and apparel industries, their workers, and consumers. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted in accordance with section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include confidential business information submitted in the course of this investigation in the reports to the USTR. In the public version of these reports, however, the Commission will not publish confidential business information in a manner that could reveal the individual operations of the firms supplying the information. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

List of Subjects: Caribbean, African, Andean, tariffs, imports, yarn, fabric, and apparel.

By order of the Commission.

Issued: January 29, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–2513 Filed 2–3–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–449]

U.S. Market Conditions for Certain Wool Articles in 2002–04

AGENCY: International Trade Commission.

ACTION: Institution of investigation and request for public comments.

EFFECTIVE DATE: January 24, 2003.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on December 30, 2002, the Commission instituted Investigation No. 332–449, U.S. Market Conditions for Certain Wool Articles in 2002–04, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: For general information, contact Lisa Ferens (202) 205–3486; *lferens@usitc.gov)*; of the Office of Industries; for information on legal aspects, contact William Gearhart (202) 205–3091; *wgearhart@usitc.gov*; of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov.*

Background

As requested by the USTR, the Commission will provide information on U.S. market conditions, including domestic demand, supply, and increases in domestic production for men's and boys' worsted wool suits, suit-type jackets, and trousers; worsted wool fabric and yarn used in the manufacture of such clothing; and wool fibers used to make such fabrics and yarn. As requested, the Commission will also provide, to the extent practicable, data on:

(1) Increases or decreases in sales and production of the subject domestically-produced worsted wool fabrics;

(2) Increases or decreases in domestic production and consumption of the subject apparel items;

(3) The ability of domestic producers of the subject worsted wool fabrics to meet the needs of domestic manufacturers of the subject apparel items in terms of quantity and ability to meet market demands for the apparel items;

(4) Sales of the subject worsted wool fabrics lost by domestic manufacturers to imports benefitting from the temporary duty reductions on certain worsted wool fabrics under HTS headings 9902.51.11 and 9902.51.12;

(5) Loss of sales by domestic manufacturers of the subject apparel items related to the inability to purchase adequate supplies of the subject worsted wool fabrics on a cost competitive basis; and

(6) The price per square meter of imports and domestic sales of the subject worsted wool fabrics. The USTR requested that the Commission provide two confidential reports. The first report will provide, to the extent information is publicly available or is available from discussions with representatives of trade and industry, an update on market conditions for the subject wool products and a summary of any major changes with respect to the above factors, for the year 2002 and year-to-date 2002–03. The Commission will transmit this report to the USTR by October 27, 2003. The Commission will transmit the second report, providing data for 2003 and year-to-date 2003–04, by October 25, 2004. The USTR requested that the Commission issue public versions of the reports as soon as possible thereafter, with any business confidential information deleted.

In the request letter, the USTR noted that section 5102 of the Trade Act of 2002, signed by the President on August 6, 2002, amends headings 9902.51.21 and 9902.51.12 of the Harmonized Tariff Schedule of the United States (HTS) to extend, through December 31, 2005, the temporary reductions of tariffs and the tariff-rate quotas (TRQs) in those headings for imports of certain worsted wool fabric, certified by the importer as suitable for use in men's or boys' suits, suit-type jackets, and trousers. The USTR also noted that, under section 504 of the Trade and Development Act of 2000, the President is required to monitor U.S. market conditions, including domestic demand, domestic supply, and increases in domestic production for men's and boys' worsted wool suits, suit-type jackets, and trousers; worsted wool fabric and yarn used in the manufacture of such clothing; and wool fibers used in the manufacture of such fabrics and yarn. He noted that the President, in Proclamation 7383 (December 1, 2000), delegated to the USTR the authority to monitor these market conditions.

Written Submissions

The Commission intends to hold a public hearing in connection with the second report under this investigation, but not the first report. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its first report on this investigation at the earliest practical date, and such statements should be received no later than the close of business on June 9, 2003. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extend permitted by section 201.8 of the Commission's Rules, as amended, 67 FR 68036 (November 8, 2002). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include confidential business information submitted in the course of this investigation in its reports to the USTR. In the public version of these reports, however, the Commission will not publish confidential business information in a manner that would reveal the individual operations of the firm supplying the information. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

List of Subjects: Tariffs, imports, wool, fabric, and suits.

By order of the Commission.

Issued: January 29, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–2515 Filed 2–3–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–003]

Sunshine Act Meeting

Agency Holding the Meeting: International Trade Commission.

Time and Date: February 12, 2003 at 11 a.m.

Place: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

Status: Open to the public.

Matters to be Considered:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification list.
4. Inv. No. 731–TA–745 (review)(Steel Concrete Reinforcing Bar from Turkey)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before February 24, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 31, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–2796 Filed 1–31–03; 3:12 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m. to 5 p.m. on Monday, March 31, 2003 and 8:30 a.m. to 12 noon on Tuesday, April 1, 2003.

Place: The Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009.

Status: Open.

Matters To Be Considered: Division reports concerning Fiscal Year 2004 Service Plan and Fiscal Year 2005 Budget Recommendations; Report by the Department of Health and Human Services; NIC Information Center update; Discussion concerning executive training programs; Quarterly Report by Office of Justice Programs; and updates on NIC's strategic planning and Interstate Compact activities.

Contact Person for More Information: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 03–2505 Filed 2–3–03; 8:45 am]

BILLING CODE 4410–35–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,183 and NAFTA–05987]

Alcoa Lebanon Works, A Division of Alcoa, Inc.; Lebanon, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of August 9, 2002 and August 10, 2002 (postmark dates), the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) under petition TA–W–41,183 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) under petition NAFTA–5987. The TAA and NAFTA–TAA denial notices applicable to workers of Alcoa Lebanon Works, A Division of Alcoa, Inc., Lebanon, Pennsylvania were signed on July 5, 2002 and published in the **Federal Register** on July 22, 2002 (67 FR 47861 and 47682, respectively).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Alcoa Lebanon Works, A Division of Alcoa, Inc., Lebanon, Pennsylvania, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed that the customers did not increase their imports of light gauge steel products and foil products, while decreasing their purchases from the subject firm during the relevant period. The workers produced light gauge steel products and foil products.

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There was no shift in production from the workers' firm to Mexico or Canada during the relevant period. Imports from Canada or Mexico did not contribute importantly to worker separations.

The petitioners believe that the Department of Labor examined the incorrect product(s) produced by the subject firm. The petitioner states that they did not produce light gauge steel, but produced aluminum products.

A review of the data supplied by the company indicates that the firm produced light gauge aluminum sheet and foil products. The Department of Labor erred in the initial decision by referring to the products produced by the subject plant as light gauge steel and foil products. A review of the initial data supplied by the company and further analysis of the customer survey show that the Department investigated the correct products (light gauge aluminum sheet and foil products) produced by the Alcoa Lebanon Works plant.

The petitioner's also believe that the decisions should be based on steel production, exports and imports.

Imported steel into the United States is not relevant to the TAA and NAFTA investigations that were filed on behalf of workers producing light gauge aluminum sheet products and foil products. The product imported must be ''like or directly'' competitive with what the subject firm produced and the imports must ''contribute importantly'' to the layoffs at the subject plant to meet the eligibility requirements for adjustment assistance under Section 223 of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no misinterpretation of the law or of the facts which would justify reconsideration of the Department of labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of January, 2003.

Edward a. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–2545 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,108; Harvard Industries, Inc., Jackson, MI.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.A.) (No employment declines) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,320; American Bag Corp., Stearns Plant, Stearns, KY.

The investigation revealed that criterion (a)(2)(A) (I.B.) (No Sales or Production declines) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,274; Neenah Foundry Co., Neenah, WI.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,237; Pass and Seymour Legrand, a Subsidiary of Legrand, Dallas, NC.

TA–W–50,254; Precision Tool and Design, Inc., Erie, PA.

TA–W–50,221; Ericsson Wireless Communications, San Diego, CA.

TA–W–50,019 & A; Domtar A.W., Wisconsin Operations, Port Edwards, WI and Nekoosa, WI.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–50,319; Affiliated Computer Services, Libertyville, KY.

TA–W–50,399; Computer Horizons Corp., Irving, TX.

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not a supplier or downstream producer for trade-affected companies.

TA–W–50,333; The Rockford Co., Custom Metal Products Div., Rockford, IL.

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not an upstream supplier of components for trade-affected companies.

TA–W–50,328; Crane Manufacturing and Services Corp., Cudahy, WI.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,268; Frazer and Jones Co., a Division of The Eastern Co., Soway, NY: October 2, 2001.

TA–W–42,330; Alcoa, Inc., Cleveland, OH: November 1, 2001.

TA–W–42,331; PHB Die Casting, a Subsidiary of PHB, Inc., Fairview, PA: October 15, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–50,310; Mossberg Reel LLC, a Wholly Owned Subsidiary of Boxy S.P.A., Cumberland, RI: December 6, 2001.

TA–W–50,154; Aurafin-OroAmerica LLC, Burbank, CA: November 12, 2001.

TA–W–50,290; Sipex Corp., Billerica, MA: November 6, 2001.

TA–W–50,289; Metolius Mountain Products, Inc., Bend, OR: November 22, 2001.

TA–W–50,272; Hitachi Magnetics Corp., Edmore, MI: December 3, 2003.

TA–W–50,257; Electric Steel Castings Co., Indianapolis, IN: December 5, 2001.

TA–W–50,230; Mount Vernon Mills, Inc., Johnston, SC: December 2, 2001.

TA–W–50,193; Dan River, Inc., Greenville, SC: November 6, 2001.

TA–W–50,187; Crown Castings, Inc., Midland Park, NJ: November 19, 2001.

TA–W–50,166; L. Chessler, In, Philadelphia, PA: November 21, 2001.

TA–W–50,152; Kennecott Rawhide Mining Co., Denton Rawhide Mine, Fallon, NE: November 20, 2001.

TA–W–50,004 & A; Spang and Company, Magnetics Div., East Butler, PA and Booneville, AR: November 4, 2001.

TA–W–50,038; Hitachi Metals America, LTD, HI Specialty America, Irwin, PA: November 5, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–50,346; Square D Company, Including Leased Workers of Adecco, Columbia, MO: December 10, 2001.

TA–W–50,124; Thomson, Inc., Research and Development, Lancaster, PA: November 8, 2001.

TA–W–50,200; Wabash Alloys, L.L.C., Benton, AR: November 25, 2001.

TA–W–50,377; Trans World Connection, LTD, Lynchburg, VA: December 12, 2001.

TA–W–50,189; Temco Fireplace Products, Manchester, TN: November 21, 2001.

I hereby certify that the aforementioned determinations were issued during the month of January 2003. 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: January 10, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–2560 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,275 & NAFTA–05163]

Tyco Electronics, Fiber Optics Division; Glen Rock, PA; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Tyco Electronics, Fiber Optics Division* v. *U.S. Secretary of Labor*, No. 01–00152.

The Department's initial denial of Trade Adjustment Assistance (TA–W–40,275) for the workers of Tyco Electronics, Fiber Optics Division, Glen Rock, Pennsylvania was issued on January 14, 2002, and published in the **Federal Register** on January 31, 2002 (67 FR 4749), was based on the finding that the ''contributed importantly'' criterion of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. The subject company did not import fiber optic cable connectors during the relevant period. The predominant cause of the work separations was related to a domestic transfer of production to an affiliated facility in Harrisburg, Pennsylvania.

The Department's initial denial of NAFTA-Transitional Adjustment Assistance (NAFTA–5163) for the workers of Tyco Electronics, Fiber Optics Division, Glen Rock, Pennsylvania was issued on September 28, 2001, and published in the **Federal Register** on October 19, 2001 (66 FR 53252), was based on the finding that the criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. The predominant cause of the worker separations was related to a domestic transfer of production to an affiliated facility in Harrisburg, Pennsylvania.

On January 22, 2002 Department of Labor issued a Notice of Negative Determination Regarding Application for Reconsideration for NAFTA–5163 and published in the **Federal Register** on February 5, 2002 (67 FR 5299). The petitioner alleged that plant production was shifted to an affiliated plant located in Mexico. Information provided by the company show that any plant production shifted to Mexico was negligible during the relevant period. The overwhelming (over 98%) portion of subject plant production was transferred to Harrisburg, Pennsylvania during the relevant period.

The petitioners on reconsideration also supplied a list of products that they indicated transferred to Mexico. The overwhelming majority of these products were transferred prior to the relevant time frame of the investigation. Some of these products were produced at the subject firm only when orders required quick turn around time. The majority of these products were produced at a sister facility located in Harrisburg when quick turn around time was required. The quick turn around products equivalent to what the Mexican plant produced were produced at the subject plant

Also, on reconsideration the petitioner also claimed that the plant workers trained workers from an affiliated Mexican plant. The workers did train workers from the Mexican plant during the relevant time frame. However, the training related to only a negligible portion of production performed at the subject plant.

On remand, the Department contacted a company official requesting company-wide sales figures of the article(s) produced at the subject firm plant and a list of the major declining customers of the subject plant.

The company supplied sales figures for the Fiber Optics Division showing increases in sales from 1999 to 2000 and sales declines from the January through September 2001 period over the corresponding 2000 period.

Since the company reported declining sales at the Fiber Optics Division during the relevant period, the Department conducted a survey of the major declining customers of the subject firm regarding their purchases of fiber optic cable assemblies, components and value added enclosures during 1999, 2000 and January through September 2001 over the corresponding 2000 period.

The survey revealed that one respondent did not increase their imports of products like or directly competitive with what the subject plant produced, while decreasing their purchases from the subject firm. Another major customer reported no direct import purchases during 1999, 2000 and January through September 2001. However, this customer reported that a small percentage of the products purchased were indirect imports (products purchased from a domestic source that were wholly manufactured in a foreign country) during September 2001, well after the decision by the subject firm to transfer production to Harrisburg, Pennsylvania and during the time of the completion of the domestic transfer. The amount of the customer's reported indirect imports was relatively low in relation to the customer's total domestic purchases.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Tyco Electronics, Fiber Optics Division, Glen Rock, Pennsylvania.

Signed at Washington, DC this 15th day of January 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–2544 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,926]

Anvil Knitwear, Inc.; Kings Mountain, North Carolina; Notice of Revised Determination On Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for voluntary remand for further investigation of the negative determination in *Former Employees of Anvil Knitwear, Inc.* v. *U.S. Secretary of Labor* (Court No. 02–00153).

The Department's initial denial of the petition for employees of Anvil Knitwear, Inc., Kings Mountain, North Carolina was issued on December 4, 2001, and published in the **Federal Register** on December 26, 2001 (66 FR 66428). The denial was based on the fact that criterion (3) of the Group Eligibility Requirements of section 222 of the Trade Act of 1974, as amended, was not met. Imports did not contribute importantly to worker separations at the subject firm.

On remand, the Department obtained new information and clarification from the company regarding the internal flow of the fabrics produced by the subject plant.

New data supplied by the company show that the overwhelming majority of the fabric produced by the subject plant was shipped to an affiliated plant, Anvil

Knitwear, Mullins, South Carolina. The Mullins plant incorporated the subject plant's fabric into knit tops and was certified for Trade Adjustment Assistance on April 13, 2001, under TA–W–38,829. The subject plant's fabrics were an integral part of Mullins knit top production.

Conclusion

After careful review of the additional facts obtained on remand, I conclude that there were increased imports of articles like or directly competitive with those produced by the subject firm that contributed importantly to the worker separations and sales or production declines at the subject facility. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Anvil Knitwear, Inc., Kings Mountain, North Carolina who became totally or partially separated from employment on or after August 3, 2000, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 14th day of January, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–2559 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,455]

Anvil Knitwear, Inc.; Kings Mountain, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 3, 2003, in response to a petition that was filed on December 5, 2002, by a company official on behalf of workers at Anvil Knitwear, Inc., Kings Mountain, North Carolina.

The petitioning group of workers is covered by an active certification issued on January 14, 2003, which remains in effect (TA–39,926). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2567 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,375]

Carlisle Foodservice Products; Erie, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 18, 2002, in response to a worker petition filed by a company official on behalf of workers at Carlisle FoodService Products, Erie, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no useful purpose and the investigation has been terminated.

Signed in Washington, DC this 16th day of January, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2565 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,132]

Ceramic Cooling Technologies, Fort Worth, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 19, 2002 in response to a worker petition that was filed by the company on behalf of workers at Ceramic Cooling Technologies, Fort Worth, Texas.

The company has requested that the petition for Trade Adjustment Assistance be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 8th day of January, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2551 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,049]

Cooper Industries, Inc., Cooper Power Systems Division; Waukesha, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 12, 2002, in response to a worker petition filed on behalf of workers at Cooper Industries, Inc., Cooper Power Systems Division, Waukesha, Wisconsin.

The petitioning group of workers is covered by an earlier petition filed on November 12, 2002 (TA–W–50,048), 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 in Washington, DC, this 15th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2561 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,109]

Creative Mold Co. LLC, Auburn, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 2002, in response to a worker petition filed by a company official on behalf of workers at Creative Mold Co. LLC, Auburn, Maine.

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 14th day of January 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2550 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,564]

Dana Corporation, Engine and Fluid Management Group; Crenshaw, Mississippi; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 15, 2003, in response to a worker petition filed by a company official on behalf of workers at Dana Corporation, Engine and Fluid Management Group, Crenshaw, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 17th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2568 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,383]

Employment Control, Inc.; Easton, Maryland; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 18, 2002, in response to a worker petition which was filed on behalf of workers at Employment Control, Inc., Easton, Maryland.

An active certification covering the petitioning group of workers is already in effect (TA–W–41,976, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 13th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2566 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,285]

Fiber-Line, Inc.; Hickory, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 10, 2002, in response to a worker petition filed by a company official on behalf of workers at Fiber-Line, Inc. Hickory, North Carolina.

The company 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 15th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2553 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,294]

Gates Rubber Company, Air Springs Division; Denver, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 10, 2002, in response to a worker petition filed a company official on behalf of workers at Gates Rubber Company, Air Springs Division, Denver, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation under this petition has been terminated.

Signed in Washington, DC this 16th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2562 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,248]

Howmet Casting, Dover, New Jersey; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 4, 2002, in response to a petition filed by a State agency representative on behalf of workers at Howmet Casting, Dover, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 13th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2552 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,358]

Jore Corporation; Edgerton, Wisconsin; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 16, 2002, in response to a worker petition filed by a company official on behalf of workers at Jore Corporation, Edgerton, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 15th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2564 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,101]

Magna Powertech, Grand Rapids, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 15, 2003 in response to a worker petition filed on behalf of workers at Magna Powertech, Grand Rapids, Michigan.

The petition was signed and submitted in advance of the inception of the Trade Adjustment Assistance Reform Act of 2002 on November 4, 2002. The petition has therefore been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC this 14th day of January 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2549 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,462]

Micro Component Technology; St. Paul, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 6, 2003, in response to a worker petition filed by a community representative on behalf of workers at Micro Component Technology, St. Paul, Minnesota.

The petitioning group of workers is covered by an active certification issued on January 10, 2003, and which remains in effect (TA–W–50,394). Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 14th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2558 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,437]

Reliant Bolt, Inc.; Bedford Park, Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 3, 2003, in response to a worker petition filed by the United Steelworkers of America on behalf of workers at Reliant Bolt, Inc., Bedford Park, Illinois.

The petitioning group of workers is covered by an active certification issued on December 10, 2002 (TA–W–50,001). 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, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2554 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,349]

Simmons Foods; Siloam Springs, AR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 16, 2003, in response to a worker petition filed on behalf of workers at Simmons Foods, Siloam Springs, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 14th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2555 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,334]

Sumco Phoenix Corporation; Fremont, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 13, 2002, in response to a petition filed by a company official on behalf of workers at Sumco Phoenix Corporation, Fremont, California.

The company official submitting the petition 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 17th day of January, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2563 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 17th day of January 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 01/02/2003 and 01/10/2003]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
50,404	Vernay Laboratories, Inc. (Comp)	Yellow Springs, OH	01/02/2003	12/11/2002
50,405	Dorr-Oliver Eimco USA (Comp)	Salt Lake City, UT	01/02/2003	12/20/2002
50,406	Walkers Auto Electric (Comp)	Vancouver, WA	01/02/2003	12/09/2002
50,407	Eaton, (Comp)	Everett, WA	01/02/2003	12/23/2002
50,408	Best Manufacturing (Comp)	Johnson City, TN	01/02/2003	12/22/2002
50,409	International Comfort Products (IBB)	Lewisburg, TN	01/02/2003	12/05/2002
50,410	Precision Diversified Ind., LLC (Wkrs)	Plymouth, MN	01/02/2003	12/19/2002
50,411	Holmes Group (The) (Comp)	Flowood, MS	01/02/2003	12/11/2002
50,412	Hayes Lemmerz International (Wkrs)	Bowling Green, KY	01/02/2003	12/20/2002
50,413	American Tack and Hardware (Comp)	Monsey, NY	01/02/2003	12/05/2002
50,414	Pacon Corporation (Wkrs)	Neenah, WI	01/02/2003	12/20/2002
50,415	Times Fiber Communication Inc. (USWA)	Chatham, VA	01/02/2003	12/16/2002
50,416	Sprague Industries (Comp)	Providence, RI	01/02/2003	12/17/2002
50,417	ABM (Comp)	Greenville, SC	01/02/2003	12/09/2002
50,418	Plastic World (Wkrs)	Wharton, NJ	01/02/2003	12/17/2002
50,419	Armstrong World Industries, Inc. (USWA)	Lancaster, PA	01/02/2003	12/20/2002
50,420	Waldo Engine Management, LLC (UAW)	Cass Ciry, MI	01/02/2003	12/17/2002
50,421	Alpine Molding, Inc. (Wkrs)	Gaylord, MI	01/02/2003	12/20/2002
50,422	Altx, Inc. (USWA)	Watervaliet, NY	01/02/2003	12/30/2002
50,423	L.A. Darling Co. (AR)	Pocahontas, AR	01/02/2003	12/30/2002
50,424	Wolverine Worldwide Inc. (MI)	Rockford, MI	01/02/2003	12/11/2002
50,425	Willing B. Wire (NJ)	Willingboro, NJ	01/02/2003	12/11/2002
50,426	B.I. Transportation Inc. (Comp)	Burlington, NC	01/02/2003	12/27/2002
50,427	Boxboard Packaging Inc. (Wkrs)	Norwalk, OH	01/02/2003	12/18/2002
50,428	South Bend Acquisition Corporation (Comp)	South Bend, IN	01/02/2003	12/26/2002
50,429	Universal Electronics, Inc. (Comp)	Menomonee Falls, WI	01/02/2003	12/27/2002
50,430	L'Art De La Mode, Inc. (NJ)	Carlstadt, NJ	01/02/2003	12/27/2002
50,431	General Electric (Wkrs)	Bucyrus, OH	01/02/2003	12/26/2002
50,432	Angus Consulting Management (Wkrs)	Columbus, OH	01/03/2003	12/19/2002
50,433	Fun Tees, Inc. (Wkrs)	Andrews, SC	01/03/2003	12/20/2002
50,434	Sanmina-SCI (Comp)	Watsonville, CA	01/03/2003	12/19/2002
50,435	Foster Wheeler Energy Corporation (Comp)	Buffalo, NY	01/03/2003	12/20/2002
50,436	Amcor White Cap (USWA)	Chicago, IL	01/03/2003	12/17/2002
50,437	Reliant Bolt, Inc. (USWA)	Bedford Park, IL	01/03/2003	12/17/2002
50,438	Computer Sciences Corporation (Wkrs)	Somerset, NJ	01/03/2003	12/21/2002
50,439	Tresco Tool, Inc. (Comp)	Guys Mills, PA	01/03/2003	12/23/2002
50,440	Tranex (Comp)	Colo. Springs, CO	01/03/2003	12/19/2002
50,441	Slipstream (Comp)	Dillingham, AK	01/03/2003	12/19/2002
50,442	Dynamik Tool and Die (Wkrs)	Dandridge, TN	01/03/2003	12/06/2002
50,443	Flexcel (Wkrs)	Danville, KY	01/03/2003	12/23/2002
50,444	Tyson Foods (Comp)	Stilwell, OK	01/03/2003	12/16/2002
50,445	Coe Manufacturing (USWA)	Painesville, OH	01/03/2003	12/18/2002
50,446	Ericsson, Inc. (Comp)	Woodbury, NY	01/03/2003	12/18/2002
50,447	Fulton Bellows and Components (Comp)	Knoxville, TN	01/03/2003	12/16/2002
50,448	Universal Instruments (Wkrs)	Binghamton, NY	01/03/2003	12/17/2002
50,449	PTC/Alliance (USWA)	Darlington, PA	01/03/2003	12/26/2002
50,450	A.M. Promotions, Inc. (Wkrs)	Ebensburg, PA	01/03/2003	12/19/2002
50,451	Berendsen Fluid Power (Wkrs)	Houston, TX	01/03/2003	12/16/2002
50,452	Spectrum Field Services (Wkrs)	Tulsa, OK	01/03/2003	12/01/2002
50,453	Atlas Copco Wagner, Inc. (IBT)	Portland, OR	01/03/2003	12/23/2002
50,454	WI Pattern Co. (WI)	Racine, WI	01/03/2003	12/18/2002
50,455	Anvil Knitwear, Inc. (Comp)	Kings Mountain, NC	01/03/2003	12/05/2002
50,456	J and A Industrial Sheet Metal (OR)	Bend, OR	01/03/2003	12/23/2002
50,457	TLC Polyform (Wkrs)	Beaverton, MI	01/03/2003	12/23/2002
50,458	Smurfit-Stone Container Corporation (Comp)	Spartanburg, SC	01/03/2003	12/23/2002
50,459	Suss Microtec, Inc. (VT)	Waterbury Cente, VT	01/03/2003	12/23/2002
50,460	VF Jeanswear Limited Partnership (Comp)	Luray, VA	01/03/2003	11/06/2002
50,461	VF Jeanswear Limited Partnership (Comp)	Lebanon, MO	01/03/2003	11/06/2002
50,462	Micro Component Technology (Comp)	St. Paul, MN	01/06/2003	12/18/2002
50,463	McCormick Enterprises, Inc. (Comp)	Delton, MI	01/06/2003	12/04/2002
50,464	Central Chair Company (Comp)	Asheboro, NC	01/06/2003	12/19/2002

APPENDIX—Continued

[Petitions instituted between 01/02/2003 and 01/10/2003]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
50,465	J B Tool and Machine, Inc. (Wkrs)	Wapakoneta, OH	01/06/2003	12/31/2002
50,466	Makita Corporation of America (Wkrs)	Buford, GA	01/06/2003	12/26/2002
50,467	F/V K2 (Comp)	Homer, AK	01/06/2003	12/28/2002
50,468	Textron (PACE)	Lincoln, NE	01/06/2003	12/30/2002
50,469	Supra Telcom (Wkrs)	Quincy, IL	01/06/2003	12/20/2002
50,470	Hitachi High Technologies America, Inc. (Comp)	San Jose, CA	01/06/2003	12/19/2002
50,471	MGM Transport Corp. (NJ)	Totowa, NJ	01/06/2003	12/31/2002
50,472	Sharon Tube Company (USWA)	Sharon, PA	01/06/2003	12/31/2002
50,473	Georgia Headwear and Apparel (Comp)	Waycross, GA	01/06/2003	12/23/2002
50,474	Store Kraft Manufacturing Company (AR)	Greenwood, AR	01/06/2003	01/02/2003
50,475	Dynamatic Corporation (WI)	Kenosha, WI	01/06/2003	12/23/2002
50,476	Honeywell International (MN)	Coon Rapids, MN	01/06/2003	12/30/2002
50,477	Fleming Companies, Inc. (Wkrs)	Altoona, PA	01/06/2003	12/24/2002
50,478	Maysteel (Comp)	Mayville, WI	01/06/2003	12/27/2002
50,479	Eastman Kodak Company (NY)	Rochester, NY	01/06/2003	12/20/2002
50,480	Miller Bag Company (Comp)	Minneapolis, MN	01/06/2003	12/23/2002
50,481	Nautilus HPS, Inc. (Comp)	Independence, VA	01/06/2003	12/17/2002
50,482	Black and Decker (Comp)	Easton, MD	01/06/2003	11/15/2002
50,483	CNH (UAW)	Burlington, IA	01/06/2003	01/02/2003
50,484	Hewlett Packard Company (Wkrs)	Vancouver, WA	01/06/2003	12/30/2002
50,485	Oshkosh B'Gosh Inc. (Comp)	Medley, FL	01/06/2003	12/26/2002
50,486	Electronic Data Systems Corp (Wkrs)	Fairborn, OH	01/06/2003	12/27/2002
50,487	NexPak (Wkrs)	El Dorado Hills, CA	01/06/2003	12/09/2002
50,488	Sanmina—SCI (Comp)	Lewisburg, PA	01/06/2003	01/03/2003
50,489	Corning, Inc. (Comp)	Painted Post, NY	01/06/2003	12/20/2002
50,490	CCL Container (Wkrs)	Harrisonburg, VA	01/06/2003	01/02/2003
50,491	KNS (Comp)	Austin, TX	01/06/2003	12/20/2002
50,492	Adventure Travel (MI)	Iron Mountain, MI	01/06/2003	01/01/2003
50,493	Moltech Power Systems (Comp)	Gainesville, FL	01/06/2003	01/03/2003
50,494	Manufacturers Services Limited (MN)	Arden Hills, MN	01/06/2003	01/03/2003
50,495	Massillon Stainless, Inc. (USWA)	Massillon, OH	01/06/2003	01/03/2003
50,496	US Manufacturing Corp. (MI)	Fraser, MI	01/06/2003	01/06/2002
50,497	C-Cor.Net (Wkrs)	Manlius, NY	01/07/2003	01/02/2003
50,498	Ram Tool, Inc. (Wkrs)	Conneaut Lake, PA	01/07/2003	01/03/2003
50,499	Marion County Shirt Company (AR)	Marshall, AR	01/07/2003	01/06/2003
50,500	Creative Die Mold (Wkrs)	Glendale Hgts., IL	01/07/2003	01/03/2003
50,501	HG Winter and Sons, Inc. (Comp)	Kingfield, ME	01/07/2003	01/03/2003
50,502	Cable Warehouse (CO)	Denver, CO	01/07/2003	12/02/2002
50,503	F/V Kirsten Marie (Comp)	Port Heiden, AK	01/07/2003	11/23/2002
50,504	Hamilton Sundstrand (Comp)	Denver, CO	01/07/2003	12/02/2002
50,505	Newport Steel Corporation (USWA)	Newport, KY	01/07/2003	12/28/2002
50,506	Con Met (Wkrs)	Clackamas, OR	01/07/2003	12/10/2002
50,507	Nortel Networks (Comp)	RTP, NC	01/07/2003	12/16/2002
50,508	Nortel Networks (Wkrs)	Richardson, TX	01/07/2003	01/06/2003
50,509	Sensient Colors, Inc. (USWA)	Birdsboro, PA	01/07/2003	12/20/2002
50,510	Goodrich Corporation (GMP)	Spencer, WV	01/07/2003	12/30/2002
50,511	Johns Manville (USWA)	Vienna, WV	01/07/2003	12/31/2002
50,512	F/V Millie Jo (Comp)	Chignik Lagoon, AK	01/07/2003	01/04/2002
50,513	Sherwood Harsco Corporation (Comp)	Washington, PA	01/07/2003	01/06/2003
50,514	General Electric Co. (Comp)	Mebane, NC	01/07/2003	01/07/2002
50,515	PPC Macomb, Inc. (Comp)	Macomb, IL	01/07/2003	01/07/2003
50,516	Gina's Inc. (Wkrs)	Brooklyn, NY	01/07/2003	12/11/2002
50,517	Carl Zeiss IMT Corporation (Wkrs)	Minneapolis, MN	01/08/2003	01/06/2003
50,518	Bangor and Aroostook Railroad (IBMWE)	Hermon, ME	01/08/2003	01/07/2003
50,519	Tyson Foods (Comp)	Jacksonville, FL	01/08/2003	01/07/2002
50,520	Omnitronics, LLC (Comp)	Conneaut, OH	01/08/2003	12/29/2002
50,521	Gorecki Manufacturing, Inc. (Wkrs)	Milaca, MN	01/08/2003	01/03/2003
50,522	Louisiana Pacific Corporation (Comp)	Saratoga, WY	01/08/2003	12/27/2002
50,523	Computer Sciences Corporation (Wkrs)	Newark, DE	01/08/2003	01/07/2003
50,524	F/V Jessica (Comp)	Anchorage, AK	01/08/2003	01/07/2003
50,525	Cincinnati Machine (Wkrs)	Cincinnati, OH	01/08/2003	01/07/2003
50,526	Sanmina-SCI (Comp)	West Liberty, KY	01/08/2003	01/03/2003
50,527	Generation 2 Worldwide, LLC (Comp)	Dothan, AL	01/09/2003	01/08/2003
50,528	Celestica Corporation (Wkrs)	Rochester, MN	01/09/2003	01/07/2003
50,529	Enterasys Networks, Inc. (Wkrs)	Salt Lake City, UT	01/09/2003	01/08/2003
50,530	PHB Tool and Die (Comp)	Girard, PA	01/09/2003	01/08/2003
50,531	Hankins Lumber Company (MS)	Grenada, MS	01/09/2003	01/08/2003
50,532	Western Digital Corporation (Wkrs)	Rochester, MN	01/09/2003	01/08/2003
50,533	Mastercraft Fabrics, LLC (Comp)	Spindale, NC	01/09/2003	01/02/2003
50,534	Corning Cable Systems, LLC (Wkrs)	Hickory, NC	01/09/2003	11/25/2003

APPENDIX—Continued

[Petitions instituted between 01/02/2003 and 01/10/2003]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
50,535	North American Container (WI)	Fond Du Lac, WI	01/09/2003	01/08/2003
50,536	Lacers Sport, Inc. (Wkrs)	Opa Locka, FL	01/10/2003	12/31/2002
50,537	Brillion Iron Works, Inc. (Comp)	Brillion, WI	01/10/2003	01/07/2003
50,538	Dana Corporation (UAW)	Richmond, IN	01/10/2003	01/08/2003
50,539	Arden Companies (Wkrs)	Kendallville, IN	01/10/2003	01/07/2003
50,540	Gaylord Container Corp. (AWPPW)	Antioch, CA	01/10/2003	12/03/2002
50,541	Prudential Insurance Co. (MN)	Plymouth, MN	01/10/2003	01/09/2003

[FR Doc. 03–2543 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,460]

VF Jeanswear, Limited Partnership, a Subsidiary of VF Corporation (Hawksbill Road Facility); Luray, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 3, 2003, in response to a worker petition filed by a company official on behalf of workers at VF Jeanswear Limited Partnership, a subsidiary of VF Corporation, Hawksville Road Facility, Luray, Virginia.

The petitioning group of workers is covered by an active certification issued on February 15, 2002, for all workers of the subject firm in Luray, Virginia, which remains in effect (TA–W–40,736B). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 10th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2556 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,461]

VF Jeanswear Limited Partnership, a Subsidiary of VF Corporation Sewing Facility (1900 Industrial Drive); Lebanon, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 3, 2003, in response to a worker petition filed by a company official on behalf of workers VF Jeanswear Limited Partnership, a subsidiary of VF Corporation, Sewing Facility (1900 Industrial Drive), Lebanon, Missouri.

The petitioning group of workers is covered by an active certification issued on December 20, 2002, and which remains in effect (TA–W–50,061A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 10th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2557 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6678]

State of Alaska Commercial Fisheries Entry Commission Permit #64936J, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64936J, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2570 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6680]

State of Alaska Commercial Fisheries Entry Commission Permit #60630I, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60630I, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would

serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2571 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6682]

State of Alaska Commercial Fisheries Entry Commission Permit #66298R, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter d, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66298R, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2572 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6683]

State of Alaska Commercial Fisheries Entry Commission Permit #62722B; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #62722B, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2573 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6693]

State of Alaska Commercial Fisheries Entry Commission Permit #61298X; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61298X, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2574 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6694]

State of Alaska Commercial Fisheries Entry Commission Permit #61994O; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61994O, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2575 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6695]

State of Alaska Commercial Fisheries Entry Commission Permit #58530L; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58530L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2576 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6696]

State of Alaska Commercial Fisheries Entry Commission Permit #59635G; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59635G, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2577 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6697]

State of Alaska Commercial Fisheries Entry Commission Permit #55500V; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55500V, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2578 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6698]

State of Alaska Commercial Fisheries Entry Commission Permit #59071A; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59071A, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2579 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7585]

J & A Industrial Sheetmetal Company, Bend, OR; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on September 25, 2002, in response to a worker petition which was filed by the company on behalf of its workers at J & A Industrial Sheetmetal Company, Bend, Oregon. The subject firm was engaged primarily in fabricating sheet metal parts.

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 3rd day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2547 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—7603]

Midwest Electric Products, Mankato, MN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on August 19, 2002, in response to a petition filed by the company on behalf of workers at Midwest Electric Products, Inc., Mankato, Minnesota.

The petitioner requested that the petition for NAFTA–TAA be withdrawn. 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, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2548 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—7562]

Tritex Sportswear, Inc.; Altoona, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 16, 2002, in response to a petition filed by the company on behalf of workers at Tritex Sportswear, Inc., Altoona, 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 22nd day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2546 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Freeman United Coal Mining Company

[Docket No. M–2002–125–C]

Freeman United Coal Mining Company, P.O. Box 4630, Springfield, Illinois 62708 has filed a petition to modify the application of 30 CFR 75.1101–8(a) (Water sprinkler system; arrangement of sprinklers) at its Crown III Mine (MSHA I.D. No. 11–02632) located in Montgomery County, Illinois. The petitioner proposes to provide a fireproof electrical enclosure and fire detection system in lieu of a sprinkler over the electrical control. The petitioner states that the Crown III Mine is a large underground mine employing three operating sections to develop entrees and rooms with remote control continuous miners and the belt system utilizes ten belt drives. The petitioner further states that: (i) The belt drives and electrical controls are ventilated with isolated intake air; (ii) the electrical control boxes do not contain flammable fluids or other flammable products and are fully enclosed with fireproof construction and are located at least two-feet from coal or other combustible material; and (iii) the electrical cables will conform with the requirements of part 18, and a heat sensor or CO monitor will be installed near the electrical control box. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Remington Coal Company, Inc.

[Docket No. M–2003–004–C]

Remington Coal Company, Inc., 430 Harper Park Drive, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1002–1 (Location of other electric equipment; requirements for permissibility) at its Stockburg No. 1 Mine (MSHA I.D. No. 46–08634) located in Kanawha County, West Virginia. The petitioner requests a modification of the existing standard to permit the use a 2,400 volt Joy 14CM27 continuous mining machine instead of the 2,400 volt Joy 12CM27 continuous mining machine currently being used at the Stockburg No. 1 Mine. The petitioner has listed in this petition specific procedures that would be followed when implementing this alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Dakota Westmoreland Corporation

[Docket No. M–2003–005–C]

Dakota Westmoreland Corporation, P.O. Box 39, Beulah, North Dakota 58523–0039 has filed a petition to modify the application of 30 CFR 77.405(b) (Performing work from a raised position; safeguards) at its Beulah Mine (MSHA I.D. No. 32–00043) located in Mercer County, North Dakota. The petitioner requests a modification of the existing standard to allow an alternative method to permit its boom/mast machine to be raised or lowered during initial dragline assembly or disassembly at construction sites. The petitioner proposes to raise or lower the boom/mast into position by using the on-board motor generator sets during assembly or disassembly of the draglines. The petitioner states that during construction, the machine will not move under its own power and will not perform mining operations. The procedure would be applicable only in instances of disassembly or major maintenance which require the boom to be raised or lowered and a written procedure would be developed and implemented by the mine operator or contractor, and the affected persons who have been trained on the requirements of the procedure. The petitioner also states that this procedure would only address installing/removing the booms on draglines utilizing the machines electrical on-board motor generator sets. The petitioner further states that this procedure does not replace other mechanical precautions or the requirements of the existing standard that is necessary to safely secure booms/masts during construction or maintenance procedures. The petitioner asserts that its proposed alternative method would not result in a diminution of safety to the miners but would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before March 6, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 30th day of January, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–2598 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts;

Partnerships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92–463), as amended, notice is hereby given that a meeting of the Partnerships Advisory Panel (State Partnership Agreements), to the National Council on the Arts will be held on February 13–14, 2003. The panel will meet from 9 a.m. to 6 p.m. on February 13th and from 8:30 a.m. to 3 p.m. on February 14th in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics will include review of the State Partnership Agreement and Regional Partnership Agreement applications, review of proposals for Challenge America Partnership funds, and discussion of guidelines and policy issues.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: January 29, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–2514 Filed 2–3–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; 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: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: February 20, 2003, 8:30 a.m.–5 p.m. and February 21, 2003, 8:30 a.m.–1:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA, Room 1235S.

Type of Meeting: Open.

Contact Person: Dr. Margaret Tolbert, Executive Liaison, CEOSE, Office of Integrative Activities, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 292–8040.

Minutes: May be obtained from the Executive Liaison at the above address.

Purpose of Meeting: To provide advice and recommendations concerning broadening participation in science and engineering.

Agenda:

Thursday, February 20, 2003

8:30 a.m.
- Welcome and approval of the June 2002 Minutes
- Statement of Executive Liaison
- Action on New Committee Members
- Discussion of Committee Agenda and Future Meeting Dates
- Presentation and Discussion of the Math Science Partnerships Program
- Discussion of Increasing the Number of Doctoral Degrees in STEM Awarded to Persons from Underrepresented Groups

10:30 a.m.
- Congressional Discussion

12 Noon
- CEOSE Report for 2004

2:45 p.m.
- Report on Mentoring Conference
- Report on BEST in Relationship to NSF
- Sampling Designs for the 2003 Surveys of Scientists and Engineers
- Plans for the 2004 Report on Women, Minorities, and Persons with Disabilities in Science and Engineering

5 p.m.
- Adjourn

Friday, February 21, 2003

8:30 a.m.
- Unfinished Business

9 a.m.
- Meeting with Dr. Rita Colwell, Director of NSF

10 a.m.
- Continuation of Unfinished Business

1:30 p.m.
- Adjourn

Dated: January 29, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–2465 Filed 2–3–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

NSB Public Service Award Committee; 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: NSB Public Service Award Committee (5195).

Date and Time: Friday, February 28, 2003, 2 p.m.–3 p.m. EST.

Place: Teleconference meeting.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703/292–8096.

Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: January 29, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–2466 Filed 2–3–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed 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. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/*

home/pubinfo/advisory.htm. This information may also be requested by telephoning 703/292–8182.

Dated: January 29, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–2467 Filed 2–3–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, February 11, 2003.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED:

7310A Pipeline accident report—Natural Gas Pipeline Rupture and Fire Near Carlsbad, New Mexico, August 19, 2000.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: January 31, 2003.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 03–2712 Filed 1–31–03; 2:10 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement submitted:

1. *The title of the information collection:* Generic Customer Satisfaction Surveys.

2. *Current OMB approval number:* OMB No. 3150–0197.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Voluntary reporting by the public and NRC licensees.

5. *The number of annual respondents:* 1,727.

6. *The number of hours needed annually to complete the requirement or request:* 386 hours.

7. *Abstract:* Voluntary customer satisfaction surveys will be used to contact users of NRC services and products to determine their needs, and how the Commission can improve its services and products to better meet those needs. In addition, focus groups will be contacted to discuss questions concerning those services and products. Results from the surveys will give insight into how NRC can make its services and products cost effective, efficient, and responsive to its customer needs. Each survey will be submitted to OMB for its review.

Submit, by April 7, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC, 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 29th day of January 2003.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–2504 Filed 2–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Plant Operations

The ACRS Subcommittees on Materials and Metallurgy and on Plant Operations will hold a joint meeting on February 18 and 19, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 18, 2003—1:30 p.m. and Wednesday, February 19, 2003—8:30 a.m. Until the Conclusion of Business

The Subcommittees will discuss industry responses to Bulletin 2002–02, ''Reactor Pressure Vessel Head Degradation and Reactor Coolant Pressure Boundary Integrity,'' the status of NRC wastage research, and the Materials and Reliability Program (MRP) and industry efforts related to vessel head penetration (VHP) cracking and reactor pressure vessel (RPV) head degradation. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions

with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301–415–3151) between 7:30 a.m. and 5:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: January 29, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–2501 Filed 2–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on February 20, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, February 20, 2003—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the Duke Cogema Stone & Webster construction application request resubmittal for a mixed oxide (MOX) fuel fabrication facility. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) between 7:30 a.m. and 5:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: January 29, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–2502 Filed 2–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Safeguards and Security; Notice of Meeting

The ACRS Subcommittee on Safeguards and Security will hold a closed meeting on February 21, 2003, NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Friday, February 21, 2003—1 p.m. Until the Conclusion of Business

The Subcommittee will hear presentations from the NRC staff and gather information on the NRC staff's proposed guidance for performing risk-informed vulnerability assessments. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

FOR FURTHER INFORMATION CONTACT: Dr. Richard P. Savio (telephone 301/415–7363) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: January 29, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–2503 Filed 2–3–03; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 3, 10, 17, 24, March 3, 10, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of February 3, 2003

Tuesday, February 4, 2003

2 p.m. Briefing on lessons learned: Davis-Besse Reactor Vessel Head (RVH) Degradation (public meeting) (contact: Stacey Rosenberg, 301–415–1733)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, February 5, 2003

1 p.m. Discussion of governmental issues (closed—Ex. 1)

Week of February 10, 2003—Tenure

Monday, February 10, 2003

10 a.m. Briefing on status of Office of Nuclear Reactor Regulation (NRR) programs, performance, and plans (public meeting) (contact: Michael Case, 301–415–1275)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Tuesday, February 11, 2003

10 a.m. Briefing on status of Office of the Chief Financial Officer (OCFO) programs, performance, and plans (public meeting) (contact: Patrice Williams-Johnson, 301–415–5732)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 17, 2003—Tentative

There are no meetings scheduled for the week of February 17, 2003.

Week of February 24, 2003—Tentative

Monday, February 24, 2003

2 p.m. Meeting with National Association of Regulatory Utility Commissioners (NARUC) (public meeting)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 3, 2003—Tentative

Monday, March 3, 2003

10 a.m. Briefing on status of Office of Nuclear Material Safety and Safeguards (NMSS) programs—Waste Safety (public meeting) (contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m. Discussion of security issues (closed—Ex. 1)

Week of March 10, 2003—Tentative

There are no meetings scheduled for the week of March 10, 2003.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making-schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 30, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–2713 Filed 1–31–03; 2:18 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, January 10, 2003, through January 23, 2003. The last biweekly notice was published on January 21, 2003 (68 FR 2796).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 6, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the

[1] The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, 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 should 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 which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

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, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with 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, Public File Area 01F21, 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, 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois; Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois; Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania; Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: December 20, 2002.

Description of amendment request: Nuclear Regulatory Commission (NRC) Regulatory Issue Summary 2002–05: ''NRC Approval of Boiling Water Reactor Pressure Vessel Integrated Surveillance Program,'' provides guidance on implementing the boiling water reactor (BWR) reactor pressure vessel integrated surveillance program (ISP). The amendment will modify the Updated Safety Analysis Reports (USARs) by removing the current facility reactor material surveillance capsule removal schedules from the facility USARs and specifying that these facilities will participate in an ISP developed by the BWR Vessel and Internals Project (BWRVIP). In addition, the Limerick Station will remove the current facility reactor material

specimen surveillance schedule from the Technical Specifications.

With the exception of Oyster Creek, the USARs of each of the listed facilities contain a withdrawal schedule for the reactor pressure vessel material specimens. For those facilities which are not scheduled to remove a material specimen as part of the ISP (*i.e.*, Clinton, Quad Cities, and Limerick), the proposed amendment would remove these plant-specific schedules from the facility USARs and substitute a description of the facility's participation in the ISP. For those facilities which are scheduled to remove a capsule as part of the ISP (*i.e.*, Dresden, LaSalle, and Peach Bottom), the proposed amendment would revise the material specimen withdrawal schedule in accordance with the ISP. Finally, for Oyster Creek, which is not scheduled to remove any further material specimens, the proposed amendment would revise the USAR to state that Oyster Creek will participate in the ISP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change adopts an integrated surveillance program (ISP) for reactor material specimen surveillances. The ISP ensures that the reactor pressure vessel (RPV) will continue to meet all applicable fracture toughness requirements. No physical changes to the facilities will result from the proposed change. The initial conditions and methodologies used in accident analyses remain unchanged. The proposed change does not revise or alter the design assumptions for systems or components used to mitigate the consequences of accidents. Thus, accident analyses results are not affected by this proposed change.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change adopts an ISP for reactor material specimen surveillances. The ISP ensures that the RPV will continue to meet all applicable fracture toughness requirements. No physical changes to the facilities will result from the proposed change.

The proposed change does not affect the design or operation of any system, structure, or component (SSC) in the plant. The safety functions of the related SSCs are not changed in any manner, nor is the reliability of any SSC reduced. The change does not affect the manner by which the facility is operated and does not change any facility, structure, system, or component.

No new or different type of equipment will be installed by this proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change has no impact on the margin of safety of any Technical Specification. There is no impact on safety limits or limiting safety system settings. The change does not affect any plant safety parameters or setpoints. No physical or operational changes to the facility will result from the proposed changes. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Deputy General Counsel Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 19, 2002, as supplemented by letter dated December 19, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) by: (1) Modifying the wording of the current Surveillance Requirements (SRs) 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2, Improved Standard Technical Specifications (ISTS) wording for SR 3.0.1 and SR 3.0.3; and (2) modifying the ISTS wording, adopted in item 1 above, to allow a delay period of 24 hours or up to the surveillance frequency interval, whichever is greater, and to require a risk analysis to be performed for any surveillance greater than 24 hours consistent with Technical Specification Task Force (TSTF)–358 for missed surveillances.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the Consolidated Line Item Improvement Process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). Entergy Operations Inc. reviewed the following proposed NSHC determination published in the **Federal Register** as part of the CLIIP for TSTF–358, and concluded in its application of August 19, 2002, that the proposed NSHC determination applied to Waterford Steam Electric Station, Unit 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Adoption of TSTF–358, Revision 6—Missed Surveillances

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

Proposed Changes to SR 4.0.1 and 4.0.3

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the adoption of NUREG–1431, Revision 2, for the revised SR 4.0.1 and 4.0.3 wording. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves rewording of the existing SRs 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2. These modifications involve no technical changes to the existing TS. This change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change involves the rewording of the existing SR 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2. The change does not involve a physical alteration of the plant (no new or different type of equipment installed) or changes in the methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the probability of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change involves rewording of the existing SRs 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2. The change is administrative in nature and will not involve any technical changes. The change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. Since this change is administrative in nature, no question of safety is involved. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 16, 2002.

Description of amendment request: The proposed amendment will revise the current main steam isolation valve (MSIV) Technical Specification (TS) 3/4 7.1.5 to more closely reflect TS 3.7.2 contained in NUREG–1432, Revision 2. In addition, this change will remove the MSIVs from the scope of containment isolation valve (CIV) TS 3/4 6.3 such that only TS 3/4.7.1.5 will apply to the MSIVs. These changes will provide increased flexibility and clarity regarding the implementation of the TSs regarding MSIVs.

Basis for proposed no significant hazard consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the applicability for the main steam line isolation valves will not require operability when all MSIVs are closed in Modes 2, 3, and 4. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. In the closed position the MSIVs are already in their safety function position. In this position, there can be no increase in the probability or consequences of an accident.

The consequences of previously analyzed events are dependent on the initial conditions assumed for the analysis, and the availability and successful functioning of the equipment assumed to operate in response to the analyzed event. When the MSIVs are closed in Modes 2, 3, and 4 they are performing their design function for containment isolation and for main steam line isolation on the secondary side of the plant. The proposed change does not alter the initial conditions assumed in the safety analyses. The plant parameters assumed for the analyses are maintained within assumed limits through compliance with the Technical Specifications and plant procedures. Additionally, the proposed change does not impose any new safety analyses limits. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed change increases the allowed outage time for an inoperable MSIV from 4 hours to 8 hours in Mode 1 and for Modes 2, 3, and 4; will allow both MSIVs to be inoperable, will allow separate action entry for the inoperable valves, and will allow 8 hours to close each inoperable valve. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. Extending the time available to complete repairs of an inoperable component does not have a detrimental impact on the integrity of plant components nor does it increase the probability that these components will fail. The proposed changes are not related in any way to the probability of failure of a plant structure, system or component which would result in the occurrence of an analyzed event. Because the probability of failure of plant equipment is not affected, there is no impact on the probability of occurrence of a previously analyzed accident.

The consequences of previously analyzed events are dependent on the initial conditions assumed for the analysis, and the availability and successful functioning of the equipment assumed to operate in response to the analyzed event. The steam line break analysis in FSAR [Final Safety Analysis Report] Section 15.1.3 assumes a failure of one MSIV to close. For the containment isolation function, in the event of an inoperable MSIV coincident with a LOCA [loss-of-coolant accident], the closed system (*i.e.*, the steam generator tubes and main steam line piping) remains intact. The closed system is subjected to a Type A containment leakage test, is missile protected, and [has] seismic category I piping, and typically has flow through it during normal operation such

that any loss of integrity could be continually observed through leakage detection systems within containment and system walkdowns outside containment. Therefore, with an inoperable MSIV the safety analysis (both LOCA and steam line break) remains valid assuming no additional failures. The increase in core damage frequency and large early release fraction, resulting from the increased restoration time, is negligible. The proposed 8 hour Allowed Outage Time is sufficiently short to ensure that the MSIVs are operable when required to perform their design function. Even though both MSIVs will be allowed under separate condition entry, to be inoperable in Modes 2, 3, and 4 the inoperable valves are still required to be closed. The 8 hour Allowed Outage Time to close an inoperable valve is based on the small likelihood of an accident occurring that will need the MSIV isolation function during this time period and the fact that the valves are located on a closed system with respect to containment integrity. The proposed change does not alter the initial conditions assumed in the safety analyses. The plant parameters assumed for the analyses are maintained within assumed limits through compliance with the Technical Specifications and plant procedures. Additionally, the proposed change does not impose any new safety analyses limits. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed change will add a Note to the MSIV surveillance to allow entry into Mode 3 for testing at hot conditions. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. The addition of this allowance for testing is not related in any way to the probability of failure of a plant structure, system or component which would result in the occurrence of an analyzed event. Because the probability of failure of plant equipment is not affected, there is no impact on the probability of occurrence of a previously analyzed accident.

The consequences of previously analyzed events are dependent on the initial conditions assumed for the analysis, and the availability and successful functioning of the equipment assumed to operate in response to the analyzed event. The proposed change will allow entry into Mode 3 in order to perform MSIV testing at hot conditions. However, prior to this testing, the MSIVs are not known to be inoperable from any other cause other than not having performed the Surveillance Requirement to demonstrate closure times at hot plant conditions, which they are expected to pass. The proposed change will allow entry into Mode 3 for the condition where both MSIVs may require closure time testing. This testing allowance is limited to Mode 3, and must be completed prior to entry into Modes 1 or 2. The proposed change does not alter the initial conditions assumed in the safety analyses. The plant parameters assumed for the analyses are maintained within assumed limits through compliance with the Technical Specifications and plant procedures. Additionally, the proposed change does not impose any new safety analyses limits. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed change will require MSIVs, that are closed in accordance with the Mode 2, 3, and 4 Action, be verified closed once per seven days. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. The addition of this requirement is not related in any way to the probability of failure of a plant structure, system or component which would result in the occurrence of an analyzed event. Because the probability of failure of plant equipment is not affected, there is no impact on the probability of occurrence of a previously analyzed accident.

The consequences of previously analyzed events are dependent on the initial conditions assumed for the analysis, and the availability and successful functioning of the equipment assumed to operate in response to the analyzed event. The proposed change adds a Surveillance Requirement to Technical Specification 3/4.7.1.5 to verify proper MSIV isolation on an actuation signal. This is not a new Surveillance Requirement for the Technical Specifications. Technical Specification 3.3.2, Engineering Safety Features Actuation System Instrumentation, Surveillance Requirement 4.3.2.1 (Table 4.3–2 Item 4.d) requires a functional test of the actuation relay (K305) once per 18 months which verifies automatic closure of the MSIVs on a simulated main steam isolation signal. The proposed change does not alter the initial conditions assumed in the safety analyses. The plant parameters assumed for the analyses are maintained within assumed limits through compliance with the Technical Specifications and plant procedures. Additionally, the proposed change does not impose any new safety analyses limits. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, none of the proposed change[s] described above involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated, or to the setpoints at which protective or mitigative actions are initiated. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through equipment design, limitations on operating parameters, and the setpoints at which automatic actions are initiated. No equipment design features are impacted by this change, no operating parameters are revised, and no changes to the actuation setpoints are involved.

The design safety function of the MSIVs is to close upon receipt of a main steam isolation signal. With the MSIVs already closed in Modes 2, 3 or 4, the design function is satisfied.

The proposed change will increase the allowed outage time from 4 hours to 8 hours in Mode 1, for an inoperable MSIV. The proposed change will also relax current allowances for MSIVs in Modes 2, 3, and 4; however, the relaxations are in lower modes of operation where the potential for an accident that would require the MSIV isolation function is reduced. The proposed changes will still ensure that the inoperable MSIV(s) are restored or closed in a reasonable time of 8 hours. Once closed, the MSIVs meet their design safety function.

The proposed change will add a note indicating the Surveillance Requirements must be performed prior to entry into Modes 1 or 2. The MSIVs are expected to pass the Surveillance Requirement and are not known to be inoperable for any other reason than not having performed the valve closure test at hot conditions. The testing is limited to Mode 3, when the reactor is subcritical, thus verifying the MSIV closure times prior to power operation.

The proposed change will require MSIVs, which are closed in accordance with the Mode 2, 3, and 4 Action, be verified closed once per seven days. This requirement provides additional assurance that the MSIVs perform their design safety function to close.

The proposed change adds a Surveillance Requirement to Technical Specification 3/4.7.1.5 to verify proper MSIV isolation on an actuation signal. This, however, is not a new Surveillance Requirement for the Technical Specifications. Technical Specification 3.3.2, Engineering Safety Features Actuation System Instrumentation, Surveillance Requirement 4.3.2.1 (Table 4.3–2 Item 4.d) requires a functional test of the actuation relay (K305) once per 18 months which verifies automatic closure of the MSIVs on a simulated main steam isolation signal.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 16, 2002.

Description of amendment request: The proposed amendment will add the topical report entitled ''Fuel Rod Maximum Allowable Gas Pressure,'' CEN–372–P–A, to the list of analytical methods in Technical Specification (TS) 6.9.1.11.1 used to determine the Waterford Steam Electric Station, Unit 3 (Waterford 3) core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The proposed change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. The proposed change adds an NRC [Nuclear Regulatory Commission]-approved topical report to the list of analytical methods used to determine the core operating limits. The effect of the addition of this new reference is to revise the fuel design criterion for internal rod pressure to accept rod pressures that may exceed nominal Reactor Coolant System operating pressure. The use of this revised criterion continues to ensure that the consequences of an accident remain within acceptable limits. The change also proposes the administrative deletion of report date and revision levels in the list of references. These changes do not alter any of the assumptions or bounding conditions currently in the Final Safety Analysis Report.

Waterford 3 performed a large break loss-of-coolant accident (LOCA) analysis using bounding fuel performance data as described in CEN–372–P–A. This analysis concluded that the peak cladding temperature remained within 10 CFR 50.46 limits.

In addition to the LOCA analysis, an evaluation of the potential for departure from nucleate boiling (DNB) propagation was performed as described in CEN–372–P–A. The results confirmed that Waterford 3 is bounded by the results evaluated in the topical report and that DNB propagation will not occur.

Based on these analyses, there is no increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed change. The intent of the proposed change is to reference an NRC-approved topical report in the Technical Specifications. The topical report justifies an acceptance criterion that allows fuel rod internal pressure to exceed RCS [reactor coolant system] pressure. There are no new accidents created by this change. An administrative aspect of this change, the deletion of date and revision levels, was also considered and does not create a new or different accident.

The impact of fuel rod internal pressure exceeding reactor coolant system (RCS) pressure was considered in both an emergency core cooling system (ECCS) performance analysis and in a DNB propagation evaluation performed for Waterford 3. These two aspects were required considerations based on the NRC Safety Evaluation review of the topical report. The results demonstrated that Waterford 3 continues to meet 10 CFR 50.46 and that there is no potential for DNB propagation.

Based on these analyses, there is no possibility of the creation of a new or different kind of accident from those previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds an NRC-approved topical report to the list of analytical methods used to determine core operating limits. It also deletes the revision number and dates associated with each of the topical reports listed. The effect of the addition of the new reference is to revise the fuel design criterion for fuel rod internal pressure to accept rod pressures that may exceed nominal RCS operating pressure. The use of this revised criterion continues to ensure that the consequences of an accident remain within acceptable limits. Since the core operating limits will continue to be established by an NRC-approved methodology and the results will be verified to meet the established acceptance criteria of 10 CFR 50.46, the change will provide adequate core protection. Thus, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 20, 2002.

Description of amendment request: The proposed amendment makes several administrative changes to the Waterford Steam Electric Station, Unit 3, Technical Specifications (TSs) to revise, delete, correct, or clarify certain titles, page numbers, and heading information. The proposed amendment also revises personnel and committee titles that have been changed, revises administrative reporting requirements to conform to 10 CFR 50.4, and deletes redundant or unnecessary requirements from TSs 5.4, 6.6, and 6.7.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes are primarily to correct titles, page numbering errors, and otherwise make the TS index pages consistent with other NRC [U. S. Nuclear Regulatory Commission] approved pages. These changes are all of an administrative nature and have no effect on any plant equipment or structures. Therefore, these changes do not increase the probability or consequences of an accident previously evaluated.

The proposed amendment also deletes TS 5.4.1 and 5.4.2. Values for RCS [Reactor Coolant System] design pressure, temperature, and volume are contained in the Final Safety Analysis Report. Any changes to these are controlled by 10 CFR 50.59. Therefore, removing the section from the TS will not increase the probability or consequences of previously evaluated accidents.

The proposed amendment also deletes TS 6.6 and 6.7, and revises TS 6.9.1 and TS 6.9.2 to administratively conform reporting requirements to those in 10 CFR [part] 50. Therefore, removing these sections from the TS will not increase the probability or consequences of previously evaluated accidents.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative in nature and do not involve a physical alteration of the plant. No new or different equipment or modes of operation are being introduced by this proposed change. Thus, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes are primarily administrative in nature and can not affect any safety barriers. The proposed change to TS 5.4 only deletes unnecessary information. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 6, 2002.

Description of amendment request: The proposed amendment would increase the surveillance interval of the Local Power Range Monitor (LPRM) calibrations from 1000 megawatt-days/ton to 2000 megawatt-days/ton.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the JAF [James A. FitzPatrick] plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

1. Involve an increase in the probability or consequences of an accident previously evaluated. The revised surveillance interval continues to ensure that the LPRM signal is adequately calibrated. The proposed change results in no change in radiological consequences of the design basis LOCA [loss-of-coolant accident] as currently analyzed for JAF. This change will not alter the basic operation of process variables, structures, systems, or components as described in the JAF UFSAR [Updated Final Safety Analysis Report], and no new equipment is introduced by the change in LPRM surveillance interval. The performance of the APRM [Average Power Range Monitor] and RBM [Rod Block Monitor] systems are not significantly affected by the proposed LPRM surveillance interval increase. Therefore, the probability of accidents previously evaluated is unchanged.

The consequences of an accident can be affected by the thermal limits existing at the time of the postulated accident, but LPRM chamber exposure has no significant effect on the calculated thermal limits because LPRM accuracy does not significantly deviate with exposure. For the extended calibration interval, the total nodal power uncertainty remains less than the uncertainty assumed in the thermal analysis basis safety limit, maintaining the accuracy of the thermal limit calculation. Therefore, the thermal limit calculation is not significantly affected by LPRM calibration frequency, and the consequences of an accident previously evaluated are unchanged.

The change does not affect the initiation of any event, nor does it negatively impact the mitigation of any event. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change will not physically alter the plant or its mode of operation. The performance of the APRM and RBM systems are not significantly affected by the proposed LPRM surveillance interval increase. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing are consistent with current safety analysis assumptions. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety. The proposed change has no impact on equipment design or fundamental operation, and there are no changes being made to safety limits or safety system allowable values that would adversely affect plant safety as a result of the proposed change. The performance of the APRM and RBM systems are not significantly affected by the proposed LPRM surveillance interval increase. The margin of safety can be affected by the thermal limits existing prior to an accident; however, uncertainties associated with LPRM chamber exposure have no significant effect on the calculated thermal limits. The thermal limit calculation is not significantly affected because LPRM sensitivity with exposure is well defined. LPRM accuracy remains within the total nodal power uncertainty assumed in the thermal analysis basis, thus maintaining thermal limits and the safety margin.

Since the proposed change does not affect safety analysis assumptions or initial conditions, the margin of safety in the safety analyses are maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: January 9, 2003.

Description of amendment request: The proposed Technical Specification (TS) amendment request changes the definition of a Logic System Functional Test, deletes the definition of a Simulated Automatic Actuation, clarifies Surveillance Requirement 4.5.G.1.a regarding simulated automatic actuation testing, and revises associated TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves surveillance requirements and definitions of surveillance tests. As such, the proposed change does not involve any plant physical changes, change any Technical Specification instrumentation setpoints, or introduce any new mode of plant operation. The proposed change to surveillance requirements and definitions does not result in any significant change in the availability of logic systems or safety-related systems themselves. Protective functions will be maintained. The proposed change does not degrade plant design, operation, or the performance of any safety system assumed to function in the accident analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility for a new or different kind of accident from any previously evaluated.

The proposed change does not: introduce any new accident initiators or failure mechanisms because the changes do not introduce any new modes of plant operation, make any physical changes (no new or different type of equipment will be installed); or change any Technical Specification instrumentation setpoints or methods of plant operation. The proposed changes will not substantially impose new requirements or eliminate any existing requirements.

Therefore, the changes to the surveillance requirements and testing definitions that encompass this proposed change do not

create the possibility of a new or different kind of accident than those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. There is no change or impact on any safety analysis assumptions. The proposed change does not involve any increase in calculated off-site dose consequences. Operability of protective instrumentation and the associated systems is unaffected, and performance of equipment will not be significantly affected. Since the proposed change is consistent with the BWR/4 Standard Technical Specifications, NUREG–1433, Revision 2, approved by the NRC [Nuclear Regulatory Commission] staff, revising the Technical Specifications in a manner which clarifies and reflects the approved level of detail ensures that safety margins are acceptable. Therefore, there is no significant reduction in the margin of safety as a result of this Technical Specification change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: March 14, 2002.

Description of amendment request: The proposed license amendment request (LAR) will allow exercising and testing the Inclined Fuel Transfer System (IFTS) prior to the beginning of the refueling outage, thus increasing system reliability and refuel outage efficiency. The proposed LAR does not provide for the movement of fuel. The proposed LAR supplements Amendment No. 100 by including a time limit on the removal of the IFTS blind flange, providing a requirement to install the upper pool IFTS gate prior to IFTS blind flange removal, and limiting the unbolted configuration on the IFTS blind flange when it is rotated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change permits removal of the Inclined Fuel Transfer System (IFTS) blind flange for a maximum duration of 60 days per cycle when primary Containment operability is required in MODES 1 (Power Operation), 2 (Startup), or 3 (Hot Shutdown). The proposed change also limits the duration the IFTS blind flange may be unbolted when in MODES 1, 2, or 3. The proposed change does not involve modifications to plant systems or design parameters that could contribute to the initiation of any accidents previously evaluated.

Regarding the probability and consequences of design basis and beyond design basis accidents, a comprehensive technical evaluation was completed in accordance with Regulatory Guide (RG) 1.174, ''An Approach for Using Probabilistic Risk Assessment In Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis'' and RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications.'' This evaluation determined that the proposed change is technically justified and the associated risk is insignificant.

The proposed change permits alteration of the containment boundary for the IFTS penetration. Regarding the consequences of accidents, the proposed change has been determined via a probabilistic risk assessment to be acceptable regarding its overall impact to the plant's risk, consistent with the Nuclear Regulatory Commission's Safety Goal Policy Statement. The resulting pressures and temperatures from a design basis Loss Of Coolant Accident (LOCA) are considered the primary challenge to the integrity of the containment. Pursuant to Amendment 100, the existing Technical Specifications require maintaining an adequate water seal to prevent leakage from the bottom of the IFTS transfer tube and isolating the drain piping. This water seal is adequate to mitigate the effects of the design basis peak post-accident pressures and temperatures. The proposed change requires the installation of the upper IFTS pool gate to provide protection of the Suppression Pool Make Up system water inventory. A time limit for IFTS blind flange removal of 60 days per cycle and a 20 hour limit for the unbolted configuration of the IFTS flange have been established as conservative measures to limit the associated risk to the containment boundary for all accident conditions. The proposed change has been found to be acceptable regarding flooding and seismic design issues.

Therefore, the function of the containment to provide an adequate boundary in the event of a design basis LOCA is not compromised with the proposed change and the proposed change does not result in a significant increase in the probability of the consequences of previously evaluated accidents.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change consists of the removal of the IFTS blind flange when in MODES 1, 2, or 3. The IFTS blind flange is a passive component that is not part of the primary reactor coolant pressure boundary and is not involved in the operation or shutdown of the reactor. Being passive, its presence or absence does not affect any of the parameters or conditions that could contribute to the initiation of any incidents or accidents that are created from a loss of coolant or positive reactivity incident. Re-aligning the boundary of the primary containment to include portions of the IFTS is passive in nature and therefore has no influence on the possibility of creating a new or different kind of accident. Furthermore, operation of the IFTS is unrelated to the operation of the reactor and there is no mishap in the process that can lead or contribute to the possibility of losing any coolant in the reactor or introducing the chance for positive or negative reactivity or other accidents different from and not bounded by those previously evaluated.

Therefore, the proposed change does not result in creating the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change involves the re-alignment of the primary containment boundary by removing the IFTS blind flange, which is a passive component. The margin of safety that has the potential of being impacted by the proposed change involves the dose consequences of postulated accidents, which are directly related to potential leakage through the primary containment boundary. The potential leakage pathways due to the proposed change have been reviewed, and leakage can only occur from the administratively controlled IFTS transfer tube drain piping. Pursuant to Amendment 100, an individual is currently designated to provide timely isolation of this drain piping when this proposed change is in effect. The conservatively calculated dose, which might be received by the designated individual while isolating the drain piping, is well within the guidelines of General Design Criterion 19. Furthermore, the drain piping isolation valve is included in the Primary Containment Leakage Rate Testing Program to ensure that leakage from the piping and components located outboard of the blind flange will be maintained consistent with the leakage rate assumptions of the accident analysis. It has been determined that the proposed change would not have a substantial impact on the ultimate pressure capacity of the containment as it relates to the Large Early Release Frequency (LERF) nor would it have a substantial impact on LERF from seismic events. Therefore, the dose consequences of an event would be unchanged, and the associated margin of safety would also be unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: March 14, 2002.

Description of amendment request: The amendment request proposes a one-time exception to the requirement in Nuclear Energy Institute (NEI) 94–01 to perform an integrated leak rate test (ILRT) at a frequency of 10 years. The exception is to allow ILRT testing within 15 years from the last ILRT, completed July 1, 1994. The proposed amendment is considered risk-informed, therefore Regulatory Guide 1.174, ''An approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' has been followed, while using the methodology of Electric Power Research Institute (EPRI) report, ''Risk Impact Assessment of Revised Containment Leak Rate Testing Intervals,'' (EPRI TR–104285).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed extension to Type A testing cannot increase the probability of an accident previously evaluated since extension of the containment Type A testing is not a physical plant modification that could alter the probability of accident occurence, nor is it an activity or modification that could lead to equipment failure or accident initiation.

The proposed extension to Type A testing does not result in a significant increase in the consequences of an accident as documented in NUREG–1493. The NUREG notes that very few potential containment leakage paths are not identified by Type B and C tests. It concludes that reducing Type A (ILRT) testing frequency to once per twenty years leads to an imperceptible increase in risk.

Other testing and inspections provide a high degree of assurance that the containment will not degrade in a manner detectable only by Type A testing. The last three Type A tests performed at PPNP identified containment leakage within the acceptable criteria, indicating a very leak-tight containment. Inspections required by the ASME Code are performed in order to identify indications of containment degradation that could affect leak-tightness. Containment pressure is monitored each shift during plant operation and would identify containment vessel shell leakage into the annulus by a decrease in containment pressure. Type B and C testing, required by Technical Specifications, identifies any containment leakage from designed penetrations, such as from valves, that would otherwise be detected by a Type A test. These factors establish that an extension to the PPNP Type A test interval will not represent a significant increase in the consequences of an accident.

Thus, the proposed amendment does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to the Technical Specifications adds a one-time extension to the current interval for Type A testing for PPNP. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A testing does not create the possibility of a new or different type of accident since there are no physical changes to the plant or changes to the operation of the plant that could introduce a new failure.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This proposed amendment does not involve a significant reduction in a margin of safety.

The proposed revision to the PPNP Technical Specifications adds a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A testing will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year interval in Type A testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes only about 0.1 percent of the overall risk and that decreasing the Type A testing frequency would have a minimal effect on this risk since 95% of the Type A detectable leakage paths would already be detected by Type B and C testing. Furthermore, for PPNP, monitoring containment vessel pressure each shift during operation further reduces the risk of any containment leakage path going undetected. The PPNP test and inspection performance has satisfactorily demonstrated that the containment remains very leak tight. The proposed change has no effect on Core Damage Frequency (CDF). The change in Large Early Release Frequency (LERF) was computed and found to be a ''very small'' change in accordance with the guidelines of Regulatory Guide 1.174. The computed change in Conditional Containment Failure Probability (CCFP) and offsite dose have also been evaluated and are considered to be insignificant.

Therefore, the change does not involve a significant reduction in a margin of safety.

Based on the above considerations, it is concluded that a significant hazard would not be introduced as a result of this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: October 11, 2002.

Description of amendment request: The proposed amendment would revise Crystal River Unit 3 Improved Technical Specifications (ITS) 3.3.15 ''Reactor Building Purge Isolation-High Radiation;'' ITS Bases 3.7.15 ''Spent Fuel Assembly Storage;'' ITS 3.9.3 ''Containment Penetrations;'' and ITS 3.9.6 ''Refueling Canal Water Level'' to account for handling irradiated fuel within containment that has not occupied part of a critical reactor core within the previous 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Crystal River Unit 3 (CR–3) proposes to revise Improved Technical Specifications (ITS) 3.3.15, 3.9.3, 3.9.6, and Bases 3.7.15.

Florida Power Corporation (FPC) has determined that this license amendment request does not involve a significant hazards consideration as defined in 10 CFR 50.92 based on the following:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not increase the probability of a fuel handling accident in that the proposed change deals with the results of such an accident, not the cause of such an accident. The proposed change does not increase the consequences of an accident previously evaluated in that the CR–3 Alternate Source Term (AST) has been

approved by the NRC, and this proposed change implements that NRC approval. The AST for the Fuel Handling Accident (FHA) takes no credit for containment isolation nor for a filtered release.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the ITS do not affect nor create a different type of fuel handling accident. The fuel handling accident analyses assume that all of the iodine and noble gases that become airborne, escape, and reach the exclusion area boundary and low population zone with no credit taken for filtration, containment of the source term, or for decay or deposition in the containment. The proposed changes do not involve the addition or modification of equipment nor do they alter the design of plant systems. The revised operations are consistent with the fuel handling accident analyses. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does not involve a significant reduction in margin of safety.

The calculated doses to both the public and control room operators are well within the limits given in 10 CFR 50.67. The proposed changes do not alter the bases for assurance that safety-related activities are performed correctly or the basis for any ITS that is related to the establishment of or maintenance of a safety margin.

The systems that have been included in the proposed change will have administrative controls in place to assure that the systems are available and can be promptly returned to operation to further reduce dose consequences. These administrative controls will include a single normal or contingency method to promptly close the equipment hatch opening. This prompt method need not completely block the hatch opening nor be capable of resisting pressure, but is to enable the ventilation systems to draw the release from the postulated FHA in the proper direction such that it can be monitored. Therefore, operations of the facility in accordance with the proposed amendment would not involve a significant reduction in margin of safety.

Based on the above, FPC concludes that the proposed license amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC-BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Allen G. Howe.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: December 19, 2002.

Description of amendment request: The proposed amendment would revise Crystal River Unit 3 Improved Technical Specification 2.1.1, ''Reactor Core Safety Limits.'' The proposed change will permit the use of the BHTP correlation, which is needed to utilize the Framatome ANP high thermal performance (HTP) spacer grid design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

FPC [Florida Power Corporation] has evaluated the proposed License Amendment Request (LAR), which consists of the identified Improved Technical Specification (ITS) change, against the criteria of 10 CFR 50.92(c). The ITS change allows the use of the BHTP Correlation for departure from nucleate boiling (DNB) calculations of reload cores containing the Mark-B/HTP fuel design.

FPC has concluded that this proposed LAR does not involve a significant hazards consideration. The following is a discussion of how each of the criteria is satisfied.

(1) [Does not] [i]nvolve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed safety limit value ensures that fuel integrity will be maintained during normal operations and anticipated operational occurrences (AOOs), and that the design requirements will continue to be met. The proposed methodology for the BHTP departure from nucleate boiling (DNB) correlation will be generically reviewed and approved by the NRC prior to its use by Crystal River Unit 3 (CR–3) in mixed core reload analyses. The core operating limits will be developed in accordance with the new methodology and any limitations established by the NRC in its safety evaluation of the new methodology. The proposed safety limit value does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. There is no impact on the source term or pathways assumed in accidents previously evaluated. No analysis assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose as the result of an accident. Therefore, the safety limit value for the BHTP correlation will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) [Does not] [c]reate the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed safety limit value does not change the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered. The BHTP correlation is not an accident/event initiator. No new initiating events or transients result from the use of the BHTP correlation and the related safety limit changes. Therefore, the safety limit value for the BHTP correlation will not involve the possibility of a new or different kind of accident from any previously evaluated.

(3) [Does not] [i]nvolve a significant reduction in a margin of safety.

The proposed safety limit value has been established in accordance with the methodology for the BHTP correlation, to ensure that the applicable margin of safety is maintained (*i.e.*, there is at least 95% probability at a 95% confidence level that the hot fuel rod in the core does not experience departure from nucleate boiling (DNB)). The proposed methodology for the BHTP DNB correlation will be generically reviewed and approved by the NRC prior to its use by CR–3. The other reactor core safety limits will continue to be met by analyzing the reload for the mixed core using NRC approved methods, and incorporation of resultant operating limits into the Core Operating Limits Report (COLR). Therefore, the safety limit value for the BHTP correlation will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC-BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Allen G. Howe.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: December 20, 2002.

Description of amendment request: This proposed amendment provides editorial and administrative changes to the Technical Specifications. The changes correct typographical, spelling, numbering syntax, page break, and font consistency errors as well as removing blank pages and associated references. There are no substantive changes made in the proposed amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change

involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendments are purely administrative or editorial in nature. These amendments make no substantive Technical Specification changes and do not affect any assumptions contained in plant safety analyses, the physical design and/or operation of the plant; and they do not affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The use of the administratively changed Technical Specifications does not create the possibility of a new or different kind of accident from any previously evaluated, since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative changes and clarifications, since the proposed changes do not involve the addition or modification of equipment, nor do they alter the design or operation of affected plant systems, structures, or components.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The changed Technical Specifications, which correct administrative and editorial errors, and clarify existing Technical Specification requirements, do not reduce any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 31, 2002.

Description of amendment request: The proposed amendment would change the reactor vessel material surveillance program to incorporate the Boiling Water Reactor Vessel and Internals Project (BWRVIP) Integrated Surveillance Program (ISP) into the licensing basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Pressure-temperature (P/T) limits (CNS [Cooper Nuclear Station] Technical Specifications Figures 3.4.9–1, 2, and 3) are imposed on the reactor coolant system to ensure that adequate safety margins against non-ductile or brittle fracture exist during normal operation, anticipated operational occurrences, and system hydrostatic tests. The P/T limits are based on the nil-ductility reference temperature, RT_{NDT}, as described in ASME Section XI, Appendix G. Changes in the fracture toughness properties of RPV [reactor pressure vessel] beltline materials, resulting from the neutron irradiation and the thermal environment, are monitored by a surveillance program in compliance with the requirements of 10 CFR 50 [title 10 of the Code of Federal Regulations part 50] Appendix H. The effect of neutron fluence on the shift in the RT_{NDT} of RPV materials is predicted by methods given in RG [Regulatory Guide] 1.99, Revision 2.

This change is not related to any accidents previously evaluated. Rather, the reactor vessel surveillance program, corresponding material evaluations, and adjustment of a plant's P/T limits, as necessary, protect against the possibility of reactor vessel brittle fracture. Monitoring, evaluation, and adjustment of CNS P/T limits to ensure adequate margin exists to brittle fracture will continue. This change only replaces a plant-specific monitoring and evaluation program with an integrated industry program, the BWRVIP ISP. The NRC has reviewed this program and approved it for implementation in a Safety Evaluation, dated February 1, 2002.

CNS's current P/T limits were established based on adjusted reference temperatures developed in accordance with the procedures described in RG 1.99, Revision 2. Calculation of adjusted reference temperature by these procedures includes a margin term to ensure conservative, upper-bound values are used for the calculation of the P/T limits. This change does not affect the existing P/T limits in the CNS Technical Specifications Figures 3.4.9–1, 2, and 3. This change will not affect any plant safety limits or limiting conditions of operation. The proposed change will not affect reactor pressure vessel performance as no physical changes are involved aside from changes related to surveillance capsule withdrawal, and CNS vessel P/T limits will remain conservative in accordance with RG 1.99, Revision 2 criteria. The proposed change will not cause the reactor pressure vessel or interfacing systems to be operated outside of their design or testing limits. Also, the proposed change will not alter any assumptions previously made in evaluating the radiological consequences of accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the CNS license basis to reflect participation in the BWRVIP ISP. Participation in the BWRVIP ISP will continue to ensure that the CNS reactor vessel materials are monitored and evaluated as necessary to protect against brittle fracture. This proposed change does not involve a modification of the design of plant structures, systems, or components. The proposed change will not impact the manner in which the plant is operated as plant operating and testing procedures will not be affected by the change. The proposed change will not degrade the reliability of structures, systems, or components important to safety as equipment protection features will not be deleted or modified, equipment redundancy or independence will not be reduced, supporting system performance will not be downgraded, the frequency of operation of equipment will not be increased, and increased or more severe testing of equipment will not be imposed. No new accident types or failure modes will be introduced as a result of the proposed change. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from that previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Conformance with 10 CFR [part] 50 Appendix G defines the accepted safety margin for Reactor Coolant Pressure Boundary fracture toughness. The P/T limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed during normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the reactor pressure vessel, a condition that is unanalyzed. Since the P/T limits are not derived from any DBA, there are no acceptance limits related to the P/T limits. Rather the P/T limits are acceptance limits themselves since they preclude operation in an unanalyzed condition.

This proposed change will not alter the required margins as defined in 10 CFR [part] 50, Appendix G. This proposed change will not affect any safety limits, limiting safety system settings, or limiting conditions of operation. The proposed change does not represent a change in initial conditions, or in a system response time, or in any other parameter affecting the course of an accident analysis supporting the Bases of any Technical Specification. The proposed

change does not involve revision of the P/T limits. Rather, this change involves a revision to the surveillance capsule withdrawal schedule, a revision to the reactor vessel fluence calculational methodology to achieve consistency within the BWRVIP ISP, and participation in future BWRVIP ISP developments. The current P/T limits were established based on adjusted reference temperatures for vessel beltline materials calculated in accordance with RG 1.99, Revision 2 which will continue to conform to 10 CFR [part] 50 Appendix G. Therefore, the proposed change does not involve a significant reduction in any safety margins.

In summary, it is concluded that this License Amendment Request does not involve significant hazards consideration results. NPPD has researched the existing regulatory precedent and has identified five BWR licensees with similar License Amendment Requests currently under NRC staff review:

- Browns Ferry Units 2 and 3—Submittal date November 6, 2002.
- Monticello Generating Station—Submittal date September 19, 2002.
- River Bend—Submittal date August 15, 2002.
- Fermi Unit 2—Submittal date August 8, 2002.
- Susquehanna Units 1 and 2—Submittal date July 25, 2002.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: January 13, 2003.

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) operating license and Technical Specifications to increase the licensed rated power by 1.4 percent to 1673 megawatts thermal (MWt) using measurement uncertainty recapture.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Kewaunee Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

There are no changes as a result of the measurement uncertainty recapture (MUR) power uprate to the design or operation of the plant that could affect system, component, or accident mitigative functions. All systems and components will function as designed and the applicable performance requirements have been evaluated and found to be acceptable.

The reduction in power measurement uncertainty allows for some of the safety analyses to continue to be used without modification. This is because the safety analyses were performed or evaluated at either 102 percent of 1650 MWt or higher. Analyses at these power levels support a core power level of 1673 MWt with a measurement uncertainty of 0.6 percent. Radiological consequences of USAR [updated safety analysis report] chapter 14 accidents were assessed previously using the alternate source term (AST) methodology (reference 7.1, TAC [technical assignment control] No. MB4596). These analyses were performed at 102 percent of 1650 MWt and continue to be bounding. The USAR chapter 14 analyses and accident analyses submitted to the NRC [Nuclear Regulatory Commission] with the fuel transition (reference 7.3, TAC No. MB5718) continue to demonstrate compliance with the relevant accident analyses acceptance criteria. Therefore, there is no significant increase in the consequences of any accident previously evaluated.

The primary loop components (reactor vessel, reactor internals, control rod drive mechanisms, loop piping and supports, reactor coolant pumps, steam generators, and pressurizer) were evaluated at an uprated core power level of 1772 MWt and continue to comply with their applicable structural limits. These analyses also demonstrate the components will continue to perform their intended design functions. Changing the applicability of the heatup and cooldown curves is based on uprated fluence values. This does not have a significant effect on the reactor vessel integrity. Thus, there is no significant increase in the probability of a structural failure of the primary loop components.

All of the NSSS [Nuclear Steam Supply System] systems will continue to perform their intended design functions during normal and accident conditions. The auxiliary systems and components continue to comply with the applicable structural limits and will continue to perform their intended functions. The NSSS/BOP [balance of plant] interface systems were evaluated at 1772 MWt and will continue to perform their intended design functions. Plant electrical equipment was also evaluated and will continue to perform their intended functions. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the Kewaunee Nuclear Power Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed change. All systems, structures, and components previously required for the mitigation of an event remain capable of fulfilling their intended design function at the uprated power level. The proposed change has no adverse effects on any safety-related systems or component and does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the Kewaunee Nuclear Power Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

Operation at the 1673 MWt core power does not involve a significant reduction in the margin of safety. The current accident analyses have been previously performed with a two percent power measurement uncertainty or at uprated core powers that exceed the MUR uprated core power. System and component analyses have been completed at a core power in excess of the MUR uprated core power. Analyses of the primary fission product barriers at uprated core powers have concluded that all relevant design basis criteria remain satisfied in regard to integrity and compliance with the regulatory acceptance criteria. As appropriate, all evaluations have been either reviewed and approved by the NRC, are in the process of being approved by the NRC, or are in compliance with applicable regulatory review guidance and standards. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Esq., Shaw Pittman, Potts & Trowbridge, 2300 N. Street, NW., Washington, DC 20037–1128.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 12, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.5.2, ''ECCS [Emergency Core Cooling System]—Operating,'' and TS 3.5.3, ''ECCS-Shutdown,'' to add a surveillance requirement to verify every 31 days that the ECCS piping is full of water; consistent with NUREG–1431, Standard Technical Specifications, Westinghouse Plants, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

Operation of this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to add a surveillance requirement to verify the ECCS is full of water every 31 days while operating in Modes 1, 2, 3 and 4.

This proposed change does not cause an increase in the probabilities of any accidents previously evaluated, because the change will not cause an increase in the probability of any initiating events for accidents previously evaluated. In particular, the change affects the ECCS, which serves to mitigate rather than initiate accidents.

The consequences of the accidents previously evaluated in the PBNP [Point Beach Nuclear Plant] Final Safety Analysis Report (FSAR) are determined by the results of analyses that are based on initial conditions of the plant, the type of accident, transient response of the plant, and the operation and failure of equipment and systems. The change proposed in this license amendment request provides an appropriate surveillance requirement for the ECCS, and thus does not increase the probability of failure of this equipment or its ability to operate as required for the accidents previously evaluated in the PBNP FSAR.

Therefore, the consequences of an accident previously evaluated in the PBNP FSAR will not be significantly increased as a result of the proposed change, because the factors that are used to determine the consequences of accidents are not being changed.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

Equipment important to safety will continue to operate as designed. The proposed change does not result in any event previously deemed incredible being made credible. The change does not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed amendment will not otherwise affect the plant protective boundaries and will not cause a release of fission products to the public. Venting the piping associated with a train of ECCS will render that ECCS train inoperable while it is being vented. Performance of this surveillance will therefore affect the availability of the associated ECCS train, but performance of the surveillance requirement at the specified frequency is consistent with the requirements of NUREG–1431, Standard Technical Specifications for Westinghouse Plants, Revision 2. Additionally, verifying the ECCS piping is full of water ensures that the system will perform properly, injecting its full capacity into the RCS [reactor coolant system], upon demand. Therefore, adopting a surveillance requirement to verify the ECCS piping is full of water, will not result in more than a minimal reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 26, 2002.

Description of amendment request: The proposed change would revise the Steam Generator low-low level trip setpoint and allowable values provided in the Salem Nuclear Generating Station, Unit Nos. 1 and 2, Technical Specifications Table 2.2–1, ''Reactor Trip System Instrumentation Trip Setpoints,'' and Table 3.3–4, ''Engineered Safety Feature Actuation System Instrumentation Trip Setpoints.'' The changes are necessary based on PSEG Nuclear's evaluation of a loss of feedwater transient at Diablo Canyon. During the event, Diablo Canyon personnel observed a flow induced pressure drop in the steam generator mid-deck area. The proposed change accounts for a level measurement bias resulting from the pressure drop that was not considered in the previous Westinghouse analysis. This bias has the effect of providing nonconservative level readings and setpoints.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Tables 2.2–1 and 3.3–4 changes both the allowable trip setpoint and allowable value for the Steam Generator Water Level-Low-Low from ≥9.0% to ≥14.0% and from ≥8.0% to ≥13% respectively. The Steam Generator Water Level Low-Low trip provides core protection by preventing operation with the steam generator water level below the minimum volume required for adequate heat removal capacity. The signal is used as a primary protection signal for the design basis loss of normal feedwater, loss of offsite power and feedwater line break safety analysis. The specified setpoint provides allowance that there will be sufficient water inventory in the steam generators at the time of trip to allow for starting delays of the auxiliary feedwater system. The change in the setpoint and allowable value allows the trip to function as originally designed accounting for the differential pressure created by steam flow past the mid-deck plate in the moisture separator section of the steam generator.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Steam Generator Water Level-Low-Low trip setpoint and allowable values allow the trip to function as originally designed. They do not alter the plant configuration in any way, and do not replace or modify existing plant equipment, or affect any plant operations. No additional failure mechanisms are introduced as a result of the changes to the setpoints and allowable values.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment would not involve a significant reduction in the margin of safety.

The proposed changes to the allowable trip setpoint and allowable value for the Steam Generator Water Level-Low-Low trip maintains core protection by preventing operation with the steam generator water level below the minimum volume required for adequate heat removal capacity.

Therefore, it is concluded that the proposed changes to the steam generator low low level trip setpoint and allowable value[s] do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: October 23, 2002.

Description of amendment request: The proposed change would revise the Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, Technical Specification (TS) 6.12, ''High Radiation Area'' to be consistent with the Standard TSs for Westinghouse Plants (NUREG–1431, Revision 2) by updating the current reference to title 10 of the Code of Federal Regulations (10 CFR), section 20.203 with the corresponding reference to 10 CFR 20.1601.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions, configuration of the facility, or manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components to perform their intended safety function to mitigate the consequences of an initiating event within the acceptance limits assumed in the UFSAR. The proposed changes are administrative in nature. Technical Specification (TS) 6.12 will be updated to include the new 10 CFR 20 (effective 06/20/91) requirements. The proposed changes do not alter the conditions or assumptions in any of the previous accident analyses, and as a result, the radiological consequences associated with these analyses remain unchanged.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated.

The proposed changes are administrative in nature and the relocated procedural details do not change the level of programmatic controls and procedural details. Accordingly, the proposed changes do not create any new failure modes or limiting single failures associated with a plant structure, system, or component important to safety. Also, there will be no change in the types or increase in the amounts of any effluents released offsite.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment would not involve a significant reduction in the margin of safety.

The proposed changes do not impact equipment design or operation, nor do the changes affect any TS safety limits or safety system settings that could adversely affect plant safety. The proposed changes are administrative in nature. Technical Specification (TS) 6.12 will be updated to include the new 10CFR20 requirements (effective 06/20/91) and are in conformance with NUREG–1431. Furthermore, the proposed changes do not result in a change in the types or an increase in the amounts of any effluents released offsite.

Therefore, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Tennessee Valley Authority (TVA), Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: October 4, 2002 (TS 02–07).

Description of amendment request: The proposed amendment would revise Technical Specification 6.8.4.h, ''Containment Leakage Rate Testing Program,'' to allow a one-time, 5-year extension to the current 10-year test interval for the performance-based leakage rate test program for 10 CFR 50, Appendix J, Type A tests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change for extending Type A test frequency does not significantly increase the probability of an accident previously evaluated since the change is not a modification to plant systems, nor a change to plant operation that could initiate an accident. TVA performed an evaluation of the risk significance for the proposed increase to the SQN Units 1 and 2 Type A test frequency. The results of the TVA risk evaluation indicates that the increase in Large Early Release Frequency (LERF) remains below the level of risk significance defined in NRC Regulatory Guide (RG) 1.174, ''An Approach for Using Risk Assessment In Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis.'' TVA's evaluation indicates that the increase in frequency for all releases (small, large, early and late) and the increase in radiation dose to the population is also non-risk significant. The proposed test interval extension does not involve a significant increase in the consequences of an accident. Research documented in NUREG–1493 determined that generically, very few potential containment leakage paths fail to be identified by Type A tests. An analysis of 144 Type A test results, including 23 failures, found that no failures were due to containment liner breach. The NUREG concluded that reducing the Type A test frequency to once per 20 years would lead to an imperceptible increase in risk. Furthermore, the NUREG concluded that Type B and C testing provides assurance that containment leakage from penetration leak paths (*i.e.*, valves, flanges, containment air-locks) identify any leakage that would otherwise be detected by the Type A tests. In addition to the NUREG conclusions, TVA's American Society of Mechanical Engineers (ASME) IWE program performs containment inspections in order to detect evidence of degradation that may affect either the containment structural integrity or leak tightness. In addition to the IWE examinations, TVA will perform additional nondestructive examinations of the steel containment vessel in the ice condenser region (inaccessible areas) at various elevations. These additional non-destructive examinations will provide added assurance of containment integrity during the 5-year extended interval. Accordingly, TVA's proposed extension of the Type A test interval does not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to extend the Type A test interval does not create the possibility of a new or different type of accident because there are no physical changes made to the plant or plant equipment governing normal plant operation. There are no changes to the operation of the plant that would introduce a new failure mode creating the possibility of a new or different kind of accident. TVA will perform additional non-destructive examinations of the steel containment vessel in the ice condenser region (inaccessible areas) at various elevations. These additional non-destructive examinations will provide added assurance of containment integrity during the 5 year extended interval.

3. Does the proposed change not involve a significant reduction in a margin of safety?

The proposed change to extend the Type A test interval will not significantly reduce the margin of safety. A generic study documented in NUREG–1493 indicates that extending the Type A leak test interval to 20 years would result in an imperceptible increase in risk to the public. The NUREG also found that, generically, the containment leakage rate contributes a very small amount to the individual risk and that the decrease in the Type A test frequency would have a minimal affect on risk because most potential leakage paths are detected by Type C testing. Previous Type A leakage tests conducted on SQN Units 1 and 2 indicate that leakage from containment have been less than the 10 CFR 50, Appendix J leakage limit of 1.0 L_a. A review of the previous Type A test results indicate a stable trend with a 10 percent margin below the 1.0 L_a leakage limit. Accordingly, these test results, in conjunction with the research findings from NUREG–1493, provide assurance that the proposed extension to the Type A test interval would not significantly reduce the margin of safety. Based on the above, TVA concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 15, 2002 (TS 02–06).

Brief description of amendments: The proposed amendments would revise the Technical Specification (TS) 3.7.1.3, ''Condensate Storage Water,'' Limiting Condition for Operation by increasing the required minimum amount of stored water from 190,000 gallons to 240,000 gallons. This change is being made to support the replacement steam generator requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not change the physical design and construction of the condensate storage tank (CST). The purpose of the increased water volume is to ensure that the required volume of water, preserved by the technical specification (TS), is sufficient to meet Sequoyah Nuclear Plant (SQN) Licensing and Design Basis after installation of the replacement steam generators. The change in the administratively controlled inventory of the CST will not increase the probability of an accident. Therefore, the proposed change does not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

This change increases the minimum required volume of water in the CST, thus ensuring that the auxiliary feedwater (AFW) system can perform its required safety function, using a preferred water source for plant transient mitigation. The maximum and normal water levels in the CST are not being changed. Additionally, increasing the minimum water volume requirement will not initiate any accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

This change does not reduce any margin associated with the CST inventory available to AFW. The requirement for sufficient CST volume to maintain hot standby and subsequent cooldown to hot shutdown continues to be met by the minimum volume increase. Additionally, the essential raw cooling water (ERCW) system still provides the long-term supply of safety grade cooling water to the AFW in the event that all inventory of the CST is lost. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority (TVA), Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: November 15, 2002 (TS 02–01).

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to revise the trip setpoint column of the Reactor Protection System and Engineered Safety Features (ESF) instrumentation tables to utilize a nominal setpoint value and revise the associated Bases discussions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions for the nominal trip setpoint representation are administrative changes that will not impact the application of the reactor trip or ESF actuation system instrumentation requirements. This is based on the setpoint requirements being applied without change, as well as the Avs [allowable values], in accordance with the setpoint methodology. The removal of the inequalities associated with the trip setpoint values will be more appropriate for the use of nominal setpoint values but will not differ in application from the setpoint methodology utilized by TVA. The revision of the radiation monitoring instrumentation table to use an Av will continue to provide appropriate operability limits. Deletion of the nominal terminology associated with overtemperature delta temperature average temperature at rated thermal power (T') and reactor coolant system power operated relief valve (PORV) lift settings provides a better representation of the limits associated with these values. In addition, this change will not alter plant equipment or operating practices. Therefore, the implementation of these changes will not increase the probability or consequences of an accident.

The revision of the reactor coolant pump (RCP) underfrequency trip setpoint and the Avs for the RCP underfrequeny and undervoltage and the containment purge radiation high has been evaluated and the results are documented in approved calculations. These calculations verify that the revised values are acceptable in accordance with appropriate calculation methodologies and that they will continue to support the accident analysis. This is based on margin being available in the accuracy determinations that could be used without impacting the intended functions of this instrumentation and maintains the established safety limits. These revisions will not require changes to the instrumentation settings currently being used or the methods for maintaining them. The offsite dose potential will not be impacted because this instrumentation will continue to adequately provide the designed safety functions to limit the release of radioactivity. Therefore, the proposed revision of these values will not significantly increase the probability or consequences of an accident.

The relocation and enhancement of current radiation monitoring and loss of voltage

functions to new LCOs [limiting condition for operations] does not alter the intended functions of these systems or physically alter these systems. While some requirements have change[d] from current limitations, these changes have provided more appropriate criteria to ensure that the accident mitigation functions are maintained properly and are available. Changes to Avs have been evaluated in accordance with TVA setpoint methodology and have been verified to acceptably protect the associated safety limits. Format changes provide a clearer representation of the requirements and provide more consistency with the standard TSs in NUREG–1431. These changes continue to support or improve the required safety functions and therefore, will not increase the possibility or consequence of an accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revision of the nominal trip setpoint representation and elimination of the nominal nomenclature, as well as the revised setpoint value and Avs, and the relocated LCOs will not alter the plant configuration or functions. The revised setpoint and the proposed operability limits will continue to provide acceptable initiation of safety functions for the mitigation of postulated accidents as required by the design basis. The primary function of the reactor protection system, the ESF actuation system, and the new actuation function LCOs is to initiate accident mitigation functions. These functions are not considered to be initiators of postulated accidents. The PORVs provide accident mitigation functions and could be the source of a loss of coolant accident. However, a clarification of how to apply the actuation setpoints without a change to the setpoints will not impact accident generation. The proposed changes do not create the possibility of a new or different kind of accident because the design functions are not altered and the proposed values meet the accident analysis requirements for accident mitigation.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The setpoint and Av revisions proposed in this request were evaluated and found to be acceptable based on operating margin available in the accuracy determinations. The reassignment of this excess margin to the setpoint and Av will not impact the safety limits required for the associated functions. The nominal trip setpoint representation change and the elimination of inappropriate nominal indications does not alter the TS functions or their application and will not require changes to design settings. The relocated requirements to new LCOs provide appropriate limits and enhancements to the actuation functions. Plant systems will continue to be actuated for those plant conditions that require the initiation of accident mitigation functions. The margin of safety is not significantly reduced because the proposed changes to the Av and setpoint representations will not change design functions and the initiation of accident mitigation functions for appropriate plant conditions will not be adversely impacted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 5, 2002.

Description of amendment request: The proposed changes would delete the monthly analog rod position test for the control rod bottom bistables currently required by Technical Specification (TS) Table 4.1–1, Item 9.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change deletes the monthly analog rod position test that verifies the operation of the rod bottom bistables. However, the TSs still require bistable action to be functionally verified to ensure operability on an 18-month frequency as part of the overall analog rod position indication system calibration. Furthermore, the TS-required monthly rod bottom bistable action test was being performed to address instrument drift in the rod bottom setpoint, which will essentially be eliminated by the design of new digital-based IRPI [Individual Rod Position Indication] electronics being installed. Consequently, elimination of the monthly rod bottom bistable action test will not result in the failure of any plant structures, systems, or components and does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. As a result, the probability of any accident previously evaluated is not significantly increased.

Consequences of analyzed events are the result of the plant being operated within assumed parameters at the onset of any event, and the successful functioning of at least one train or division of the equipment credited with mitigating the event. These changes do not impact the capability of the credited equipment to perform, nor is there any change in the likelihood that credited equipment will fail to perform. Deletion of the monthly rod bottom bistable action test does not affect the ability of the control rods to perform their function. Surveillance tests to verify the operability of the IRPI System are still being performed. Furthermore, the Rod Position Demand Counter System provides redundant control rod position indication. As a result, the consequences of any accident previously evaluated are not significantly affected by the proposed change.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change deletes the monthly surveillance of rod bottom bistable action in the Individual Rod Position Indication system. This change does not alter the methods governing normal plant operation. The IRPI provides indication of rod position, is one of two independent systems that are provided to detect a rod drop and is the backup to detection by rapid reduction of ex-core neutron flux. The dropping of a rod assembly can occur when the rod drive mechanism is de-energized from the Rod Control System. This accident has been evaluated in the UFSAR and in all cases the DNB design bases is met by demonstration that the DNBR is greater than the limiting value. Thus, this change deleting the monthly analog rod position test does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The digital-based IRPI system continues to meet the design function of providing reliable control rod position indication. The proposed change and associated replacements with digital-based IRPI system electronics provides enhanced testing through the automatic self-testing diagnostic features. Consequently, the overall ability to detect failures is not degraded. Therefore, the change deleting the monthly analog rod position test does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendments request: December 19, 2002.

Description of amendments request: The proposed changes would revise the Technical Specifications (TS) to Facility Operating License Nos. DRP–32 and DRP–37 for Surry Power Station, Units 1 and 2, respectively, to reflect changes in regulations, correct typographical and editorial errors made in previous TS revisions, and to revise TS cross-references to Updated Final Safety Analysis Report sections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Dominion has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed administrative change to the Surry Power Station Units 1 and 2 Technical Specifications (TS) and Bases. The proposed change to the Surry TS makes administrative revisions to reflect changes in regulations, corrects editorial and typographical errors from previous TS revisions, and revises TS cross-references to Updated Final Safety Analysis Report (UFSAR) sections. Due to the strictly administrative nature of the proposed TS change, we have determined that a significant hazards consideration does not exist. The basis for this determination is provided as follows:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is administrative in nature and as such does not impact the condition or performance of any plant structure, system or component. The proposed administrative change does not affect the initiators of any previously analyzed event nor the assumed mitigation of accident or transient events. As a result, the proposed change to the Surry Technical Specifications does not involve any increase in the probability [nor] the consequences of any accident or malfunction of equipment important to safety previously evaluated since neither accident probabilities or consequences are being affected by this proposed administrative change.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change is administrative in nature, and therefore does not involve any changes in station operation or physical modifications to the plant. In addition, no changes are being made in the methods used to respond to plant transients that have been previously analyzed. No changes are being made to plant parameters within which the plant is normally operated or in the setpoints, which initiate protective or mitigative actions and no new failure modes are being introduced. Therefore, the proposed administrative change to the Surry Technical Specifications does not create the possibility of a new or different kind of accident or malfunction of equipment important to safety from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed change is administrative in nature, and does not impact station operation or any plant structure, system or component that is relied upon for accident mitigation. Furthermore, the margin of safety assumed in the plant safety analysis is not affected in any way by the administrative ''cleanup'' of the Surry Technical Specifications. Therefore, the proposed administrative change to the Surry Technical Specifications does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: December 19, 2001, as supplemented July 30, 2002, and November 14, 2002.

Brief description of amendment: The amendment includes a revision of the Technical Specification (TS) Limiting Conditions for Operation 3.4, ''Decay Heat Removal Capability,'' conforming changes to TS Table 3.5–2, ''Accident Monitoring Instruments,'' and TS 4.9.1.2, ''Decay Heat Removal—Periodic Testing,'' and numerous editorial changes.

Date of issuance: January 16, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 242.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12598).

The supplements dated July 30, and November 14, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated January 16, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 2, 2002.

Brief description of amendments: These amendments change the administrative controls in Technical Specification 5.7, ''High Radiation Area.''

Date of issuance: January 13, 2003.

Effective date: January 13, 2003.

Amendment Nos.: 225 and 252.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50950).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002, as supplemented by letter dated December 17, 2002.

Brief description of amendment: The amendment revised Technical Specification Table 3.3.8.1–1, ''Loss of Power Instrumentation,'' by changing the degraded voltage—voltage basis and loss-of-coolant accident time delay allowable values to reflect the results of new calculations performed in association with a design basis reconstitution.

Date of issuance: January 16, 2003.

Effective date: As of the date of issuance and shall be implemented no later than November 30, 2003.

Amendment No.: 128.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42823).

The December 17, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2003.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington Date of application for amendment: October 22, 2002.

Brief description of amendment: The amendment revises the Technical Specifications (TS) to change TS section 5.0, ''Administrative Controls,'' and adopt Technical Specification Task Force (TSTF) -258, Revision 4. The change revises: (1) Section 5.2.2, ''Unit Staff,'' to delete details of staffing requirements and delete requirements for the Shift Technical Advisor (STA) as a separate position while retaining the function, (2) section 5.5.4, ''Radioactive Effluent Controls Program,'' to be consistent with the intent of 10 CFR part 20, (3) section 5.6.4, ''Monthly Operating Reports,'' to delete periodic reporting requirements for main steam safety/relief valve challenges to be consistent with Generic Letter 97–02, ''Revised Contents of the Monthly Operating Report,'' and (4) section 5.7, ''High Radiation Area,'' in accordance with 10 CFR 20.1601(c). TS section 5.3.2 is added to incorporate regulatory definitions for the senior reactor operator (SRO) and reactor operator (RO) positions.

Date of issuance: January 9, 2003.

Effective date: January 9, 2003, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 182.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75870).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: March 28, 2002.

Brief description of amendment: The amendment revised Technical Specification (TS) sections 3.7, ''Auxiliary Electrical Systems,'' and 4.6, ''Emergency Power System Periodic Tests,'' to relocate the requirements for the gas turbine generators to the Updated Final Safety Analysis Report (UFSAR) and the plans, programs and procedures that document and control the credited functions of these systems, structures, and components. The amendments also deleted TS 3.7.B.2.b. to remove the option that allows power operation for up to 72 hours with a gas turbine as the only available 13.8 kilovolt power source.

Date of issuance: January 17, 2003.

Effective date: This license amendment is effective as of the date of its issuance and shall be implemented within 60 days and only after incorporation of the required changes into the UFSAR and completion of the necessary implementation and procedural changes.

Amendment No.: 236.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications and Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34484).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: July 5, 2002.

Brief description of amendment: The amendment relocates Technical Specification (TS) 3/4.6.I to the Pilgrim Nuclear Power Station Updated Final Safety Analysis Report. The affected TS contains snubber operability and surveillance requirements. The associated Bases section will also be relocated.

Date of issuance: January 14, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 195.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68735).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: September 27, 2002.

Brief description of amendments: The amendments revise Appendix B,

''Environmental Protection Plan (Non-Radiological),'' of the licenses to remove a parenthetical reference to a superseded section of 10 CFR part 51.

Date of issuance: January 21, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 211 & 205.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised Appendix B of the licenses.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66009).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 21, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Brief description of amendment: The amendment relocates Technical Specification 2.13, ''Nuclear Detector Cooling System,'' and its associated Bases to the Fort Calhoun Station Updated Safety Analysis Report.

Date of issuance: January 16, 2003.

Effective date: January 16, 2003, and shall be implemented within 120 days of the date of issuance. Implementation includes the incorporation of changes to the Fort Calhoun Station Updated Safety Analysis Report as described in the licensee's application dated October 8, 2002.

Amendment No.: 214.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68741).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 22, 2002, as supplemented by letter dated October 8, 2002.

Brief description of amendment: The amendment revises Technical Specification (TS) 5.19, Surveillance Requirement (SR) 3.0.4 and adds TS 5.20 and SR 3.0.5 to extend the delay period before entering a limiting condition for operation following a missed surveillance.

Date of issuance: January 16, 2003.

Effective date: January 16, 2003, and shall be implemented with 120 days from the date of issuance, including the incorporation of changes to the technical specification Bases as described in the licensee's application dated July 22, 2002, as supplemented by letter dated October 8, 2002.

Amendment No.: 215.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56326).

The supplemental letter of October 8, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2003.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: September 23, 2002.

Brief description of amendments: These amendments revised Technical Specification (TS) section 2.6.2.4, ''Residual Heat Removal [RHR] Suppression Pool Cooling,'' to adopt TS Task Force (TF) change 230, Revision 1 (TSTF–230, Revision 1). This change to Required Action B of Limiting Condition for Operation 3.6.2.3 allows two RHR suppression pool cooling subsystems to be inoperable for up to 8 hours.

Date of issuance: January 16, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 207, 181.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66012). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 16, 2003.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 17, 2002, as supplemented December 31, 2002.

Brief description of amendment: The amendment provides a one-time change to Technical Specification (TS) 4.8.1.1.2.h.14 to allow the testing of Hope Creek's emergency diesel generator (EDG) lockout relays to be performed at power until startup from its eleventh refueling outage (spring 2003). The current TS surveillance requirement only allows the EDG lockout relays to be tested during shutdown conditions. PSEG requested that the TS change be issued on an exigent basis in accordance with title 10 of the Code of Federal Regulations (10 CFR), part 50, section 50.91(a)(6). Approval and implementation of the TS change allows the testing that has been completed to be used to comply with TS 4.8.1.1.2.h.14.

Date of issuance: January 10, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 141.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Public Comments Requested as to Proposed No Significant Hazards Consideration: Yes (67 FR 79163) December 27, 2002. That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by January 27, 2003, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after the issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, final determination of no significant hazards consideration, and state consultation are contained in a safety evaluation dated January 10, 2003.

NRC Section Chief: James W. Clifford.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendments request: February 18, 2002, as supplemented in letter dated July 23, 2002.

Brief description of amendments: The proposed amendments revised

Technical Specification 3/4.6.1.7, ''Containment Ventilation System,'' to extend the intervals between operability tests of the normal and supplementary containment purge valves.

Date of issuance: January 7, 2003.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–147; Unit 2–135.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12608). The July 23, 2002, supplemental letter provided clarifying information that was within the scope of the original **Federal Register** notice (67 FR 12608) and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 7, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project. Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 22, 2002.

Brief description of amendments: The proposed amendments revised Technical Specification 3/4.3.5, allowing the automatic operation of the atmospheric steam relief valves during Mode 2 to maintain secondary side pressure at or below an indicated steam generator pressure of 1225 psig during startup and shutdown of the reactors.

Date of issuance: January 13, 2003.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–148; Unit 2–136.

Facility Operating License Nos. NPF–76 and NPF–80: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45571).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 2003.

No significant hazards consideration comments received: No.

Dated in Rockville, Maryland, this 28th day of January 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–2415 Filed 2–3–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedule C in the excepted service as required by 5 CFR 6.1 and 213.103.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are one Schedule A authority and the individual authorities established under Schedule C between between December 01, 2002 and December 31, 2002. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

U.S. Chemical and Hazard Investigation Board

Up to 37 positions established to create the Chemical Safety Hazard Investigation Board. No new appointments may be made under this authority after December 31, 2000. Effective December 31, 2002.

Schedule C

Department of Agriculture

Special Assistant to the Administrator, Farm Service Agency. Effective December 10, 2002.

Special Assistant to the Chief of Staff. Effective December 12, 2002.

Assistant to the Chief for Environment and Natural Resources. Effective December 20, 2002.

Director of Marketing and Public Relations to the Chief Natural Resource and Conservation Service. Effective December 20, 2002.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective December 20, 2002.

Department of Commerce

Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective December 9, 2002.

Special Assistant to the Director of External Affairs. Effective December 30, 2002.

Special Assistant to the Director of External Affairs. Effective December 30, 2002.

Special Assistant to the Director of External Affairs. Effective December 30, 2002.

Department of Defense

Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia). Effective December 4, 2002.

Protocol Officer to the Director of Protocol. Effective December 9, 2002.

Confidential Assistant to the Assistant Secretary of Defense Command, Control, Communications and Intelligence. Effective December 30, 2002.

Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective December 30, 2002.

Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective December 30, 2002.

Defense Short to the Special Assistant to the Secretary of Defense for White House Liaison. Effective December 31, 2002.

Department of Education

Special Assistant to the Assistant Secretary for Management. Effective December 19, 2002.

Deputy Secretary's Regional Representative, Region IX to the Deputy Assistant Secretary for Regional Services. Effective December 20, 2002.

Confidential Assistant to the Special Assistant. Effective December 31, 2002.

Department of Energy

Special Assistant for Communications to the Director, Office of Civilian Radioactive Waste Management. Effective December 4, 2002.

Deputy Chief of Staff to the Deputy Secretary of Energy. Effective December 13, 2002.

Department of Health and Human Services

Special Assistant to the Assistant Secretary for Public Affairs. Effective December 2, 2002.

Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media). Effective December 10, 2002.

Assistant to the Commissioner for Presidential Initiatives. Effective December 12, 2002.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Public Affairs. Effective December 3, 2002.

Staff Assistant to the Senior Advisor to the Deputy Secretary. Effective December 4, 2002.

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective December 4, 2002.

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective December 4, 2002.

Deputy Assistant Secretary for Policy Management to the Assistant Secretary for Policy Development and Research. Effective December 11, 2002.

Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective December 11, 2002.

Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective December 13, 2002.

Staff Assistant to the Assistant Secretary for Public and Indian Housing. Effective December 13, 2002.

Special Assistant to the Assistant Deputy Secretary for Field Policy and Management. Effective December 19, 2002.

Deputy Assistant Secretary for Public Housing and Voucher Proof to the Assistant Secretary for Public and Indian Housing. Effective December 20, 2002.

Special Assistant to the Assistant Secretary for Housing, Federal Housing Commission. Effective December 30, 2002.

Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective December 31, 2002.

Special Assistant to the Assistant Deputy Secretary for Field Policy and Management. Effective December 31, 2002.

Department of the Interior

Special Assistant to the Director, Minerals Management Service. Effective December 13, 2002.

Special Assistant—Lewis and Clark to the Director, External and Intergovernmental Affairs. Effective December 30, 2002.

Department of Justice

Special Assistant to the Deputy Attorney General. Effective December 19, 2002.

Senior Counsel to the Assistant Attorney General. Effective December 20, 2002.

Research Assistant to the Director, Office of Public Affairs. Effective December 20, 2002.

Confidential Assistant to the Director, Office of Public Affairs. Effective December 23, 2002.

Department of Labor

Special Assistant to the Director, Office of Public Liaison. Effective December 3, 2002.

Chief of Staff to the Assistant Secretary for Employment Standards. Effective December 13, 2002.

Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 17, 2002.

Department of State

Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective December 10, 2002.

Foreign Affairs Officer to the Assistant Secretary, Bureau of Political Affairs. Effective December 10, 2002.

Foreign Affairs Officer to the Deputy Assistant Secretary for Public Affairs/ Chief Speechwriter. Effective December 13, 2002.

Special Assistant to the Assistant Secretary for Political-Military Affairs. Effective December 18, 2002.

Legislative Management Officer to the Assistant Secretary for Legislative and Governmental Affairs. Effective December 19, 2002.

Special Assistant to the Under Secretary for Arms Control and Security Affairs. Effective December 19, 2002.

Department of Transportation

Senior Policy Advisor to the Administrator, Federal Motor Carrier Safety Administration. Effective December 20, 2002.

Department of the Treasury

Senior Advisor to the Assistant Secretary (Economic Policy). Effective December 19, 2002.

Farm Credit Administration

Congressional and Public Affairs Specialist to the Director, Office of Congressional and Public Affairs. Effective December 9, 2002.

Federal Emergency Management Agency

Staff Assistant to the Director, Mount Weather Enterpise Operations Division to the Executive Administrator, Emergency Management Center. Effective December 3, 2002.

General Services Administration

Special Assistant to the Regional Administrator, New England Region. Effective December 31, 2002.

Office of Management and Budget

Legislative Analyst to the Associate Director for Legislative Affairs. Effective December 13, 2002.

Confidential Assistant to the Executive Associate Director. Effective December 20, 2002.

Office of National Drug Control Policy

Program Analyst (Program and Fiscal Management) to the Director, Counter-Drug Control Policy. Effective December 10, 2002.

Office of Personnel Management

Special Assistant to the Director, Office of Communications. Effective December 3, 2002.

Coordinator, Public Liaison and Hispanic Outreach to the Director, Office of Communications. Effective December 3, 2002.

Deputy Director to the Director, Office of Congressional Relations. Effective December 3, 2002.

Attorney Advisor to the General Counsel. Effective December 18, 2002.

Overseas Private Investment Corporation

Confidential Assistant to the Vice President for External Affairs. Effective December 19, 2002.

Small Business Administration

Senior Advisor to the Associate Administrator for Investments. Effective December 3, 2002.

Speech Writer to the Associate Director for Communications (Public Liaison). Effective December 20, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–2462 Filed 2–3–03; 8:45 am]

BILLING CODE 6325–38–P

SOCIAL SECURITY ADMINISTRATION

Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice; correction.

SUMMARY: The Social Security Administration published a document in the **Federal Register** of January 17, 2003, concerning a meeting of the Ticket to Work and Work Incentives Advisory Panel. The document contained an error for the meeting beginning time on February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Kristen M. Breland, 202–358–6423.

Correction:

In the **Federal Register** of January 17, 2003, in FR Doc. 03–1084, on page 2628, in the second column, correct the ''DATE'' to read:

DATES:
January 10, 2003, 10 a.m.–3 p.m.*
January 11, 2003, 9 a.m.–5 p.m.
January 12, 2003, 9 a.m.–1 p.m.

Dated: January 29, 2003.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 03–2500 Filed 2–3–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4225]

Notice of Meetings: United States International Telecommunication Advisory Committee Preparations for Various Telecommunication Standardization Meetings, First Half of 2003

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the International Telecommunication Union (ITU).

The ITAC will meet periodically throughout the first half of 2003 to prepare for various ITU Telecommunication Standardization Study Group meetings. Times and locations of these meetings will be announced via the email reflectors (list servers) identified below. People may join these reflectors by sending a message identifying the list to *itac@state.gov.*

TSAG Preparations: The ITAC will meet January 22 and February 5, 2003 to prepare for the February meeting of the ITU–T Telecommunication Sector Advisory Group (TSAG), and on the afternoon of April 22 to debrief the results of TSAG and initiate preparations for the next TSAG meeting. Preparations for the next TSAG will continue at a meeting in the afternoon of May 28. Location and times for these meetings will be announced on the reflector list ''*itac-t@almsntsa.lmlist.state.gov*''.

ITU–T Study Group 2 preparations: The ITAC will meet April 8 to prepare for ITU–T Study Group 2. Location and times for this meeting will be announced on the reflector list ''*sganumberingadhoc@almsntsa.lmlist.state.gov*''.

ITU–T Study Group 3 preparations: The ITAC will meet on January 23 from 9:30 to 11 to debrief the December 2002 SG3 meeting, and on March 5 and April 16 from 2 to 4 to prepare for the next ITU–T Study Group 3. Locations for these meetings will be announced on the reflector list ''*sag@almsntsa.lmlist.state.gov*''.

ITU–T Study Group 9 preparations: The ITAC will meet March 12 to prepare for ITU–T Study Group 9. Location and times for this meeting will be announced on the reflector list ''*sgd@almsntsa.lmlist.state.gov*''.

ITU–T Study Group 13 preparations: The ITAC will meet June 26 to prepare for ITU–T Study Group 13. Location and times for this meeting will be announced on the reflector list ''*sgb@almsntsa.lmlist.state.gov*''.

ITU–T Study Group 16 preparations: The ITAC will meet April 30 to prepare for ITU–T Study Group 16. Location and times for this meeting will be announced on the reflector list ''*sgd@almsntsa.lmlist.state.gov*''.

ITU–T Special Study Group preparations: The ITAC will meet May 19–28, 2003 via email to prepare for ITU–T Special Study Group (IMT2000 and beyond) on the reflector list ''*sgd-ssg@almsntsa.lmlist.state.gov*''. Originators must post their documents to the reflector by May 19; comments on the documents posted to the same address by May 23, originators' responses posted by May 27, and final action will be posted by the Department of State on May 28. If necessary, this meeting may be continued through a later date via email or conference call, as announced on the reflector.

CITEL PCC I Group Preparations: The ITAC will meet on February 13, 2003 from 2–4, and March 12, 2003 from 2–4 to prepare for the next CITEL PCC I meeting. Location for these meetings will be announced on the reflector list *PCCI–CITEL@almsntsa.lmlist.state.gov.*

This meeting announcement does not meet the official deadline due to constraints imposed by the travel of senior officials.

Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Entrance to the Department of State is controlled; people intending to attend a meeting at the Department of State should send their clearance data by fax to (202) 647–7407 or email to *worsleydm@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location may be obtained by calling the ITAC Secretariat at (202) 647–2592 or email to *worsleydm@state.gov.*

Dated: January 27, 2003.

Marian Gordon,

Director, Telecommunication & Information Standardization, Department of State.

[FR Doc. 03–2533 Filed 2–3–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 4227]

United States International Telecommunication Advisory Committee Information Meeting on the World Summit on the Information Society and the U.S. Preparatory Process; Notice of Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the World Summit on the Information Society (WSIS), which will take place in December 2003, including U.S. preparations for the WSIS. The meeting will take place on February 10, 2003, from 3 p.m. to 5 p.m. at the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St. NW., Washington, DC. This meeting announcement does not meet the official deadline due to constraints imposed by the travel of senior officials who will brief on WSIS.

Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. People intending to attend a meeting at the Department of State should send the following data by fax to (202) 647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at (202) 647–2592 or e-mail to *worsleydm@state.gov.*

Dated: January 28, 2003.

Anne D. Jillson,

Foreign Affairs Officer, Telecommunication Policy, Department of State.

[FR Doc. 03–2534 Filed 2–3–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 24, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–14365.
Date Filed: January 23, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 EUR–SEA 0158 dated 17 December 2002.
TC23/TC123 Europe-South East Asia Resolutions r1–r19.
PTC23 EUR–SEA 0159 dated 10 January 2003
(Technical Correction).
Minutes—PTC23 EUR–SEA 0161 dated 21 January 2003.
Tables—PTC23 EUR–SEA FARES 0039 dated 3 January 2003.
Intended effective date: 1 April 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–2527 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 24, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–14320.
Date Filed: January 21, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 11, 2003.
Description: Application of Murray Air, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting a certificate of public convenience and necessity authorizing it to conduct foreign all-cargo air transportation on a charter basis.

Docket Number: OST–2003–14321.
Date Filed: January 21, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 11, 2003.
Description: Application of Murray Air, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting a certificate of public convenience and necessity authorizing it to conduct interstate all-cargo air transportation on a charter basis.

Docket Number: OST–2003–14337.
Date Filed: January 22, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 12, 2003.
Description: Application of Delta Air Transport N.V. S.A. d/b/a SN Brussels Airlines, pursuant to 49 U.S.C. Section 41302 and Subpart B, requesting an initial foreign air carrier permit to provide scheduled foreign air transportation of persons, property, and mail between a point or points behind Belgium, via Belgium and intermediate points, to a point or points in the United States and beyond.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–2528 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14378]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Towing Safety Advisory Committee's (TSAC) Working Group on Maritime Security will meet to discuss various issues relating to current U.S. Coast Guard regulations as they pertain to towing vessels. The meeting will be open to the public.

DATES: The TSAC Working Group will meet on Tuesday, February 18, 2003, from 10 a.m. to 4 p.m. and on the following day, Wednesday, February 19, 2003, from 10 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 12, 2003. Requests to have a copy of your material distributed to each member of the Working Group should reach the Coast Guard on or before February 7, 2003.

ADDRESSES: The Working Group will meet in room 1303, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director of TSAC, telephone (202) 267–0214, or fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda tentatively includes the following:

1. Ways the towing community can assist the Coast Guard to increase security awareness in our ports and other domestic waterways;
2. Measures the Coast Guard can take to increase operational security in these areas;
3. Anticipated threats on towing vessels with barges and how should those threats be addressed;
4. Relevant topics, *e.g.* Vessel Traffic Systems (VTS); Automatic Identification Systems (AIS); the size of vessels, and special Security Zones; and
5. Criteria for acceptance of Industry Standards for Security.

Procedural

The meeting is open to the public. All attendees must have photo identification to be admitted into Coast Guard Headquarters. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director no later than February 12, 2003. Written

material for distribution at the meeting should reach the Coast Guard no later than February 7, 2003. If you would like a copy of your material distributed to each member of the Working Group in advance of the meeting, please submit 15 copies to Mr. Miante at the address in **ADDRESSES**, or an electronic version to the e-mail address in **FOR FURTHER INFORMATION CONTACT**, no later than February 7, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: January 28, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–2522 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular: Type Certification of an Airplane Originally Certificated to Joint Aviation Regulations—Very Light Airplane (JAR–VLA) Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC, which provides information and guidance concerning type certification of a Joint Aviation Regulations—Very Light Airplane. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before April 7, 2003.

ADDRESSES: Send all comments on the proposed AC to: Mr. Pat Mullen, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 901 Locust, Room 301, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Pat Mullen, telephone (816) 329–4128 or fax (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 23–11A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Small Airplane Directorate before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/DraftAC* by taking the following steps: Under ''Search Help'' click on ''Open for Comment.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT.**

Discussion

The subject advisory circular describes one way to show compliance to Title 14 of the Code of Federal Regulations part 23 for type certification of Joint Aviation Regulations—Very Light Airplanes if the type certification will be for either a part 23 Normal or Utility Category Type Certificate or a ''special class'' airplane, following § 21.17(b).

Material in the AC is neither mandatory nor regulatory in nature and does not constitute a regulation. In addition, the material is not to be construed as having any legal status and should be treated accordingly.

Issued in Kansas City, Missouri on January 28, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2525 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Financial Management Service gives notice of a proposed new Privacy Act system of records entitled ''Treasury/FMS .017—Collections Records.''

DATES: Comments must be received no later than March 6, 2003. The proposed new system of records will become effective March 17, 2003 unless comments are received which would result in a contrary determination.

ADDRESSES: You should send your comments to Robert Spiegel, Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday. You may send your comments by electronic mail to robert.spiegel@fms.treas.gov.

FOR FURTHER INFORMATION CONTACT: Robert Spiegel, Disclosure Officer, (202) 874–6837.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Financial Management Service (FMS) is proposing to establish a new system of records entitled ''Collection Records —Treasury/FMS .017.'' FMS collects more than $2 trillion in Federal receipts through a network of more than 10,000 financial institutions. It manages the collection of Federal receipts such as taxes, customs duties, loan repayments, fines, fees, and lease payments. Citizens and others make payments to the Federal government in a variety of ways. Many people mail a check to a post office box, known as a ''lockbox,'' which is managed by a financial institution as the financial agent of the Department of the Treasury. Some people pay over-the-counter for goods and services at the time of receipt of those goods or services. Others make payments electronically by credit card, debit card, or by authorizing the government to debit their bank account. FMS offers a variety of cost-efficient ways by which Federal agencies may collect receipts due from the public to the government while ensuring that information pertaining to such collections remains secure and confidential.

FMS continually seeks to modernize the government collections program. Through its electronic money program, FMS is initiating new collection mechanisms using the Internet or other communications networks to help Federal agencies modernize their collection activities. For example, through an Internet site known as ''Pay.gov,'' a person can authorize a payment to the government via the Internet. Electronic Federal Tax Payment System, or ''EFTPS,'' allows taxpayers to authorize the payment of certain types of taxes on-line. In both cases, the payor submits information to a government Web site, which allows the government to debit the person's bank account or charge the person's credit card. The process used by the government and the information collected from payors is similar to how the private sector handles commercial

transactions over the Internet. Another type of electronic collection mechanism known as ''paper check conversion'' allows the government to convert a paper check to an Automated Clearing House (ACH) debit, that is, to an electronic debit of the payor's checking account, as is done in the private sector. With better technology, FMS expects to develop new collections vehicles in the future.

FMS's electronic money programs are developed to efficiently facilitate the collection and reporting of receipts from the public in accordance with legal authorities. Simultaneously, FMS seeks to protect the government and the public from risks such as the unauthorized use of electronic payment methods, identity theft, and inadvertent disclosure of confidential information. The records covered by the proposed system are necessary not only to process financial transactions, but to authenticate the identity of someone electronically authorizing a payment to the government and to verify the payor's ability to make the payment authorized.

Thus, the records are collected and maintained for three primary reasons. First, in order to process a payment electronically, a payor needs to submit his or her name and bank account or credit card account information. Without such information, FMS would not be able to process the payment as requested by the individual authorizing the payment.

Second, to authenticate the identity of the person initiating the electronic transaction (*i.e.*, user claiming to be ''John Doe'' is, in fact, ''John Doe''), FMS may, in some instances, require some or all of the following additional information from an individual: date of birth; driver's license number; employer's name, address and telephone number (currently, employer information is not mandatory); user name, password, and/or unique question and answer chosen by the person using the Internet to initiate the electronic transaction. The information collected and maintained for a particular transaction will depend upon the level of risk associated with the transaction. FMS will work with the Federal agency for which collections are being made to determine the financial risk associated with a transaction, as well as the risk of identity theft. For example, if an individual is paying an obligation, such as a student loan, an agency may need less information than in the case of someone purchasing goods from the government. The agency may determine there is a lower likelihood that someone would pay a bill fraudulently than there is that someone would purchase goods in a one-time non-recurring transaction with the government. This is not to minimize the amount of security associated with an electronic loan repayment process, which in any event will be stringent, but to note that less personal information may be needed in order to provide the degree of security required for a particular transaction type. FMS recognizes that security needs must always be balanced with privacy concerns, and therefore, seeks to limit personal information requirements to only what is needed to securely process transactions.

Third, to verify the financial and other information provided by the person initiating the electronic transaction and to evaluate the payor's ability to make the payment authorized (for example, to verify the validity of the payor's credit card account information), FMS may compare information submitted with information available in FMS's electronic transaction historical database or commercial databases used for verification purposes, much like a store clerk determines whether someone paying by paper check has a history of writing bad checks. The ability to research historical transaction information will help eliminate the risk of fraudulent activity, such as the purchase of government products using an account with insufficient funds or using a stolen identity. By collecting and maintaining a certain amount of unique personal information about an individual who purchases goods from the government, FMS can help ensure that the individual's sensitive financial information will not be fraudulently accessed or used by anyone other than the individual.

The authentication of identity and verification of account information is required under FMS's regulation governing Federal agencies' use of the ACH system (*see* 31 CFR part 210). Part 210, which incorporates the private sector rules governing ACH transactions, requires a debit to a consumer's account to be authorized in writing and signed or similarly authenticated. For the ''similarly authenticated'' standard to be met, the process of obtaining a consumer's authorization electronically must provide evidence of both the consumer's identity and his or her assent to the transaction. In addition, the rules governing ACH debits initiated over the Internet require that an agency employ a ''commercially reasonable fraudulent transaction detection system to screen each entry'' and use ''commercially reasonable procedures to verify that (bank account) routing numbers are valid.'' An agency is required to retain a copy of each authorization for two years. The information collected and maintained for authentication and verification purposes is intended to assist agencies in meeting the requirements of part 210.

In addition to the purposes cited above, the information contained in the covered records will be used for collateral purposes related to the processing of financial transactions, such as collection of statistical information on operations, development of computer systems, investigation of unauthorized or fraudulent activity related to electronic transactions, and the collection of debts arising out of such activity.

Thus, the information contained in the records covered by FMS's proposed system of records and FMS's use of the information is necessary to process financial transactions while protecting the government and the public from financial risks that could be associated with electronic transactions. It is noted that the proposed system covers records obtained in connection with various mechanisms that are either used currently or may be used in the future for electronic financial transactions. Not every transaction will require the collection or disclosure of all of the information listed under ''Categories of records in the system.'' The categories of records cover the broad spectrum of information that might be connected to various types of transactions. FMS has attempted to cover the information needed for the types of transactions processed in today's technological environment, as well as some or all of the information that might be required in connection with future yet-to-be developed collections mechanisms or future security needs. Security needs are constantly changing with the evolution of technology. FMS is aware that the information used today to authenticate an individual and verify a transaction may need to be upgraded in the future.

FMS recognizes the sensitive nature of the confidential information it obtains when collecting receipts from the public and has many safeguards in place to protect the information from theft or inadvertent disclosure. When appropriate, FMS's contractual arrangements with commercial database vendors include provisions that preclude the vendors from retaining, disclosing, and using for other purposes the information provided by FMS to the vendor. In addition to various procedural and physical safeguards, access to computerized records is limited, through the use of encryption,

access codes, and other internal mechanisms, to those whose official duties require access solely for the purposes outlined in the proposed system. Access to the system is granted only as authorized by a security manager after security background checks. The information in the Collections Records system will allow the public to enjoy the benefits of electronic payment authorization while minimizing the risks of identity theft, fraudulent transactions, and the loss of public funds.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

For the reasons set forth in the preamble, FMS proposes a new system of records Treasury/FMS .017–Collections Records which is published in its entirety below.

Dated: January 29, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/FMS .017

SYSTEM NAME:

Collections Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Records are located at the Financial Management Service, U.S. Department of the Treasury, Liberty Center Building (Headquarters), 401 14th Street, SW., Washington, DC 20227. Records are also located throughout the United States at various Federal Reserve Banks and financial institutions, which act as Treasury's fiscal and financial agents. The address(es) of the fiscal and financial agents may be obtained from the system manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who electronically authorize payments to the Federal government through the use of communication networks, such as the Internet, via means such as Automated Clearing House (ACH), check conversion, credit card, and/or stored value card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Collections records containing information about individuals who electronically authorize payments to the Federal government to the extent such records are covered by the Privacy Act of 1974. The records may contain identifying information, such as an individual's name(s), taxpayer identifying number (*i.e.*, social security number or employer identification number), home address, home telephone number, and personal e-mail address (home and work); an individual's employer's name, address, telephone number, and e-mail address; an individual's date of birth and driver's license number; information about an individual's bank account(s) and other types of accounts from which payments are made, such as financial institution routing and account number; credit card numbers; information about an individual's payments made to or from the United States (or to other entities such as private contractors for the Federal government), including the amount, date, status of payments, payment settlement history, and tracking numbers used to locate payment information; user name and password assigned to an individual; other information used to identify and/or authenticate the user of an electronic system to authorize and make payments, such as a unique question and answer chosen by an individual; information concerning the authority of an individual to use an electronic system (access status) and the individual's historical use of the electronic system. The records also may contain information about the governmental agency to which payment is made and information required by such agency as authorized or required by law.

The information contained in the records covered by FMS's proposed system of records is necessary to process financial transactions while protecting the government and the public from financial risks that could be associated with electronic transactions. It is noted that the proposed system covers records obtained in connection with various mechanisms that are either used currently or may be used in the future for electronic financial transactions. Not every transaction will require the maintenance of all of the information listed in this section. The categories of records cover the broad spectrum of information that might be connected to various types of transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; 31 U.S.C. chapter 33; 31 U.S.C. 3720

PURPOSE(S):

The purpose of this system is to maintain records about individuals who electronically authorize payments to the Federal government. The information contained in the records is maintained for the purpose of facilitating the collection and reporting of receipts from the public to the Federal government and to minimize the financial risk to the Government and the public of unauthorized use of electronic payment methods. Examples of payment mechanisms authorized electronically include ACH, check conversion, credit card, or stored value cards. Individuals may authorize payments using paper check conversion or Internet-based systems through programs such as ''*Pay.gov*'' and ''Electronic Federal Taxpayer Payment System (EFTPS).'' The information also is maintained to:

(a) Provide collections information to the Federal agency collecting the public receipts;

(b) Authenticate the identity of individuals who electronically authorize payments to the Federal government;

(c) Verify the payment history and eligibility of individuals to electronically authorize payments to the Federal government;

(d) Provide statistical information on collections operations;

(e) Test and develop enhancements to the computer systems that contain the records; and

(f) Collect debts owed to the Federal government from individuals when the debt arises from the unauthorized use of electronic payment methods.

FMS's use of the information contained in the records is necessary to process financial transactions while protecting the government and the public from financial risks that could be associated with electronic transactions. The records are collected and maintained for three primary reasons. First, in order to process a payment electronically, a payor needs to submit his or her name and bank account or credit card account information. Without such information, FMS would not be able to process the payment as requested by the individual authorizing the payment. Second, to authenticate the identity of the person initiating the electronic transaction, FMS may, in some instances, require some or all of the information described in ''Categories of records in the system,'' above, depending upon the level of risk associated with a particular type of transaction. Third, to verify the financial and other information provided by the person initiating the electronic transaction and to evaluate the payor's ability to make the payment authorized, FMS may compare information submitted with information

available in FMS's electronic transaction historical database or commercial databases used for verification purposes, much like a store clerk determines whether someone paying by paper check has a history of writing bad checks. The ability to research historical transaction information will help eliminate the risk of fraudulent activity, such as the purchase of government products using an account with insufficient funds or using a stolen identity. By collecting and maintaining a certain amount of unique personal information about an individual who purchases goods from the government, FMS can help ensure that the individual's sensitive financial information will not be fraudulently accessed or used by anyone other than the individual.

In addition, the information contained in the covered records will be used for collateral purposes related to the processing of financial transactions, such as collection of statistical information on operations, development of computer systems, investigation of unauthorized or fraudulent activity related to electronic transactions, and the collection of debts arising out of such activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license, but only if the investigation, prosecution, enforcement or implementation concerns a transaction(s) or other event(s) that involved (or contemplates involvement of), in whole or part, an electronic method of collecting receipts for the Federal government. The records and information may also be disclosed to commercial database vendors to the extent necessary to obtain information pertinent to such an investigation, prosecution, enforcement or implementation.

(2) Commercial database vendors for the purposes of authenticating the identity of individuals who electronically authorize payments to the Federal government, to obtain information on such individuals' payment or check writing history, and for administrative purposes, such as resolving a question about a transaction. For purposes of this notice, the term ''commercial database vendors'' means vendors who maintain and disclose information from consumer credit, check verification, and address databases.

(3) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a subpoena, where arguably relevant to the litigation, or in connection with criminal law proceedings.

(4) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(5) Fiscal agents, financial agents, financial institutions, and contractors for the purpose of performing financial management services, including, but not limited to, processing payments, investigating and rectifying possible erroneous reporting information, creating and reviewing statistics to improve the quality of services provided, conducting debt collection services, or developing, testing and enhancing computer systems.

(6) Federal agencies, their agents and contractors for the purposes of facilitating the collection of receipts, determining the acceptable method of collection, the accounting of such receipts, and the implementation of programs related to the receipts being collected.

(7) Federal agencies, their agents and contractors, credit bureaus, and employers of individuals who owe delinquent debt for the purpose of garnishing wages only when the debt arises from the unauthorized use of electronic payment methods. The information will be used for the purpose of collecting such debt through offset, administrative wage garnishment, referral to private collection agencies, litigation, reporting the debt to credit bureaus, or for any other authorized debt collection purpose.

(8) Financial institutions, including banks and credit unions, and credit card companies for the purpose of collections and/or investigating the accuracy of information required to complete transactions using electronic methods and for administrative purposes, such as resolving questions about a transaction.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a government claim against a debtor when the debt arises from the unauthorized use of electronic payment methods is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of a delinquent debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained in electronic media.

RETRIEVABILITY:

Records are retrieved by account number (such as financial institution account number or credit card account number), name (including an authentication credential, *e.g.*, a user name), social security number, transaction identification number, or other alpha/numeric identifying information.

SAFEGUARDS:

All officials access the system of records on a need-to-know basis only, as authorized by the system manager after security background checks. Procedural and physical safeguards, such as personal accountability, audit logs, and specialized communications security, are utilized. Accountability and audit logs allow systems managers to track the actions of every user of the system. Each user has an individual password (as opposed to a group password) for which he or she is responsible. Thus, a system manager can identify access to the records by user. Access to computerized records is limited, through use of encryption, access codes, and other internal mechanisms, to those whose official duties require access. Storage facilities are secured by various means such as security guards, locked doors with key entry, and limited virtual access requiring a physical token.

RETENTION AND DISPOSAL:

Records for payments and associated transactions will be retained for seven (7) years or as otherwise required by statute or court order. Audit logs of transactions will be retained for a period of six (6) months or as otherwise required by statute or court order. Records in electronic media are electronically erased using industry-accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Architect, Electronic Commerce, Federal Finance, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All

individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access to or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974, as amended.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained (or by his or her authorized representative), other persons who electronically authorize payments to the Federal government, Federal agencies responsible for collecting receipts, Federal agencies responsible for disbursing and issuing Federal payments, Treasury fiscal and financial agents that process collections, and commercial database vendors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–2521 Filed 2–3–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration of Person Who Performed Repairs

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of a Person Who Performed Repairs. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of Person Who Performed Repairs.

OMB Number: 1515–0137.

Form Number: None.

Abstract: The Declaration of Person Who Performed Repairs is used by Customs to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 20,472.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 10,236.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2589 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request Deferral of Duty on Large Yachts Imported for Sale

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Deferral of Duty on Large Yachts Imported for Sale. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Tracey Denning, Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Deferral of Duty on Large Yachts Imported for Sale.

OMB Number: 1515–0223.

Form Number: N/A.

Abstract: Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 provides that an otherwise dutiable ''large yacht'' may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the U.S.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions, and non-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annualized Cost on the Public: $50.00.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2583 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request, Application for Extension of Bond for Temporary Importation

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Extension of Bond for Temporary Importation. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Tracey Denning, Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Publ. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application for Extension of Bond for Temporary Importation.

OMB Number: 1515–0054.

Form Number: Customs Form 3173.

Abstract: Imported merchandise which is to remain in the U.S. Customs territory for 1-year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on Customs Form 3173.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 348.

Estimated Total Annualized Cost on the Public: $5,568.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2584 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Proof of the Use for Rates of Duty Dependent on Actual Use

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Proof of the Use for Rates of Duty Dependent on Actual Use. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork

Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Proof of the Use for Rates of Duty Dependent on Actual Use.

OMB Number: 1515–0109.

Form Number: None.

Abstract: The Proof of the Use for Rates of Duty Dependent on Actual Use declaration is needed to ensure Customs control over merchandise which is duty-free. The declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 10,500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2585 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Bonded Warehouse Proprietor's Submission

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Bonded Warehouse Proprietor's Submission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Tracey Denning, U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Information Services Group, Room 3.2.C.,1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1515–0093.

Form Number: Customs Form 300.

Abstract: Customs Form 300 is prepared by Bonded Warehouse Proprietor's and submitted to the Customs Service annually. The document reflects all bonded merchandise entered, released, and manipulated, and includes beginning and ending inventories.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,800.

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 36,000.

Estimated Total Annualized Cost on the Public: $1,671,813.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2586 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Application and Approval To Manipulate, Examine, Sample, or Transfer Goods

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application and Approval to Manipulate, Examine, Sample, or Transfer Goods. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Tracey Denning, U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application & Approval to Manipulate, Examine, Sample, or Transfer Goods.

OMB Number: 1515–0021.

Form Number: Customs Form 3499.

Abstract: Customs Form 3499 is prepared by importers or consignees as an application to request examination, sampling, or transfer of merchandise under Customs supervision. This form is also an application for the manipulation of merchandise in a bonded warehouse and abandonment or destruction of merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions and individuals.

Estimated Number of Respondents: 137,400.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 13,740.

Estimated Total Annualized Cost on the Public: $109,920.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, , Information Services Branch.

[FR Doc. 03–2587 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Required Records for Smelting and Refining Warehouses

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Required Records for Smelting and Refining Warehouses. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Required Records for Smelting and Refining Warehouses.

OMB Number: 1515–0135.

Form Number: N/A.

Abstract: Each manufacturer engaged in smelting or refining must file an annual statement showing any material change in the character of the metal-bearing materials used or changes in the method of smelting or refining. Also the records must show the receipt and disposition of each shipment.

Current Actions: There are no changes to the information collection.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 15.

Estimated Time Per Respondent: 10.4.

Estimated Total Annual Burden Hours: 156 hours.

Estimated Total Annualized Cost on the Public: $1,872.00.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2588 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Customs Modernization Act Recordkeeping Requirements

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to

comment on an information collection requirement concerning the Customs Modernization Act Recordkeeping Requirements. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Customs Modernization Act Recordkeeping Requirements.

OMB Number: 1515–0214.

Form Number: N/A.

Abstract: This information and records keeping requirement is required to allow Customs to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 9,114.

Estimated Time Per Respondent: 875 hours.

Estimated Total Annual Burden Hours: 7,977,600.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, , Information Services Branch.

[FR Doc. 03–2590 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Country of Origin Marking Requirements for Containers or Holders

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Country of Origin Marking Requirements for Containers or Holders. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Country of Origin Marking Requirements for Containers or Holders.

OMB Number: 1515–0163.

Form Number: N/A.

Abstract: Containers or Holders imported into the United States destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of importation into Customs territory.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 15 seconds.

Estimated Total Annual Burden Hours: 41.

Estimated Total Annualized Cost on the Public: $533.00.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2591 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Lien Notice (Customs Form 3485)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Lien Notice (Customs Form 3485). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Dennng, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Lien Notice.

OMB Number: 1515–0046.

Form Number: Customs Form 3485.

Abstract: The Lien Notice, Customs Form 3485, enable the carriers, cartmen, and similar businesses to notify Customs that a lien exists against an individual/business for non-payment of freight charges, etc., so that Customs will not permit delivery of the merchandise from public stores or a bonded warehouse until the lien is satisfied or discharged.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, businesses.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 8,497.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–2592 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Importers of Merchandise Subject to Actual Use Provisions

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Importer's of Merchandise Subject to Actual Use Provisions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1515–0091.

Form Number: None.

Abstract: The Importers of Merchandise Subject to Actual Use Provision is part of the regulation which provides that certain items may be admitted duty-free such as farming implements, seed, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 12,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–2593 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; General Declaration (Outward/Inward)

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the General Declaration (Outward/Inward). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: General Declaration (Outward/Inward).

OMB Number: 1515–0002.

Form Number: Customs Form 7507.

Abstract: Customs Form 7507 allows the agent or pilot to make entry or exit of the aircraft, as required by statute. The form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 90 minutes.

Estimated Total Annual Burden Hours: 49,950.

Estimated Total Annualized Cost on the Public: $1,874,250.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2594 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

Advisory Committee to the National Center for State and Local Law Enforcement Training; Meeting

AGENCY: Federal Law Enforcement Training Center, Department of the Treasury.

ACTION: Notice of Meeting.

SUMMARY: The Advisory Committee to the National Center for State and Local Law Enforcement Training (National Center) at the Federal Law Enforcement Training Center will meet on February 26, 2003, beginning at 9 a.m. The agenda for this meeting includes remarks by the Committee Co-Chairs, Kenneth Lawson, Assistant Secretary (LE), Department of the Treasury, and Deborah Daniels, Assistant Attorney General, Office of Justice Programs, Department of Justice; update on the transition of the FLETC and the National Center from Department of the Treasury to Department of Homeland Security. This meeting is open to the public. Anyone desiring to attend the meeting must contact Reba Fischer, the Designated Federal Officer, no later than February 19, 2003, at (912) 267–2343, to arrange clearance.

ADDRESSES: Sea Palms Hotel and Resort, 5445 Frederica Road, St. Simons Island, GA.

FOR FURTHER INFORMATION CONTACT: Bruce P. Brown, Director, National Center for State and Local Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, GA 31524, 912–267–2322.

Dated: January 23, 2003.

Bruce P. Brown,

Director, National Center for State and Local Law Enforcement Training.

[FR Doc. 03–2492 Filed 2–3–03; 8:45 am]

BILLING CODE 4810–32–P



Federal Register

Tuesday,

February 4, 2003

Part II

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Parts 1805 and 1806

Community Development Financial Institutions and Bank Enterprise Award Programs and Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Program and for the Community Development Financial Institutions Program; Interim Rules and Notices

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1805

RIN 1505–AA92

Community Development Financial Institutions Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Community Development Financial Institutions Program (CDFI Program) administered by the Community Development Financial Institutions Fund (Fund). The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Under the CDFI Program, the Fund provides financial and technical assistance in the form of grants, loans, equity investments and deposits to CDFIs selected through a merit-based application process. The Fund provides such assistance to CDFIs to enhance their ability to make loans and investments, and to provide related services for the benefit of designated investment areas, targeted populations, or both. In order for an organization to qualify as a CDFI, the organization must meet specific eligibility criteria. One such criterion is that the organization shall have a primary mission of promoting community development. This revised interim rule: Revises the primary mission eligibility test to comply with the plain meaning of the Community Development Banking and Financial Institutions Act of 1994 (the Act); reduces the frequency of previously approved collections of information by replacing semi-annual reporting requirements with annual reporting requirements; clarifies the terms and conditions underlying an award of assistance prior to the execution of an assistance agreement; achieves regulatory economy and efficiency by deleting references to application content requirements and other matters that have been and will continue to be thoroughly addressed in the various applications and in the Notices of Funds Availability (NOFA); and makes other technical and clarifying changes that the Fund believes will generally inure to the benefit of CDFIs and entities proposing to become CDFIs.

DATES: Revised interim rule effective February 4, 2003; comments must be received in the offices of the Fund on or before April 7, 2003.

ADDRESSES: You may send hard copy comments concerning this interim rule to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. You may also send us comments by e-mail at *reg_comments@cdfi.treas.gov*. When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov*.

FOR FURTHER INFORMATION CONTACT: Fredric C. Cooper, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, at (202) 622–6355. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by the Act. Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute.

The mission of the Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. Access to credit, investment capital, and financial services are essential ingredients for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people.

The Fund was established to promote economic revitalization and community development through, among other things, investment in and assistance to CDFIs, which specialize in serving underserved markets and the people who live there. CDFIs—while highly effective—are typically small in scale and often have difficulty raising the capital needed to meet the demands for their products and services. Under the CDFI Program, the Fund provides CDFIs with financial and technical assistance in the form of grants, loans, equity investments, and deposits in order to enhance their ability to make loans and investments, and provide services for the benefit of designated investment areas, targeted populations or both. Additionally, CDFIs are in formation or in the early stages of development in many markets underserved by traditional financial institutions, including rural and Native American communities. The CDFI Program assists such entities in acquiring technical assistance to build their capacity to serve such markets. Applicants participate in the CDFI Program through a merit-based qualitative application and selection process in which the Fund makes funding decisions based on pre-established evaluation criteria. Program participants generally receive monies from the Fund only after being certified as a CDFI and entering into an assistance agreement with the Fund. These assistance agreements include performance goals, matching funds requirements and reporting requirements.

On August 14, 2000, the Fund published in the **Federal Register** a revised interim rule (65 FR 49642) implementing the CDFI Program (the current rule). The deadline for the submission of comments was October 13, 2000.

II. Comments on the August 14, 2000 Interim Rule

By the close of the October 13, 2000 comment period, the Fund received no comments on the August 14, 2000 interim rule.

III. Summary of Changes

Purpose

Section 1805.100 of the current rule contains a description of the purpose of the CDFI Program. This interim rule revises such purpose to conform to the purpose set forth in Section 102 of the Act (12 U.S.C. 4701(b)).

Summary

Section 1805.101 of the current rule provides that the Fund will select Awardees to receive financial and technical assistance through a competitive application process. The Fund is considering evaluating applications, particularly those for technical assistance, through a merit-based qualitative application process in which the Fund may evaluate applications on a stand-alone basis in lieu of a larger competitive process in order to expedite funding decisions. Accordingly, § 1805.101 of this interim rule provides that the Fund will select Awardees to receive financial and technical assistance through a merit-based qualitative application process. This interim rule contains similar conforming changes to §§ 1805.303(d) and 1805.700(a).

Definitions

Section 1805.104 of the current rule contains a list of definitions. This interim rule revises § 1805.104 by adding definitions of the following two terms: ''Control'' and ''Voting Securities.'' The two new definitions are intended to clarify the meaning of the term ''Affiliate,'' which is defined in § 1805.104(b) of the current rule. Section 1805.104(b) of the current rule defines ''Affiliate'' as any company or entity that controls, is controlled by, or is under common control with another company. The definition of ''Affiliate'' is derived from Section 103 of the Act (12 U.S.C. 4702(3)), which incorporates the definition of ''Affiliate'' contained in the Bank Holding Company Act (BHCA) (12 U.S.C. 1841(k)). Because the definition of ''Affiliate'' is derived from the BHCA, the Fund's definition of ''Control'' in this interim rule is likewise derived from the BHCA (12 U.S.C. 1841(a)(2)) and the BHCA implementing regulations (12 CFR 225.2(e)(1)). The definition of ''Voting Securities,'' which is referenced in the definition of ''Control,'' is derived from the definition contained in the BHCA implementing regulations (12 CFR 225.2(q)). The addition of these two definitions in this interim rule does not reflect a change in Fund policy or procedure, because the Fund has consistently looked to such BHCA definitions to guide it in determining whether one company is an Affiliate of another company.

Applicant Eligibility

Section 1805.200(a)(2) of the current rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if its application materials provide a realistic course of action to ensure that it will meet the CDFI eligibility tests within 24 months from September 30 of the calendar year in which the applicable application deadline falls or such other period as may be set forth in an applicable NOFA. The current interim rule reflects the Fund's practice of allowing entities to apply for certification and funding at the same time. The Fund intends to change such practice by requiring the submission of an application for certification in advance of the submission of an application for funding for some CDFI Program components. The policy goal of this bifurcated process is to facilitate the allocation of Fund staff resources for purposes of making eligibility and award decisions on a timelier basis. In furtherance of this same policy goal, the Fund also seeks the ability to require an entity to be certified as a CDFI prior to such entity's submission of an application for funding under some CDFI Program components. Accordingly, § 1805.200(a)(2) of this interim rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if the Fund receives an application for certification from the entity within the time period set forth in an applicable NOFA, and the Fund determines that such application materials provide a realistic course of action to ensure that it will meet the CDFI eligibility tests within the period set forth in an applicable NOFA. Section 1805.200(a)(2) of this interim rule also provides that the Fund reserves the right to require an entity to have been certified as a CDFI prior to its submission of an application for assistance under the CDFI Program, as set forth in an applicable NOFA.

Primary Mission Eligibility Test

Section 1805.201(b)(1) of the current rule provides that in order for an entity to qualify as a CDFI, such entity shall have a primary mission of promoting community development. Section 1805.201(b)(1) of the current rule also provides that in determining whether an entity has such a primary mission, the Fund will consider whether the activities of such entity individually and such entity and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of distressed communities. The Fund believes that the primary mission eligibility test in the current rule does not comply with the plain meaning of the definition of ''CDFI'' contained in Section 103 of the Act. Section 103 of the Act (12 U.S.C. 4702(5)(A)(i)) provides, in pertinent part, that the term ''CDFI'' means a person (other than an individual) that has a primary mission of promoting community development. The Fund believes that if Congress had intended that the primary mission eligibility test to apply to an entity on a collective basis with the entity's Affiliates, Congress would have so specified as it did elsewhere in Section 103 of the Act (12 U.S.C. 4702(5)(B) and (C)) with regard to entities that are Depository Institution Holding Companies, Subsidiaries or Affiliates of Depository Institution Holding Companies, and Subsidiaries of Insured Depository Institutions. Moreover, the Fund believes that this interim rule reflects a sound policy approach in that it will facilitate the ability of venture capital companies to qualify as CDFIs. Under the current rule, venture capital companies, which might meet all of the other CDFI eligibility tests, might not meet the primary mission eligibility test if their Affiliate portfolio companies do not have a primary mission of promoting community development. Accordingly, under § 1805.201(b)(1) of this interim rule, in determining whether an entity has a primary mission of promoting community development, the Fund will only consider the activities of the entity individually, and no longer take into account, except where required by the Act, the activities of an entity's Affiliates.

Certification As A CDFI

Section 1805.201 of the current rule describes, among other things, the application content requirements for an entity to be certified by the Fund as a CDFI. This interim rule deletes such application content requirements for purposes of regulatory economy and efficiency, because they are already contained in and will continue to be contained in the certification application.

Target Market—Investment Area

Section 1805.201(b)(3)(ii)(A)(*3*) of the current rule provides that a geographic area will be considered an eligible Investment Area if it encompasses or is located in an Empowerment Zone or Enterprise Community designated under Section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391). The Fund has decided to clarify this Investment Area eligibility requirement for purposes of accurately reflecting the Fund's longstanding interpretation of such requirement. Accordingly, § 1805.201(b)(3)(ii)(A)(*3*) of this interim rule clarifies that a geographic area will be considered an eligible Investment

Area if it wholly consists of or is wholly located within an Empowerment Zone or Enterprise Community.

Section 1805.201(b)(3)(ii)(A)(*2*) of the current rule provides that in order for a geographic area to qualify as an Investment Area, it must generally meet one of the objective criteria of economic distress set forth in § 1805.201(b)(3)(ii)(D) of the current rule. Section 1805.201(b)(3)(ii)(D) of the current rule contains a list of five economic distress criteria. In § 1805.201(b)(3)(ii)(D)(*4*) of the current rule, one criterion is that the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) in the geographic area is at least 20 percent. The Fund has determined that such criterion is no longer necessary, because the Fund has found that geographic areas that meet the occupied distressed housing criterion also meet one or more of the other economic distress criteria. The Fund thus believes that the deletion of the occupied distressed housing criterion will have no substantive adverse effect on a geographic area qualifying as an Investment Area. Accordingly, this interim rule deletes the occupied distressed housing criterion for purposes of regulatory economy and efficiency.

Section 1805.201(b)(3)(ii)(D)(*5*)(*i*) of the current rule contains an Investment Area distress criterion that for areas located outside of a Metropolitan Area, the county population loss in the period between the most recent decennial census and the previous decennial census is at least 10 percent. The Fund has determined that this 10 percent threshold figure is no longer applicable in light of the fact that the most recent decennial census indicates that only a small fraction of such counties experienced such a loss between 1990 and 2000.

In addition, § 1805.201(b)(3)(ii)(D)(*5*)(*ii*) of the current rule contains an Investment Area distress criterion that for areas located outside of a Metropolitan Area, the county net migration loss over the five year period preceding the most recent decennial census is at least five percent. In light of the most recent decennial census data, the Fund believes that this distressed criterion is no longer an accurate measure of an area's economic distress. Accordingly, this interim rule deletes the county population loss and county net migration loss distress criteria for purposes of regulatory economy and efficiency.

Matching Funds—Retained Earnings

Section 1805.504(d)(4)(i)(A) of the current rule provides that an Assistance Agreement with insured credit union Awardees that seek to use as matching funds retained earnings in the form of their net capital accumulated since inception shall require that such Awardees increase their member and/or nonmember shares by an amount that is at least equal to four times the amount of retained earnings that is committed as matching funds. The Fund believes that this four-fold increase is excessive and unduly burdensome for many small insured credit union Awardees that face incremental, rather than large-scale growth. In previous NOFAs under the Small and Emerging CDFI Assistance Component, the Fund waived the four-fold requirement and in its place held ''small and emerging'' insured credit union Awardees to a two-fold requirement. However, the Fund believes that the flexibility to vary the amount of such increases should be codified in this interim rule. Accordingly, § 1805.504(d)(4)(i)(A) of this interim rule is revised to require insured credit union Awardees, which seek to use net capital accumulated since their inception as matching funds, to increase their member and/or nonmember shares by an amount set forth in an applicable NOFA.

Section 1805.504(d)(4)(i)(B) of the current rule requires the increase in member and/or nonmember shares to be achieved within 24 months from September 30 of the calendar year in which the applicable application deadline falls. The Fund believes that this time frame needs to be shortened by three months so that if an Awardee fails to timely achieve the increase, the Fund can make a corresponding reduction in the award amount and then utilize the freed up funds to make additional awards on or before September 30, which is the last date that such funds will generally be available to make awards. Accordingly, § 1805.504(d)(4)(i)(B) of this interim rule is revised to require insured credit union awardees, which seek to use net capital accumulated since inception, to increase their member and/or nonmember shares within 24 months from June 30 of the calendar year in which the applicable application deadline falls.

Application Contents

Section 1805.601 of the current rule describes the Application content requirements for entities seeking financial and/or technical assistance. This interim rule deletes § 1805.601 for purposes of regulatory economy and efficiency, because such requirements are already contained in and will continue to be contained in the applicable applications.

Evaluation of Applications

Section 1805.701(b) of the current rule describes the criteria that the Fund will consider in evaluating applications for assistance. Section 1805.701(b)(9) of the current rule provides that the Fund will consider on the one hand the extent of need for the Fund's assistance, and on the other hand, in the case of an Applicant that has previously received assistance under the CDFI Program, the Applicant's level of success in meeting, among other things, its performance goals and whether it will expand its activities. The latter is derived from Section 105 of the Act (12 U.S.C. 4704(b)(4)). The Fund has decided to bifurcate these two criteria for purposes of clarity. Accordingly, § 1805.701(b)(10) of this interim rule contains the criterion by which the Fund will evaluate, in the case of an Applicant that has previously received assistance under the CDFI Program, its level of success and whether it will expand its activities.

Notice of Award—Terms and Conditions of Assistance

Section 1805.801 of the current rule provides that prior to providing any assistance, the Fund and an Awardee shall enter into an Assistance Agreement. Section 1805.801 of the current rule also describes the terms and conditions of an Assistance Agreement. However, there is a gap in the current rule between the evaluation and selection of an Applicant and the Applicant's entering into an Assistance Agreement with the Fund. To fill this gap, the Fund is adding a new section to this interim rule that essentially codifies the terms and conditions contained in the Notices of Award executed by the Fund and each Awardee under the CDFI Program. Specifically, § 1805.801 of this interim rule provides that once an Applicant has been selected to receive assistance, the Fund and the Awardee will generally execute a Notice of Award. Section 1805.801 of this interim rule also provides that the Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance, and that the Fund may terminate the Notice of Award or take other actions in the event of, among other things, Awardee fraud, Awardee mismanagement, or Awardee noncompliance with the terms of any

previous Assistance Agreement entered into with the Fund.

Assistance Agreement; Sanctions

Section 1805.801(b) of the current rule provides that an Awardee shall comply with mutually negotiated performance goals. However, § 1805.801(b) does not describe the types of performance goals to which an Awardee and the Fund may mutually agree. Accordingly, § 1805.802(b) of this interim rule adds an illustrative list of the types of performance goals that may be mutually agreed to.

Section 1805.801(c) of the current rule states that an Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Fund's regulations, or noncompliance with the Assistance Agreement on the part of an Awardee, the Fund, in its discretion, may impose one or more sanctions. Section 1805.801(c)(7) of the current rule contains a catch-all sanction in that it authorizes the Fund to take any other action as permitted by the terms of the Assistance Agreement. The enumerated sanctions in § 1805.801(c) of the current rule are derived from Section 109 of the Act (12 U.S.C. 4707(f)(2)(C)), which commits to the Fund's discretion the ability to impose sanctions on an Awardee in the case of fraud, mismanagement or noncompliance. Section 109 of the Act (12 U.S.C. 4707(f)(2)(C)(vii)) also contains a catch-all sanction in that it confers upon the Fund the discretion to ''take such other actions as the Fund deems appropriate.'' The Fund has decided to revise the catch-all sanction contained in the current rule to conform to the plain language of the Act. Accordingly, § 1805.802(c)(7) of this interim rule is revised to authorize the Fund to take such other actions, as the Fund deems appropriate.

Section 1805.801(d) of the current rule provides that in the case of an Insured Depository Institution, the Assistance Agreement shall provide that the Act, the implementing regulations and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 by the Appropriate Federal Banking Agency. Section 1805.801(d) of the current rule is derived from Section 119 of the Act (12 U.S.C. 4717(b)), which provides that the Act, the implementing regulations, and agreements entered into under the Act are enforceable by the Appropriate Federal Banking Agency in the case of an Insured CDFI. The Fund seeks to revise § 1805.801(d) of the current rule to conform to the plain meaning of the Act. Accordingly, § 1805.802(d) of this interim rule is revised by replacing ''Insured Depository Institution'' with ''Insured CDFI.''

Reporting

Section 1805.803(e)(2) of the current rule requires each Awardee to submit semi-annual reports consisting of internal financial statements and information on its compliance with its financial soundness covenants. The Fund believes that these semi-annual reporting requirements are unduly burdensome, and has decided to reduce the frequency of such reporting from semi-annually to annually. Accordingly, § 1805.804(e)(2) of this interim rule requires each Awardee to submit to the Fund its fiscal year end unaudited statements of financial condition on an annual basis.

IV. Rulemaking Analysis

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

Because no notice of proposed rule making is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1559–0006. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005 and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedure Act

Because the revisions to this interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

Catalog of Federal Domestic Assistance Number

Community Development Financial Institutions Program—21.020.

List of Subjects in 12 CFR Part 1805

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 12 CFR part 1805 is revised to read as follows:

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

Subpart A—General Provisions

Sec.

1805.100 Purpose.
1805.101 Summary.
1805.102 Relationship to other Fund programs.
1805.103 Awardee not instrumentality.
1805.104 Definitions.
1805.105 Waiver authority.
1805.106 OMB control number.

Subpart B—Eligibility

1805.200 Applicant eligibility.
1805.201 Certification as a Community Development Financial Institution.

Subpart C—Use of Funds/Eligible Activities

1805.300 Purposes of financial assistance.
1805.301 Eligible activities.
1805.302 Restrictions on use of assistance.
1805.303 Technical assistance.

Subpart D—Investment Instruments

1805.400 Investment instruments—general.
1805.401 Forms of investment instruments.
1805.402 Assistance limits.
1805.403 Authority to sell.

Subpart E—Matching Funds Requirements

1805.500 Matching funds—general.

1805.501 Comparability of form and value.
1805.502 Severe constraints waiver.
1805.503 Time frame for raising match.
1805.504 Retained earnings.

Subpart F—Applications for Assistance

1805.600 Notice of Funds Availability.

Subpart G—Evaluation and Selection of Applications

1805.700 Evaluation and selection—general.
1805.701 Evaluation of Applications.

Subpart H—Terms and Conditions of Assistance

1805.800 Safety and soundness.
1805.801 Notice of Award
1805.802 Assistance Agreement; sanctions.
1805.803 Disbursement of funds.
1805.804 Data collection and reporting.
1805.805 Information.
1805.806 Compliance with government requirements.
1805.807 Conflict of interest requirements.
1805.808 Lobbying restrictions.
1805.809 Criminal provisions.
1805.810 Fund deemed not to control.
1805.811 Limitation on liability.
1805.812 Fraud, waste, and abuse.

Authority: 12 U.S.C. 4703, 4703 note, 4710, 4717; and 31 U.S.C. 321.

Subpart A—General Provisions

§ 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions.

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a merit-based qualitative application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.* (1) No Community Development Financial Institution may receive a Bank Enterprise Award under the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

(i) An application pending for assistance under the Community Development Financial Institutions Program;

(ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Ever directly received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(2) An equity investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution, or deposits in an Insured Community Development Financial Institution, made by a Bank Enterprise Award Program Awardee may be used to meet the matching funds requirements described in subpart E of this part. Receipt of such equity investment, loan, or deposit does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

§ 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affiliate* means any company or entity that Controls, is Controlled by, or is under common Control with another company;

(c) *Applicant* means any entity submitting an application for assistance under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

(e) *Assistance Agreement* means a formal agreement between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(f) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(g) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements described in § 1805.200;

(h) *Community Development Financial Institution Intermediary* (or *CDFI Intermediary*) means an entity that meets the CDFI Program eligibility requirements described in § 1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

(i) *Community Development Financial Institutions Program* (or *CDFI Program*) means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(j) *Community Facility* means a facility where health care, childcare, educational, cultural, or social services are provided;

(k) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(l) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(m) *Community Partner* means a person (other than an individual) that provides loans, Equity Investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(n) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide loans, Equity Investments, or Development Services to an Investment Area(s) or a Targeted Population(s);

(o) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described in an applicable Notice of Funds Availability (NOFA);

(p) *Control* means: (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons; (2)

Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or (3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company.

(q) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1));

(r) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(s) *Equity Investment* means an investment made by an Applicant that, in the judgment of the Fund, directly supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate. Equity Investments comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the Fund), or any other investment deemed to be an Equity Investment by the Fund;

(t) *Financial Products* means: loans, Equity Investments and similar financing activities (as determined by the Fund) including the purchase of loans originated by certified CDFIs and the provision of loan guarantees; in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs.

(u) *Financial Services* means checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, and safe deposit box services;

(v) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(w) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(x) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(y) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(z) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(aa) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(bb) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(cc) *Investment Area* means a geographic area meeting the requirements of § 1805.201(b)(3);

(dd) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(ee) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(ff) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(gg) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(hh) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in § 1805.200(b)(4);

(ii) *Targeted Population* means individuals or an identifiable group meeting the requirements of § 1805.201(b)(3); and

(jj) *Target Market* means an Investment Area(s) and/or a Targeted Population(s).

(kk)(1) *Voting Securities* means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

(i) To vote for or select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) *Nonvoting shares.* Preferred shares, limited partnership shares or interests, or similar interests are not Voting Securities if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or

partners (or persons exercising similar functions) of the issuing company.

§ 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register.**

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1559–0006.

Subpart B—Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in § 1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(3) of this section, will be eligible to apply for assistance under this part.

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund:

(i) Receives a complete application for certification from the entity within the time period set forth in an applicable NOFA; and

(ii) Determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within the period set forth in an applicable NOFA. The Fund will not, however, disburse any financial assistance to such an entity before it meets the requirements described in this section. Moreover, notwithstanding paragraphs (a)(1) and (a)(2)(ii) of this section, the Fund reserves the right to require an entity to have been certified as described in § 1805.201(a) prior to its submission of an application for assistance, as set forth in an applicable NOFA.

(3) The Fund shall require an entity to meet any additional eligibility requirements that the Fund deems appropriate.

(4) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and § 1805.201(b).

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1), (2) and (3) of this section, an Applicant will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the Applicant's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in the application for certification. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section, § 1805.200(b) or (a)(3) (if applicable) are no longer met.

(b) *Eligibility verification.* An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) of this section and § 1805.200 by providing the information described in the application for certification demonstrating that the Applicant meets the eligibility requirements described in paragraphs (b)(1) through (b)(6) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b) and § 1805.200.

(1) *Primary mission.* A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas).

(2) *Financing entity.* A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. An Applicant may demonstrate that it is such an entity if it is a(n):

(i) Depository Institution Holding Company;

(ii) Insured Depository Institution or Insured Credit Union; or

(iii) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(3) *Target Market.* (i) *General.* An Applicant may be found to serve a Target Market by virtue of serving one or more Investment Areas and/or Targeted Populations. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) in this section.

(ii) *Investment Area.* (A) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

(1) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands); and either

(2) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans, Equity Investments, or Financial

Services as described in paragraph (b)(3)(ii)(E) of this section; or

(3) Encompasses (*i.e.* wholly consists of) or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) *Geographic units.* Subject to the remainder of this paragraph (B), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American Indian or Alaskan Native areas. An Applicant may designate one or more Investment Areas as part of a single application.

(C) *Designation.* An Applicant may designate an Investment Area by selecting:

(1) A geographic unit(s) which individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(2) A group of contiguous geographic units which together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(D) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

(1) The percentage of the population living in poverty is at least 20 percent;

(2) In the case of an Investment Area located:

(i) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(ii) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater; or

(3) The unemployment rate is at least 1.5 times the national average.

(E) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if a narrative analysis provided by the Applicant adequately demonstrate a pattern of unmet needs for loans, Equity Investments, or Financial Services within such area(s).

(F) *Serving Investment Areas.* An Applicant may serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents.

(iii) *Targeted Population.* (A) *General.* Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to loans, Equity Investments, or Financial Services in the Applicant's service area. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(B) *Serving A Targeted Population.* An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products.

(5) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise.

(6) *Non-government.* A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities.

Subpart C—Use of Funds/Eligible Activities

§ 1805.300 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to provide Financial Products and Financial Services.

§ 1805.301 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting, through lending, investing, enhancing liquidity, or other means of finance:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of Consumer Loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

§ 1805.302 Restrictions on use of assistance.

(a) An Awardee shall use assistance provided by the Fund and its corresponding matching funds only for the eligible activities approved by the Fund and described in the Assistance Agreement.

(b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.303 Technical assistance.

(a) *General.* The Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such

technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.402.

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.600.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the merit-based qualitative review criteria in subpart G of this part, except as otherwise may be provided in the applicable NOFA. In addition, the requirements for matching funds are not applicable to technical assistance requests.

Subpart D—Investment Instruments

§ 1805.400 Investment instruments—general.

The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.401, and under such terms and conditions as described in this subpart D. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

§ 1805.401 Forms of investment instruments.

(a) *Equity.* The Fund may make nonvoting equity investments in an Awardee, including, without limitation, the purchase of nonvoting stock. Such stock shall be transferable and, in the discretion of the Fund, may provide for convertibility to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs. Deposits in an Insured CDFI shall not be subject to any requirement for collateral or security.

§ 1805.402 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than $5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional assistance pursuant to this part up to a maximum of $3.75 million during the same three-year period. Such additional assistance:

(1) Shall be used only to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) An Awardee may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.701(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

§ 1805.403 Authority to sell.

The Fund may, at any time, sell its equity investments and loans, provided the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

Subpart E—Matching Funds Requirements

§ 1805.500 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.502, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements described in this section. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the Comprehensive Business Plan that the Fund is supporting through its assistance.

§ 1805.501 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (*e.g.*, equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.502). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

§ 1805.502 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than $100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than $25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section. Additionally, not more than 25 percent of the total funds disbursed under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a ''severe constraints waiver'' as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a ''severe constraints waiver'' only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

§ 1805.503 Time frame for raising match.

Applicants shall satisfy matching funds requirements within the period set forth in the applicable NOFA.

§ 1805.504 Retained earnings.

(a) An Applicant that proposes to meet all or a portion of its matching funds requirements as set forth in this part by committing available earnings retained from its operations pursuant to § 1805.501(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings (excluding the after-tax value to an Applicant of any grants and other donated assets) that has occurred over the Applicant's most recent fiscal year (*e.g.*, retained earnings at the end of fiscal year 2001 less retained earnings at the end of fiscal year 2000); or

(ii) The annual average of such increases that have occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for an equity investment. The terms and conditions of financial assistance will be determined by the Fund.

(c)(1) In the case of a non-profit Applicant (other than a Credit Union), retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in an Applicant's net assets (excluding the amount of any grants and value of other donated assets) that has occurred over the Applicant's most recent fiscal year; or

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for a grant. The terms and conditions of financial assistance will be determined by the Fund.

(d)(1) In the case of an insured credit union Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year;

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or

(iii) The entire retained earnings that have been accumulated since the inception of the Applicant provided that the conditions described in paragraph (d)(4) of this section are satisfied.

(2) For the purpose of paragraph (d)(4) of this section, retained earnings shall be comprised of ''Regular Reserves'', ''Other Reserves'' (excluding reserves specifically dedicated for losses), and ''Undivided Earnings'' as such terms are used in the National Credit Union Administration's accounting manual.

(3) Such retained earnings may be used to match a request for a grant. The terms and conditions of financial assistance will be determined by the Fund.

(4) If the option described in paragraph (d)(1)(iii) of this section is used:

(i) The Assistance Agreement shall require that:

(A) An Awardee increase its member and/or non-member shares by an amount that is set forth in an applicable NOFA; and

(B) Such increase be achieved within 24 months from June 30 of the calendar year in which the applicable application deadline falls (or such other date as set forth in the applicable NOFA);

(ii) The Applicant's Comprehensive Business Plan shall discuss its strategy for raising the required shares and the activities associated with such increased shares;

(iii) The level from which the increases in shares described in paragraph (d)(4)(i) of this section will be measured will be as of June 30 of the calendar year in which the applicable application deadline falls; and

(iv) Financial assistance shall be disbursed by the Fund only as the amount of increased shares described in paragraph (d)(4)(i)(A) of this section is achieved.

(5) The Fund will allow an Applicant to utilize the option described in paragraph (d)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in increasing its shares to the specified amounts.

(e) Retained earnings accumulated after the end of the Applicant's most recent fiscal year ending prior to the appropriate application deadline may not be used as matching funds.

Subpart F—Applications for Assistance

§ 1805.600 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with the applicable NOFA published in the **Federal Register**. The NOFA will advise potential Applicants on how to obtain an application packet and will establish deadlines and other requirements. The NOFA may specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

Subpart G—Evaluation and Selection of Applications

§ 1805.700 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the Fund, to receive assistance based on a review process, that could include an interview(s) and/or site visit(s), that is intended to:

(a) Ensure that Applicants are evaluated on a merit basis and in a fair and consistent manner;

(b) Take into consideration the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Awardee can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact;

(d) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States; and

(e) Take into consideration other factors as described in the applicable NOFA.

§ 1805.701 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described in § 1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the Fund reserves the right to request additional information from the Applicant, if the Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the Fund will evaluate the Applicant's likelihood of success in meeting the goals of the Comprehensive Business Plan and achieving community development impact, by considering factors such as:

(1) Community development track record (*e.g.*, in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market);

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills and experience of the management team;

(5) Understanding of its market context, including its analysis of current and prospective customers, the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria, the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Program design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, delivery strategy, and coordination with other institutions and/or a Community Partner, or participation in a secondary market for purposes of increasing the Applicant's resources. In the case of an Applicant submitting an application with a Community Partner, the Fund will evaluate the extent to which the Community Partner will participate in carrying out the activities of the Community Partnership; the extent to which the Community Partner will enhance the likelihood of success of the Comprehensive Business Plan; and the extent to which service to the designated Target Market will be better performed by a Community Partnership than by the Applicant alone;

(7) Projections for financial performance, capitalization and raising needed external resources, including the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan;

(10) In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the Fund, the undisbursed balance of assistance, and whether the Applicant will, with additional assistance from the Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities; and

(11) The Fund may consider any other factors, as it deems appropriate, in reviewing an application as set forth in an applicable NOFA.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund will consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(d) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable NOFA.

Subpart H—Terms and Conditions of Assistance

§ 1805.800 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the maximum extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

§ 1805.801 Notice of award.

(a) The Fund will generally signify its selection of an Applicant as an Awardee by delivering a signed notice of award to the Applicant. The notice of award will contain the general terms and conditions underlying the Fund's provision of assistance to an Awardee including, but not limited to, the requirement that an Awardee and the Fund enter into an Assistance Agreement.

(b) To become an Awardee under paragraph (a) of this section, an Applicant shall execute the notice of award and return it to the Fund.

(c) By executing a notice of award, an Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the Awardee's eligibility for funding, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the notice of award or take such other actions as it deems appropriate. Moreover, by executing a notice of award, an Awardee also agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is not in compliance with the terms of

any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the notice of award or take such other actions as it deems appropriate. An Awardee shall notify the Fund of information that an Awardee may reasonably believe may affect its eligibility or ability to achieve the objectives of its Comprehensive Business Plan as submitted to the Fund (such as changes in management).

(d) The Fund will notify an Awardee of either the Fund's termination of a notice of award or such other action(s) taken by the Fund under paragraph (c) of this section.

§ 1805.802 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the Fund and an Awardee or as provided in paragraph (c) of this section. If a Community Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardee's application. Such performance goals may include measures that require an Awardee to:

(1) Be financially sound;

(2) Be managerially sound;

(3) Maintain appropriate internal controls; and/or

(4) Achieve specific lending, investment, and development service objectives. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Act and the Fund's regulations, or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take such other actions as the Fund deems appropriate.

(d) In the case of an Insured CDFI, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1805.803 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured firm commitments for the matching funds required for such assistance. At a minimum, a firm commitment must consist of a written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursal of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

§ 1805.804 Data collection and reporting.

(a) *Data—General.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund which are necessary to:

(1) Disclose the manner in which Fund assistance is used;

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements,

and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Review.* (1) General. At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement. The Fund's review will generally be based on the following:

(i) The annual report described in paragraph (e)(2) of this section;

(ii) The audited statements of financial condition described in paragraph (e)(3) of this section; and

(iii) The annual survey described in paragraph (e)(4) of this section.

(2) *Annual Report.* An Awardee shall submit a report within 60 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following:

(i) A description of an Awardee's activities in support of its Comprehensive Business Plan;

(ii) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals; and

(iii) Information describing the manner in which Fund assistance and any corresponding matching funds were used;

(iv) A certification that an Awardee continues to meet the eligibility requirements described in § 1805.200; and

(v) Fiscal year end unaudited statements of financial condition.

(3) *Audited Financial Statements.* An Awardee shall submit within 120 days after the end of its fiscal year, or within some other period as may be agreed to in the Assistance Agreement, fiscal year end statements of financial condition audited by an independent certified public accountant. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Offices Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations), as applicable.

(4) *Annual Survey.* An Awardee shall submit a report within 120 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following information:

(i) The Awardee's customer profile;

(ii) Awardee activities including Financial Products and Development Services;

(iii) Awardee portfolio quality;

(iv) The Awardee's financial condition; and

(v) The Awardee's community development impact (which may include loan-level data).

(5) The Fund shall make reports described in paragraph (e)(2) of this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies.* (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by the Appropriate Federal Banking Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the institutions implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency, and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on

the Internet (*http://www.whitehouse.gov/OMB/grants/index.html*); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

§ 1805.805 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

§ 1805.806 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

§ 1805.807 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Equity Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Equity Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

§ 1805.808 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1805.809 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds is applicable to all Awardees and Insiders.

§ 1805.810 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.811 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.812 Fraud, waste, and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–2335 Filed 2–3–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1806

RIN 1505–AA91

Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Bank Enterprise Award (BEA) Program administered by the Community Development Financial Institutions Fund (Fund). The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance, within Distressed Communities and provide financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. This revised interim rule: improves programmatic operating efficiencies; targets program incentives to encourage the provision of investment, credit and financial services in Distressed Communities that demonstrate the most extreme need, to CDFIs that serve such Distressed Communities, and to smaller, less well capitalized CDFIs; reduces applicants' documentary and reporting burdens; clarifies and redefines the requirements of certain Qualified Activities; redefines and adds new categories of Qualified Activities; changes some methodologies for calculating BEA Program awards, including the application of caps to such awards; and simplifies some reporting and documentation requirements.

DATES: Interim rule effective February 4, 2003; comments must be received on or before April 7, 2003.

ADDRESSES: You may send hard copy comments concerning this interim rule to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department

of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. You may also send us comments by e-mail at *reg_comments@cdfit.treas.gov.* When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Nilson, Depository Institutions Manager, the Community Development Financial Institutions Fund, at (202) 622–6355. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994. Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute.

The mission of the Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. Access to credit, investment capital, and financial services are essential ingredients for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people.

Through the BEA Program, the Fund seeks to: strengthen and expand the financial and organizational capacity of CDFIs; provide financial incentives to insured depository institutions to increase their lending and services in Distressed Communities; and increase the flow of private capital into Low- and Moderate-Income areas. Applicants participate in the BEA Program through a competitive process, which evaluates applications based on the value of their increases in certain Qualified Activities. Program participants receive BEA Program award proceeds only after successful completion of the specified Qualified Activities.

On December 5, 1997, the Fund published in the **Federal Register** an interim regulation (62 FR 64439) implementing the BEA Program (the current rule). The deadline for the submission of comments was April 6, 1998.

II. Comments on the December 5, 1997 Interim Rule

By the close of the April 6, 1998 comment period, the Fund received no comments on the December 5, 1997 interim rule.

III. Summary of Changes

(1) *Purpose:* Section 1806.100 of the current rule contains a description of the purpose of the BEA Program. This interim rule revises such purpose to more accurately describe the purpose of the BEA Program.

(2) *New Definitions:* Section 1806.103 of the revised interim rule contains a number of new definitions: Community Development Entity (§ 1806.103(m)) which includes entities certified through the New Markets Tax Credit Program; CDFI Partner (§ 1806.103(o)) which includes CDFIs to which Applicants have provided assistance; and Deposit Liabilities (§ 1806.103(s)) includes savings and other deposit accounts. In addition, the revised interim rule defines Electronic Transfer Account (ETA) (§ 1806.103(w)), First Account (§ 1806.103(aa)), and Individual Development Account (IDA) (§ 1806.103(ff)) (such terms were defined in Notices of Funds Availability for certain prior BEA Program funding rounds).

(3) *Definitions for New Categories of Qualified Activities:* The revised interim rule creates Service Activities (§ 1806.103(oo)), a new category of Qualified Activities (§ 1806.103(mm)). The Service Activities category includes: Community Services (§ 1806.103(r)); Deposit Liabilities (§ 1806.103(s)); Financial Services (§ 1806.103(z)); Targeted Financial Services (§ 1806.103(rr)); and Targeted Retail Savings/Investment Products (§ 1806.103(ss)). Targeted Financial Services is a new category that includes ETAs, First Accounts, and IDAs. Targeted Retail Savings/Investment Products is a new sub-category that includes savings and other investment products targeted to Low- and Moderate-Income Residents of Distressed Communities.

The revised interim rule eliminates Development Activities (§ 1806.201(b)(4) of the current rule), re-designating Development Activities as Distressed Community Financing Activities (§ 1806.103(u)). Distressed Community Financing Activities include: Affordable Housing Development Loans (§ 1806.103(b)); Affordable Housing Loans (§ 1806.103(c)), Home Improvement Loans (§ 1806.103(dd)); Education Loans (§ 1806.103(v)); Commercial Real Estate Loans (§ 1806.103(l)); and Small Business Loans (§ 1806.103(pp)). Affordable Housing Development Loan activities comprise loans related to the development of residential real property that is affordable to Low- and Moderate-Income households. Affordable Housing Loan means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is a Low- and Moderate-Income individual (included in the Single Family Loans category of the current rule). Correspondingly, Single Family Loans have been re-designated as Home Improvement Loans and mean advances of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence. Education Loan means an advance of funds to a Resident of a Distressed Community for the purpose of financing a college or vocational education. Small Business Loan has been modified from focusing on the size of the loan to the size of the business and means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Finance Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less.

(4) *Definitions Related to Certain Qualified Activities:* Consistent with the Fund's objective of ensuring that BEA Program awards are targeted to institutions that provide capital and services to CDFIs and other enterprises that have significant impact in their communities, the revised interim rule provides that certain types of CDFI Support Activities (§ 1806.103(q)), Community Services (§ 1806.103(r)), and Financial Services (§ 1806.103(z)), must be, among other requirements, provided to CDFIs or other enterprises, as applicable, that are Integrally

Involved in a Distressed Community (§ 1806.200). The revised interim rule defines Integrally Involved (§ 1806.103(gg)) as meaning

(a) for a CDFI Partner, having provided at least five percent of financial transactions or dollars transacted (*e.g.*, loans or equity investments as defined in 12 CFR 1805.104(s)), or five percent of Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of the applicable NOFA, or having transacted at least ten percent of financial transactions (*e.g.*, loans or equity investments) in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA, or demonstrating that it has attained at least five percent of market share for a particular product in said Distressed Community (such as at least five percent of home mortgages originated in said Distressed Community) in at least one of the three calendar years preceding the date of the applicable NOFA; or

(b) for a non-CDFI, having directed at least five percent of its business activities (*e.g.*, investments, revenues, expenses, or other appropriate measures) to serving the Distressed Community identified by the Applicant in each of the three calendar years preceding the date of the applicable NOFA, or having provided at least ten percent of its business activities in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA.

The revised interim rule also provides that the Fund may qualify further certain Qualified Activities, for example, through the application of dollar amount caps, in the applicable NOFA.

(5) *Measuring and Reporting Qualified Activities:* Much of the information contained in § 1806.201 of the current rule has been consolidated in the revised interim rule to remove repetitive material and to improve readability. In addition, sections concerning the measurement of Qualified Activities (§ 1806.202(a)–(e) of the current rule) have been incorporated in § 1806.201 of the revised interim rule. The revised interim rule omits the Priority Factors (see § 1806.201(b)(3) of the current rule), and provides in § 1806.103(kk) that such Priority Factors shall be set forth in the applicable NOFA.

(6) *Low-Income Housing Tax Credits; New Markets Tax Credits:* Sections 1806.201(d)(1) and (2) of the revised interim rule provide that activity by an Applicant shall not be considered a Qualified Activity if, with respect to such activity, the Applicant has received an allocation of Low-Income Housing Tax Credits or New Markets Tax Credits.

(7) *Treatment of Renewed/Refinanced Loans:* Section 1806.201(e)(1) of the revised interim rule clarifies the Fund's treatment of renewed and refinanced loans. The Fund will continue to value refinanced loans based upon the increase in principal over the original loan. However, financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award if, such activity has matured and is then renewed. This treatment of renewed and refinanced loans is consistent with the Fund's objective of creating incentives for providing new capital. The Fund recognizes that while there is value to borrowers in having loan maturities extended and other terms renegotiated, such activities, strictly speaking, do not create an additional flow of funds.

(8) *Estimated award amounts:* Section 1806.202 of the revised interim rule provides that the estimated award amounts for all Qualified Activities (not solely for Development and Service as is the case under § 1806.203(c) of the current rule) shall be determined by applying the appropriate:

(a) award percentage (§ 1806.202(b)), as such percentages are set forth in the applicable NOFA, and

(b) Priority Factor, where applicable, as set forth in the applicable NOFA (§ 1806.202(c)).

(9) *Selection Process, actual award amounts:* Section 1806.203 of the revised interim rule sets forth the statutorily prescribed first priority for BEA Program awards for activities that have supported CDFIs. However, the revised interim rule omits the rankings of particular Qualified Activities within priority categories (§ 1806.204(b) of the current rule). Rather, the revised interim rule provides that the Fund will set forth the applicable rankings of particular Qualified Activities within a priority category in the applicable NOFA. In addition, the interim revised rule incorporates most of § 1806.205 of the current rule into § 1806.203, and deletes the ''75 percent rule'' (§ 1806.205(b) of the current rule).

(10) *Applications for Bank Enterprise Awards:* Section 1806.204 of the revised interim rule is substantially the same as § 1806.206 of the current rule. The revised interim rule omits the requirements that the Applicant submit: a copy of its certificate of insurance (§ 1806.206(b)(1) of the current rule); a narrative description of its Qualified Activities (§ 1806.206(b)(3) of the current rule); a report of its asset size (§ 1806.206(b)(4) of the current rule); and a copy of its most recent annual report (§ 1806.206(b)(7) of the current rule). The Fund believes that this information duplicates other information that is available to the Fund via other sources, including appropriate banking agencies.

(11) *Award Agreement; Sanctions:* Section 1806.300(c) of the revised interim rule provides that if a BEA Program award recipient, or its Subsidiary or Affiliate, fails to comply with the terms and conditions of its BEA Program award agreement, or the terms and conditions of any other assistance agreement under the CDFI Program, then the Fund may reject such Applicant's application or withhold any disbursement of such award funds.

(12) *Clarification on Measuring Certificates of Deposits:* Section 1806.103(q) of the revised interim rule provides that any certificate of deposit placed by an Applicant in a CDFI that is a bank, thrift, or credit union may be either:

(i) Uninsured and committed for a term of at least three years; or

(ii) insured and committed for a term of at least three years, if it earns a rate of interest that is determined by the Fund to be materially below market, as set forth in the applicable NOFA.

IV. Rulemaking Analysis

(1) Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

(2) Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

(3) Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1559–0005. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

(4) National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these revised interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

(5) Administrative Procedure Act

The Fund is promulgating this revised interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553, because the BEA Program involves grants and is thereby exempt from the procedural requirements of the APA pursuant to 5 U.S.C. 553(a)(2). The Fund also believes that an immediate effective date is necessary for the convenience of the persons affected. Specifically, an immediate effective date will minimize the risk of confusion on the affected community by ensuring that there will be a single and uniform regulation in effect during the Assessment Period that, as stated in the NOFA published elsewhere in this issue of the **Federal Register**, will begin on January 1, 2003.

(6) Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

(7) Catalog of Federal Financial Assistance Number

Bank Enterprise Award Program—21.021.

(8) List of Subjects in 12 CFR Part 1806

Banks, banking, Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, 12 CFR Part 1806 is revised to read as follows:

PART 1806—BANK ENTERPRISE AWARD PROGRAM

Subpart A—General Provisions

Sec.

1806.100 Purpose.
1806.101 Summary.
1806.102 Relationship to the Community Development Financial Institutions Program.
1806.103 Definitions.
1806.104 Waiver authority.
1806.105 OMB control number.

Subpart B—Awards

1806.200 Community eligibility and designation.
1806.201 Measuring and Reporting Qualified Activities.
1806.202 Estimated award amounts.
1806.203 Selection process, actual award amounts.
1806.204 Applications for Bank Enterprise Awards.

Subpart C—Terms and Conditions of Assistance

1806.300 Award Agreement; sanctions.
1806.301 Records, reports and audits of Awardees.
1806.302 Compliance with government requirements.
1806.303 Fraud, waste and abuse.
1806.304 Books of account, records and government access.
1806.305 Retention of records.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321.

Subpart A—General Provisions

§ 1806.100 Purpose.

The purpose of the Bank Enterprise Award Program is to provide an incentive for insured depository institutions to increase their activities in Distressed Communities, and provide financial assistance to Community Development Financial Institutions.

§ 1806.101 Summary.

(a) Under the Bank Enterprise Award Program, the Fund makes awards to selected Applicants that:

(1) Increase their investments in or other support of Community Development Financial Institutions;

(2) Increase lending and investment activities within Distressed Communities; or

(3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum poverty and unemployment criteria.

(c) Applicants are selected to participate in the program through a competitive application process. Awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities. All awards shall be made subject to the availability of funding.

§ 1806.102 Relationship to the Community Development Financial Institutions Program.

(a) *Prohibition against double funding.* No CDFI may receive a Bank Enterprise Award if it has:

(1) An application pending for assistance under the Community Development Financial Institutions Program (part 1805 of this chapter);

(2) Directly received assistance from the Fund under the Community Development Financial Institutions Program within the 12-month period prior to the date the Fund selected the Applicant to receive a Bank Enterprise Award; or

(3) Ever received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(b) *Matching funds.* Equity Investments and CDFI Support Activities (except technical assistance) provided to a CDFI under this part can be used by the CDFI to meet the matching funds requirements of the Community Development Financial Institutions Program.

§ 1806.103 Definitions.

For purposes of this part the following terms shall have the following definitions:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affordable Housing Development Loan* means origination of a loan to finance the acquisition, construction, and/or development of single-or multi-family residential real property, where at least sixty percent of the units in such property are affordable, as may be defined in the applicable NOFA, to Low- and Moderate-Income individuals.

(c) *Affordable Housing Loan* means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is a Low- and Moderate-Income individual. Affordable Housing Loan may also refer to second (or otherwise subordinated) liens or ''soft second'' mortgages, and other similar types of downpayment assistance loans but may not necessarily be secured by such property originated for the purpose of facilitating the purchase or improvement of the borrower's primary residence, where such borrower is a Low- and Moderate-Income individual.

(d) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(e) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(f) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability in which an Applicant will carry out, or has carried out, Qualified Activities;

(g) *Award Agreement* means a formal agreement between the Fund and an Awardee pursuant to § 1806.300;

(h) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(i) *Bank Enterprise Award (or BEA Program Award)* means an award made to an Applicant pursuant to this part;

(j) *Bank Enterprise Award (or BEA) Program* means the program authorized by section 114 of the Act and implemented under this part;

(k) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(l) *Commercial Real Estate Loan* means an origination of a loan (other than an Affordable Housing Loan) that is secured by real estate and used to finance the acquisition or rehabilitation of a building, or the acquisition, construction and or development of property, used for commercial purposes;

(m) *Community Development Entity (or CDE)* means any Qualified Community Development Entity that meets the requirements set forth at Internal Revenue Code (IRC) § 45D(c) and that has been certified as such by the Fund;

(n) *Community Development Financial Institution (or CDFI)* means an entity whose certification as a CDFI under § 1805.201 of this chapter is in effect as of the end of the applicable Assessment Period (the Assessment Period in which the Qualified Activity takes place) and that meets the requirements of § 1805.200 of this chapter at the time of the Qualified Activity, subject to the rest of this paragraph (n). If an Applicant is proposing to engage in CDFI Related Activities with an uncertified CDFI, the uncertified CDFI may apply for certification by submitting the information described in § 1805.201(b) of this chapter. In order for the Applicant to be eligible to receive a Bank Enterprise Award for its CDFI Related Activities, the required information with respect to the uncertified CDFI shall be submitted to the Fund as specified in the applicable NOFA, and certification must be completed by the end of the applicable Assessment Period as specified in the applicable NOFA. Notwithstanding anything in this paragraph (n) to the contrary, an Applicant may receive an award pursuant to this part for assistance provided to an uncertified CDFI that, at the time of the Qualified Activity, does not meet the requirements of § 1805.200 of this chapter if the uncertified CDFI is certified by the end of the applicable Assessment Period.

(o) *CDFI Partner* means a CDFI that has been provided assistance in the form of CDFI Related Activities by an Applicant;

(p) *CDFI Related Activities* means Equity Investments, Equity-Like Loans and CDFI Support Activities;

(q) *CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that meets criteria set forth by the Fund in the applicable NOFA, that is Integrally Involved in a Distressed Community, in the form of the origination of a loan, technical assistance, or deposits if such deposits are:

(1) Uninsured and committed for a term of at least three years; or

(2) Insured, committed for a term of at least three years, and provided at an interest rate that is materially (in the determination of the Fund) below market rates;

(r) *Community Services* means the following forms of assistance provided by officers, employees or agents (contractual or otherwise) of the Applicant:

(1) Provision of technical assistance, through consumer education programs, to Residents regarding managing their personal finances;

(2) Provision of technical assistance and consulting services to newly formed small businesses located in the Distressed Community;

(3) Provision of technical assistance to, or servicing the loans of, Low- or Moderate-Income homeowners and homeowners located in the Distressed Community; and

(4) Other services provided to Low- and Moderate-Income individuals in a Distressed Community or enterprises Integrally Involved in a Distressed Community, as deemed appropriate by the Fund;

(s) *Deposit Liabilities* means time or savings deposits or demand deposits, accepted from Residents at offices of the Applicant, or a Subsidiary of the Applicant, located within the Distressed Community. Depository Liabilities may only include deposits held by individuals in transaction accounts (*i.e.*, demand deposits, NOW accounts, automated transfer service accounts and telephone or preauthorized transfer accounts) or nontransaction accounts (*i.e.*, money market deposit accounts, other savings deposits and all time deposits), as defined by the Appropriate Federal Banking Agency;

(t) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200, and such additional criteria as may be set forth in the applicable NOFA;

(u) *Distressed Community Financing Activities* means Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; and Small Business Loans and related Project Investments;

(v) *Education Loan* means an advance of funds to a student, who is a Resident of a Distressed Community, for the purpose of financing a college or vocational education.

(w) *Electronic Transfer Account (or ETA)* means an account meeting the requirements, and with respect to which the Applicant has satisfied the requirements, set forth in the **Federal Register** on July 16, 1999 at 64 FR 38510, as such requirements may be amended from time to time;

(x) *Equity Investment* means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in the applicable NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the Fund;

(y) *Equity-Like Loan* means a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment (consistent with requirements of the Appropriate Federal Banking Agency), as such characteristics may be specified by the Fund in the applicable NOFA;

(z) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, new branches, and other comparable services as may be specified by the Fund in the applicable NOFA, that are provided by the Applicant to Low- and Moderate-Income individuals in the Distressed

Community or enterprises Integrally Involved in the Distressed Community;

(aa) *First Account* means a low-cost account and such other services designed to expand access to financial services for Low- and Moderate-Income individuals, provided pursuant to grants made under the Consolidated Appropriations Act, 2001 (Public Law 106–554, 114 Stat. 2763, 2763A–126), and the Department of Transportation and Related Agencies Appropriations Act, 2001 (Public Law 106–346, 114 Stat. 1356, 1356A–44);

(bb) *Fund* means the Community Development Financial Institutions Fund, established under section 104(a) of the Act (12 U.S.C. 4703(a));

(cc) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and American Indian or Alaska Native areas (as each is defined by the U.S. Bureau of the Census) or other areas deemed appropriate by the Fund;

(dd) *Home Improvement Loan* means an advance of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence;

(ee) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

(ff) *Individual Development Account (or IDA)* means an account that meets the requirements, and with respect to the provision of which Applicant has satisfied the requirements, set forth in the U.S. Department of Health and Human Services Program Announcement OCS–2000–04, published on December 14, 1999 in the **Federal Register** at 64 FR 69824, as such requirements may be amended from time to time;

(gg) *Integrally Involved* means (i) for a CDFI Partner, having provided at least five percent of financial transactions or dollars transacted (*e.g.*, loans or equity investments as defined in 12 CFR 1805.104(s)), or five percent of Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of the applicable NOFA, or having transacted at least ten percent of financial transactions (*e.g.*, loans or equity investments) in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA, or demonstrating that it has attained at least five percent of market share for a particular product in said Distressed Community (such as at least five percent of home mortgages originated in said Distressed Community) in at least one of the three calendar years preceding the date of the applicable NOFA; or (ii) for a non-CDFI, having directed at least five percent of its business activities (*e.g.*, investments, revenues, expenses, or other appropriate measures) to serving the Distressed Community identified by the Applicant in each of the three calendar years preceding the date of the applicable NOFA, or having provided at least ten percent of its business activities in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA.

(hh) *Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development, with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

(ii) *Metropolitan Area* means an area designated as such (as of the date of the application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d), and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(jj) *Notice of Funds Availability (or NOFA)* means the public notice, published by the Fund in the **Federal Register**, that announces the availability of BEA Program funds for a particular funding round and that advises Applicants with respect to obtaining application materials, establishes application submission deadlines, and establishes other requirements or restrictions applicable for the particular funding round including, for example, application contents, further qualifications of Qualified Activities, Priority Factors, related policy directives, and any restrictions on Bank Enterprise Award amounts;

(kk) *Priority Factor* means a numeric value assigned to each type of activity within each category of Qualified Activity, as may be established by the Fund in the applicable NOFA. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity;

(ll) *Project Investment* means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is Integrally Involved in a Distressed Community and formed for the sole purpose of engaging in a project or activity, approved by the Fund, including Affordable Housing Development Loans, Affordable Housing Loans, Commercial Real Estate Loans, and Small Business Loans (as defined in this part);

(mm) *Qualified Activities* means CDFI Related Activities, Distressed Community Financing Activities, and Service Activities;

(nn) *Resident* means an individual domiciled in a Distressed Community;

(oo) *Service Activities* means the following activities that are carried out by the Applicant: Deposit Liabilities; Financial Services; Community Services; Targeted Financial Services; and Targeted Retail Savings/Investment Products;

(pp) *Small Business Loan* means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less;

(qq) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation;

(rr) *Targeted Financial Services* means ETAs, First Accounts, IDAs, and such other similar banking products as maybe specified by the Fund in the applicable NOFA;

(ss) *Targeted Retail Savings/ Investment Products* means certificates of deposit, mutual funds, life insurance and other similar savings or investment vehicles targeted to Low- and Moderate-Income Residents, as may be specified by the Fund in the applicable NOFA; and

(tt) *Unit of General Local Government* means any city, county town, township, parish, village or other general-purpose political subdivision of a State or Commonwealth of the United States, or general-purpose subdivision thereof, and the District of Columbia.

§ 1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver will be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1806.105 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1559–0005.

Subpart B—Awards

§ 1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out Service Activities, or Distressed Community Financing Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it is proposing to support is Integrally Involved in a Distressed Community. If an Applicant proposes to carry out CDFI Support Activities, Service Activities, or Distressed Community Financing Activities, the Applicant may designate different Distressed Communities for each category of activity.

(b) *Minimum area eligibility requirements.* A Distressed Community must meet the following minimum area eligibility requirements:

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(i) That is located within the boundaries of a Unit of General Local Government;

(ii) The boundaries of which are contiguous; and

(A) The population of which must be at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater;

(B) The population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or

(C) The area is located entirely within an Indian Reservation.

(2) *Distress requirements.* A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Residents have incomes which are less than the national poverty level, as published by the U.S. Bureau of the Census in the most recent decennial census for which data is available;

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data, including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method; and

(iii) Such additional requirements as may be specified by the Fund in the applicable NOFA.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements set forth in paragraph (b) of this section; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section, provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* The Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be designated as a Distressed Community. Applicants shall submit designation materials as instructed in the applicable NOFA.

§ 1806.201 Measuring and Reporting Qualified Activities.

(a) *General.* An Applicant may receive a Bank Enterprise Award for engaging in any of the following categories of Qualified Activities during an Assessment Period: CDFI Related Activities, Distressed Community Financing Activities, or Service Activities. The Fund may further qualify such Qualified Activities in the applicable NOFA, including such additional geographic and transaction size limitations as the Fund deems appropriate.

(b) *Reporting Qualified Activities.* An Applicant should report only its Qualified Activities for the category in which it is seeking a Bank Enterprise Award. For example, if an Applicant is seeking a Bank Enterprise Award for Distressed Community Financing Activities only, it should report only its activities for the Distressed Community Financing Activities category.

(1) If an Applicant elects to apply for an award in a either the CDFI Related Activities category or the Distressed Community Financing Activities category, it must report on all types of activity within that category except if an Applicant can provide a reasonable explanation, acceptable to the Fund in its sole discretion, as to why it cannot report on such category.

(2) Exception. An Applicant may elect not to report each type of activity within the Service Activities category.

(c) *Area served.* Service Activities and Distressed Community Financing Activities must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(1) Undertaken in the Distressed Community; or

(2) Provided to Low- and Moderate-Income Residents or enterprises Integrally Involved in the Distressed Community.

(d) *Limitations.*

(1) Low-Income Housing Tax Credits. Financial assistance provided by an Applicant for which the Applicant receives benefits through Low-Income Housing Tax Credits, authorized pursuant to Section 42 of the Internal Revenue Code, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a Bank Enterprise Award.

(2) New Markets Tax Credits. Financial assistance provided by an Applicant for which the Applicant receives benefits as an investor in a Community Development Entity that has received an allocation of New Markets Tax Credits, authorized pursuant to Section 45D of the Internal Revenue Code, as amended (26 U.S.C. 45D), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a Bank Enterprise Award.

(3) Loan Renewals. Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award if, such activity has matured and is then renewed.

(e) *Measuring the Value of Qualified Activities.* Subject to such additional or alternative valuations as the Fund may specify in the applicable NOFA, the Fund will assess the value of:

(1) Equity Investments, Equity-Like Loans, loans, grants and certificates of deposits, at the original amount of such Equity Investments, Equity-Like Loans, loans, grants or certificates of deposits. Where a certificate of deposit matures and is then rolled over during the Baseline Period or the Assessment Period, as applicable, the Fund will assess the value of the full amount of the rolled over deposit. Where an existing loan is refinanced (a new loan is originated to pay off an existing loan, whether or not there is a change in the applicable loan terms), the Fund will only assess the value of any increase in the principal amount of the refinanced loan;

(2) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant;

(3) Deposit Liabilities at the dollar amount deposited as measured by comparing (i) the net change in the amount of applicable funds on deposit at the Applicant during the Baseline Period with (ii) the net change in the amount of applicable funds on deposit at the Applicant during the Assessment Period, as described below:

(i) The Applicant shall calculate the net change in deposits during the Baseline Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Applicant shall calculate the net change in such deposits during the Assessment Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

(4) Financial Services and Targeted Financial Services based on the predetermined amounts as may be set forth by the Fund in the applicable NOFA; and

(5) Financial Services (other than those for which the Fund has established a predetermined value), Community Services, and CDFI Support Activities consisting of technical assistance based on the administrative costs of providing such services.

(f) *Closed Transactions.* A transaction shall be considered to have been carried out during the Baseline Period or the Assessment Period if the documentation evidencing the transaction:

(1) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively; and

(2) Constitutes a legally binding agreement between the Applicant and a borrower or investee which specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the Fund); and

(3) An initial cash disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction (as determined by the Fund) unless it is normal business practice to make no initial disbursement at closing and the Applicant demonstrates that the borrower has access to the proceeds, subject to reasonable conditions as may be determined by the Fund.

(g) *Reporting Period.* An Applicant may only measure the amount of a Qualified Activity that it reasonably expects to disburse to an investee, borrower, or other recipient within one year of the end of the applicable Assessment Period, or such other period as may be set forth by the Fund in the applicable NOFA.

§ 1806.202 Estimated award amounts.

(a) *General.* An Applicant shall calculate an estimated award amount that it shall submit to the Fund for consideration for a Bank Enterprise Award.

(b) *Award Percentages.* The Fund will establish the award percentage for each category of Qualified Activities in the applicable NOFA. Applicable award percentages for activities undertaken by Applicants that are CDFIs will be equal to three times the award percentages for activities undertaken by Applicants that are not CDFIs.

(c) *Calculating the estimated award amount.* The estimated award amount for each category of Qualified Activities will be equal to the applicable award percentage of the increase in the weighted value of such Qualified Activities between the Baseline Period and Assessment Period. The weighted value of the applicable Qualified Activities shall be calculated by:

(1) subtracting the Baseline Period value of such Qualified Activity from the Assessment Period value of such Qualified Activity to yield a remainder; and

(2) multiplying the remainder by the applicable Priority Factor (as set forth in the applicable NOFA).

(d) *Estimated Award Eligibility Review.* The Fund will determine the eligibility of each transaction for which an Applicant has applied for a Bank Enterprise Award. Based upon this review, the Fund will calculate the actual award amount for which such Applicant is eligible.

§ 1806.203 Selection Process, actual award amounts.

(a) *Sufficient Funds Available to Cover Estimated Awards.* All Bank Enterprise Awards are subject to the availability of funds. If the amount of funds available during a funding round is sufficient to cover all estimated award amounts for which Applicants are eligible, in the Fund's determination, and an Applicant meets all of the program requirements specified in this part, then such Applicant shall receive an actual award amount that is calculated by the Fund in the manner specified in Section 1806.202.

(b) *Insufficient Funds Available to Cover Estimated Awards.* If the amount of funds available during a funding round is insufficient to cover all estimated award amounts for which Applicants are eligible, in the Fund's determination, then the Fund will select Awardees and determine actual award amounts based on the process described in this section.

(c) *Priority of Awards.* The Fund will rank Applicants in each category of Qualified Activity according to the priorities described in this paragraph (c). All Applicants in the first priority category will be selected for Bank Enterprise Awards before Applicants in the second priority category. All Applicants in the first and second priority categories will be selected for Bank Enterprise Awards before Applicants in the third priority category. Selections within each priority category will be based on the Applicants' relative rankings within each such category, subject to the availability of funds.

(1) *First priority.* If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to Applicants that propose to engage in CDFI Related Activities, ranked in the order set forth in the applicable NOFA.

(2) *Second priority.* If the amount of funds available during a funding round is sufficient for all CDFI Related Activities but insufficient for all estimated award amounts, second priority will be given to Applicants that propose to engage in Distressed Community Financing Activities, ranked in the order set forth in the applicable NOFA.

(3) *Third Priority.* If the amount of funds available during a funding round is sufficient for all CDFI Related Activities and all Distressed Community Financing Activities, but insufficient for all remaining estimated award amounts,

third priority will be given to Applicants that propose to engage in Service Activities, ranked in the order set forth in the applicable NOFA.

(d) *Calculating actual award amounts.* The Fund will determine actual award amounts based upon the availability of funds, increases in Qualified Activities from the Baseline to the Assessment Period, and an Applicant's priority ranking. If an Applicant receives an award for more than one priority category described in this section, the Fund will combine the award amounts into a single Bank Enterprise Award.

(e) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) To select Applicants not previously selected, using the calculation and selection process contained in this part;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(f) *Limitation.* The Fund, in its sole discretion, may deny or limit the amount of an award for any reason.

§ 1806.204 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability; Applications.* Applicants shall submit applications for Bank Enterprise Awards in accordance with this section and the applicable NOFA. After receipt of an application, the Fund may request clarifying or technical information related to materials submitted as part of such application or to verify that Qualified Activities were carried out in the manner prescribed in this part.

(b) *Application contents.* An application for a Bank Enterprise Award shall contain:

(1) A completed worksheet that reports the increases in Qualified Activities actually carried out during the Baseline and Assessment Period. If an Applicant has merged with another institution during the Assessment Period, it shall submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that reports the activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the Fund reserves the right to withhold distribution of an award until the merger has been completed;

(2) A report of Qualified Activities that were closed during the Assessment Period. Such report shall describe the original amount, census tract served, and the dates of execution, initial disbursement, and final disbursement of the instrument;

(3) With respect to:

(i) All CDFI Related Activities; and

(ii) Distressed Community Financing Activities where the original amount of the value of the activity is $250,000 or greater, documentation that meets the conditions described in § 1806.201(f);

(4) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(5) Certifications that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period; and that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(6) In the case of an Applicant proposing to engage in Service Activities, Distressed Community Financing Activities, a completed Distressed Community Designation worksheet, and a map and narrative description of the Distressed Community;

(7) Information that indicates that each CDFI to which an Applicant has provided CDFI Support Activities is Integrally Involved in a Distressed Community, a completed Distressed Community Designation worksheet, and a map and narrative description of the Distressed Community; and

(8) Any other information requested by the Fund, or specified by the Fund in the applicable NOFA or the Bank Enterprise Award application, in order to document or otherwise assess the validity of information provided by the Applicant to the Fund.

Subpart C—Terms and Conditions of Assistance

§ 1806.300 Award Agreement; Sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee shall:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Comply with such other terms and conditions (including recordkeeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the award, bar the Awardee and/or its Affiliates from applying for an award from the Fund for a period to be decided by the Fund in its sole discretion, and pursue any other available legal remedies.

(c) *Compliance with Other CDFI Fund Awards.* In the event that an Awardee or its Subsidiary or Affiliate is not in compliance, as determined by the Fund, with the terms and conditions of any other award under the Bank Enterprise Award Program or any component of the Community Development Financial Institutions Program, the Fund may, in its sole discretion, reject an application for or withhold disbursement (either initial or subsequent) on a Bank Enterprise Award.

(d) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund will provide the Awardee with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, will provide an Awardee with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.302 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations and ordinances, OMB Circulars, and Executive Orders.

§ 1806.303 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

§ 1806.304 Books of account, records and government access.

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilities, and all books, documents, records, and financial

statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

§ 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–2336 Filed 2–3–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications for the FY 2003 and 2004 funding rounds of the Bank Enterprise Award (BEA) Program.

SUMMARY: This NOFA is issued in connection with the Fiscal Year 2003 and 2004 funding rounds of the BEA Program. Through the BEA Program, the Community Development Financial Institutions Fund (the Fund) encourages insured depository institutions to increase their levels of loans, investments, services, and technical assistance within distressed communities and financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance.

Subject to funding availability, the Fund expects that it may award approximately $17 million for FY 2003 awards, and approximately $8 million for FY 2004 awards, in appropriated funds under this BEA Program combined FY 2003–2004 NOFA. The Fund reserves the right to award in excess of said funds under this NOFA, provided that the appropriated funds are available and the Fund deems it appropriate. Under this NOFA, the Fund anticipates a maximum award amount of $1.5 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

The interim rule governing the BEA Program (12 CFR part 1806), revised and published in this issue of the **Federal Register**, provides guidance on evaluation criteria and other requirements of the BEA Program. Detailed application content requirements are found in the application related to this NOFA. The Preamble to the Fund's NOFAs, published in this issue of the **Federal Register** also specifies other program information, including eligibility requirements, for each of the Fund's programs. The Fund encourages applicants to review the revised interim rule and the Preamble to the NOFAs; in addition, all of the application content requirements and the evaluation criteria set forth in the revised interim rule are set forth in the application.

DATES: Following the publication of this NOFA, the Fund will make the FY 2003–2004 BEA Program application materials available on its Web site at *http://www.cdfifund.gov*. The Fund will send application materials to applicants that are unable to download them from the Web site. To have application materials sent to you, contact the Fund by telephone at (202) 622–6350; by e-mail at *cdfihelp@cdfi.treas.gov*; or by facsimile at (202) 622–7754. These are not toll free numbers.

BEA Program awards are based on increases in Qualified Activities from a Baseline Period to an Assessment Period. For the FY 2003–2004 funding round, applicants may elect to apply for an award based on a 6-month Baseline and Assessment Period or a 12-month Baseline and Assessment Period. The deadline for receipt of all application materials for the 6-month option is 5 p.m. ET on July 17, 2003. The deadline for receipt of all application materials for the 12-month option is 5 p.m. ET on February 25, 2004. Applicants may only submit an application for either the 6-month option or the 12-month option, but not both. Applications received after 5 p.m. ET on the applicable date will be rejected and returned to the sender.

In order to expedite application review, applicants must submit a specific section of the application, the Report of Transactions form, electronically (via e-mail) per the instructions provided on the Fund's website, by 5 p.m. ET on July 17, 2003 (for the 6-month option) or by 5 p.m. ET on February 25, 2004 (for the 12-month option). Reports of Transactions that are submitted after said date and time will not be accepted for consideration and will be returned to the sender. If an applicant is unable to submit the Report of Transactions via e-mail, it must notify the Fund by 5 p.m. ET April 30, 2003 (for the 6-month option) or 5 p.m. ET on October 31, 2003 (for the 12-month option) to make alternative arrangements. Applications sent by facsimile or e-mail will not be accepted (except as provided above).

Any entity that is planning to participate in the BEA Program either as an applicant or as a CDFI Partner, and that is seeking certification as a CDFI (as described in 12 CFR 1805.200), is strongly encouraged to submit the Application for Certification (the contents of which are described in 12 CFR 1805.201(b)(1) through (6)), no later than the following dates prior to the end of the applicable Assessment Period: April 15, 2003 for the 6-month option and October 15, 2003 for the 12-month option. If an entity fails to submit such application by the applicable deadline, the Fund may not have sufficient time to timely complete a certification review for the purpose of the current funding round of the BEA Program. With respect to all requests for certification, the Fund reserves the right to request clarifying or technical information after reviewing certification materials submitted as described in 12 CFR 1805.201(b)(1) through (6). If the entity seeking certification does not respond to such requests in a timely manner, the Fund may not have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program.

For the 6-month option, any CDFI whose certification is due to expire between January 1, 2003 and June 30, 2003 must submit a re-certification application by May 30, 2003 in order to continue to qualify as a CDFI Partner. For the 12-month option, any CDFI whose certification is due to expire between July 1, 2003 and December 31, 2003 must submit a re-certification application by November 28, 2003 in order to continue to qualify as a CDFI Partner.

ADDRESSES: Applications in paper form must be sent to: CDFI Fund Awards Manager, Bureau of Public Debt—Franchising, 200 Third Street, Room 211, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. Applications will not be accepted in the Fund's offices in Washington, DC. Applications received in the Fund's offices will be rejected and returned to the sender. Applicants must submit completed Reports of Transactions either:

(i) online to *bea@cdfi.treas.gov*; or

(ii) in paper form to the address stated above, by the applicable deadline.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for the BEA Program, or if you have questions or problems with the e-mail submission of the Report of Transactions form, contact

the Fund's Depository Institutions Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Depository Institutions Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. Allow at least one to two weeks from the date the Fund receives a request for receipt of the application. Applications and other information regarding the Fund and its programs may be downloaded and printed from the Fund's Web site at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION:

I. Eligibility

The legislation that authorizes the BEA Program specifies that eligible applicants for the BEA Program must be Insured Depository Institutions, as defined in 12 U.S.C. 1813(c)(2). An applicant must be FDIC-insured by June 30, 2003 for the 6-month option and by December 31, 2003 for the 12-month option to be eligible for consideration for a BEA Program award under this NOFA.

For the purposes of this NOFA, an eligible CDFI Partner is:

(a) a CDFI that is not an insured credit union, insured depository institution, or depository institution holding company, and that has up to $25 million in total assets as of its most recently completed fiscal year;

(b) a CDFI that is an insured credit union that has up to $25 million in total assets for its most recently completed fiscal year;

(c) a CDFI that is an insured depository institution or depository institution holding company and that has up to $500 million in total assets for its most recently completed fiscal year, or

(d) a CDFI proposing a new level or type of activity in a CDFI Program-qualified Hot Zone (for further information on the CDFI Program's Hot Zones, please refer to the NOFA for the Financial Assistance Component of the CDFI Program published in this issue of the **Federal Register**, and the Fund's Web site at *http://www.cdfifund.gov/programs/hotzones.*

For purposes of CDFI Support Activities, the CDFI Partner must demonstrate that it is Integrally Involved in an eligible Distressed Community. The revised interim rule (at 12 CFR § 1806.103(gg)) provides the following definition of Integrally Involved: (a) For a CDFI Partner, having provided at least five percent of financial transactions or dollars transacted (*e.g.*, loans or equity investments as defined in 12 CFR 1805.104(s)), or five percent of Development Service activities, in the Distressed Community identified by the applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of the applicable NOFA, or having transacted at least ten percent of financial transactions (*e.g.*, loans or equity investments) in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA, or demonstrating that it has attained at least five percent of market share for a particular product in said Distressed Community (such as at least five percent of home mortgages originated in said Distressed Community) in at least one of the three calendar years preceding the date of the applicable NOFA; or (b) for a non-CDFI, having directed at least five percent of its business activities (*e.g.*, investments, revenues, expenses, or other appropriate measures) to serving the Distressed Community identified by the applicant in each of the three calendar years preceding the date of the applicable NOFA, or having provided at least ten percent of its business activities in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA.

II. Designation of Distressed Community

A Distressed Community, defined in the revised interim rule at 12 CFR § 1806.103(t), and as more fully described in 12 CFR § 1806.200, must meet the following minimum geographic, population, poverty, and unemployment requirements:

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(a) That is located within the boundaries of a Unit of General Local Government;

(b) the boundaries of which are contiguous; and

(c) the population of which is at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater; or

(d) the population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area. If an area is located entirely within an Indian Reservation, there is no minimum population requirement.

(2) *Economic Distress requirements.* A Distressed Community must be a geographic area where:

(a) at least 30 percent of the Residents have incomes that are less than the national poverty level, as published by the U.S. Bureau of the Census in the most recent decennial census; and

(b) the unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data (including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method).

An applicant applying for a BEA Program Award for carrying out Distressed Community Financing Activities, Services Activities, and CDFI Support Activities shall designate one or more Distressed Communities. Each CDFI Partner that is the recipient of CDFI Support Activities from an applicant shall also designate a Distressed Community. The CDFI Partner can identify a different Distressed Community than the applicant. Applicants providing Equity Investments to a CDFI, and CDFI Partners that receive Equity Investments, are not required to designate Distressed Communities. Please note that the CDFI Partner's designated Distressed Community must meet the requirements of the BEA Program; a Distressed Community as defined by the BEA Program is not the same as an Investment Area as defined by the CDFI Program or a Low-Income Community, as defined by the NMTC Program.

An applicant or CDFI Partner (as appropriate) shall designate an area as a Distressed Community by:

(a) Selecting geographic units which individually meet the minimum area eligibility requirements; or

(b) selecting two or more geographic units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (1) of this section provided that no geographic unit selected by the applicant within the area has a poverty rate of less than 20 percent. An applicant engaging in Distressed Community Financing Activities or Service Activities designates a Distressed Community by submitting:

(i) a List of Eligible Census Tracts; and

(ii) a Map of the Distressed Community.

An applicant that engaged in CDFI Support Activities only (or CDFI Support Activities and CDFI Equity Investments) may designate the same Distressed Community as any one of its CDFI Partners by signing and submitting with its application, a certification (included in the application materials) that it is designating the same Distressed

Community as its CDFI Partner. A CDFI Partner designates a Distressed Community by submitting:

(a) a List of Eligible Census Tracts;

(b) a Map of the Distressed Community; and

(c) a narrative describing how the CDFI Partner is Integrally Involved (see definition above, section I ''Eligibility'') in the Distressed Community.

Applicants and CDFI Partners must use the Fund's online Help Desk at *http://www.cdfifundhelp.gov* to designate Distressed Communities. The online Help Desk contains step-by-step instructions on how to create and print the aforementioned List of Eligible Census Tracts and Map of the Distressed Community.

III. Baseline Period and Assessment Period Dates

In NOFAs for prior funding rounds, the Fund established the Baseline Period and Assessment Period as the first 6-months of corresponding years. For this NOFA only, applicants may elect to apply for an award based on a 6-month Baseline and Assessment Period or a 12-month Baseline and Assessment Period. The Fund believes that a 12-month Baseline and Assessment Period will be more in keeping with the natural business cycle of applicants. For purposes of this NOFA, applicants electing the 6-month option will report on all Qualified Activities carried out during the Baseline Period of January 1, 2002 to June 30, 2002 as well as those carried out during the Assessment Period of January 1, 2003 to June 30, 2003. Applicants electing the 12-month option will report on Qualified Activities carried out during the Baseline Period of January 1, 2002 to December 31, 2002 as well as those carried out during the Assessment Period of January 1, 2003 to December 31, 2003. Applicants may apply to either the 6-month option or the 12-month option, but not both.

IV. CDFI Related Activities

For purposes of determining the award amount attributed to deposits in a CDFI that is an insured depository institution, the Fund will count only the first $1,000,000 deposited by any applicant in said CDFI. Furthermore, an applicant that is also a CDFI cannot receive credit for any financial assistance or Qualified Activities provided to a CDFI Partner that is also an FDIC-insured depository institution or depository institution holding company.

Section 1806.103(q) of the revised interim rule states that any certificate of deposit placed by an applicant in a CDFI that is bank, thrift, or credit union must be:

(a) Uninsured and committed for at least three years; or

(b) Insured, committed for at least three years, and earn a rate of interest that is determined by the Fund to be materially below market rates. The Fund has interpreted a ''materially below market'' interest rate to be an annual percentage rate that does not exceed 80 percent of the rate on a U.S. Treasury bill of comparable maturity as of the date the deposit is placed. For a three-year deposit, use the three-year rate posted for U.S. Government securities, Treasury Constant Maturity on the Federal Reserve Web site at *http://www.federalreserve.gov/releases/H15/update.*

The rate on the website is updated daily at approximately 4 p.m. ET. Certificates of deposit closed prior to that time may use the rate posted for the previous day. The annual percentage rate on a certificate of deposit should be compounded quarterly, semi-annually, or annually. In addition, applicants should determine whether a certificate of deposit is insured based on the total amount the applicant has on deposit on the day the certificate of deposit is placed. For example, if an applicant purchased a $100,000 certificate of deposit from a CDFI in April, 2001 and purchases another $100,000 certificate of deposit from the same CDFI in May, 2003, then the second certificate of deposit should be treated as uninsured for purposes of calculating the annual percentage rate. The applicant must make note, in its BEA Program Application, of whether the certificate of deposit is insured or uninsured.

V. Commercial Real Estate Loans and Related Project Investments

For purposes of this NOFA, eligible Commercial Real Estate Loans and related Project Investments (see revised interim rule at 12 CFR § 1806.103(l) and (ll)) are generally limited to transactions with a total principal value of up to and including $1 million used to finance ''community assets'' such as the purchase, construction, or renovation of real estate where over 50 percent of the leasable (or occupable) square footage is for the provision of one or more of the following: health care facilities, charter schools, job training, day care, elder care centers, homeless services, or retail facilities. The Fund will calculate award amounts in accordance with Section VIII, below. Not withstanding the foregoing, the Fund may in its discretion, consider transactions with a principal value of over $1 million subject to review and approval of a ''community benefit statement.'' The application must demonstrate that the proposed project offers, or significantly enhances the quality of, a facility or service not currently provided to the Distressed Community. The application contains additional information on fulfilling this requirement.

VI. Equity-Like Loans

In January 2001, the Fund issued policy guidance specifying its BEA Program definition of Equity-Like Loans (*i.e.*, loans with characteristics of equity). On further review, the CDFI Fund realized that the previously defined characteristics presented certain barriers for CDFI Partners to the point where there was a disincentive to engage in the activity. The Fund hopes that reducing the requirements for Equity-Like Loans will make this product more accessible to CDFIs that can only access the BEA Program through the Equity Investment category—especially CDFIs located in rural areas. For purposes of this NOFA, Equity-Like Loans (see revised interim rule at 12 CFR 1806.103(y)) must meet the following characteristics:

(1) At the end of the initial term, the loan must have a definite rolling maturity date that is automatically extended on an annual basis if the borrower continues to be financially sound and carrying out a community development mission;

(2) Periodic payments of interest and/or principal may only be made out of the CDFI borrower's available cash flow after satisfying all other obligations;

(3) Failure to pay principal or interest (except at maturity) will not automatically result in a default under the loan agreement; and

(4) The loan must be subordinated to all other debt except for other Equity-Like Loans. Notwithstanding the foregoing, the Fund reserves the right to determine, on a case-by-case basis, if an instrument evidences an Equity-Like Loan.

As specified in the January 2001 guidance, the Fund requests that applicants submit to the Fund for review, not later than 45 days prior to the end of the applicable Assessment Period, all documents evidencing loans that they wish to be considered as Equity-Like Loans. The purpose for this request is to enhance the Fund's ability to provide feedback to applicants as to whether a transaction meets the Equity-Like Loan requirements prior to the end of the applicable Assessment Period. The Fund will not redraft instruments or provide language for applicants. However, the Fund may comment as to the consistency of a proposed

instrument with the above-stated policy requirements. Such information will allow applicants, if they so choose, to modify the instruments to conform to the program requirements prior to the end of the Assessment Period. This process is intended to prevent circumstances in which an applicant executes loan documents without review by the Fund only to learn after the close of the Assessment Period that the transaction is ineligible for purposes of a Bank Enterprise Award. The Fund cannot guarantee timely feedback to applicants that submit the aforementioned documentation less than 45 days prior to the end of the applicable Assessment Period.

VII. Reporting Financial Services Activities

In an effort to simplify the reporting requirements and reduce paperwork burden, the Fund is providing a new method for reporting Financial Services activities. The Fund will value the administrative cost of providing certain Financial Services at specified per unit values. The per unit values of specific types of Financial Services are as follows:

(a) $25.00 per account for non-ETA, non-IDA and non-First Account savings accounts;

(b) $40.00 per account for checking accounts;

(c) $5.00 per check cashing transaction times the total number of check cashing transactions;

(d) $25,000 per new ATM installed at a location in a Distressed Community;

(e) $2,500 per ATM operated at a location in a Distressed Community;

(f) $250,000 per new retail bank branch office opened in a Distressed Community; and

(g) in the case of applicants engaging in Financial Services activities not described above, the Fund will determine the account or unit value of such services. In the case of opening a new retail bank branch office, the applicant must certify that it has not operated a retail branch in the same census tract in which the new retail branch office is being opened in the past three years, and that such new branch will remain in operation for at least the next five years.

An applicant may derive the total percentage of Low- and Moderate-Income individuals who are recipients of Financial Services by either:

(a) Collecting income data on its Financial Services customers;

(b) certifying that the applicant reasonably believes that such customers are Low- and Moderate-Income individuals and providing a brief analytical narrative with information describing how the applicant made this determination; or

(c) using the Fund's methodology described below.

The Fund has developed a methodology for estimating the number of Low- and Moderate-Income Financial Services customers rather than requiring applicants to collect data on the actual income levels of its Financial Services customers. For both the Baseline Period and the Assessment Period, the value of Financial Services shall be derived based on the total number of new accounts, transactions or other eligible services multiplied by a per unit value of such services. This number shall be multiplied by the total percentage of Low- and Moderate-Income individuals who are residents of the census tracts where the Financial Services were provided (*e.g.*, bank branch, ATM location). Such census tracts must be part of a Distressed Community. The Help Desk includes a component that will provide the needed census tract data.

VIII. Cap on Qualified Activity Amount

In calculating award amounts, the Fund will count only the amount an applicant reasonably expects to disburse on a transaction within 12 months from the end of the Assessment Period. Subject to the exception outlined in Section V, above, in no event shall the value of a Qualified Activity for purposes of determining a Bank Enterprise Award exceed $1 million in the case of Commercial Real Estate Loans or any CDFI Related Activities (*i.e.*, the total principal amount of the transaction must be $1 million, or less to be considered a Qualified Activity).

IX. Priority Factors

For the purposes of this NOFA, Qualified Activities shall have the following Priority Factors:

Qualified activities	Priority factor
Personal Wealth Building, which includes: ..... Affordable Housing Loans; Home Improvement Loans; Small Business Loans and related Project Investments; Education Loans; and Targeted Financial Services, IDAs	3.0
Community Wealth Building, which includes: ..... Affordable Housing Development Loans and related Project Investments; and Select Commercial Real Estate Loans and related Project Investments	2.0

X. Award Percentages, Award Amounts, Selection Process

The revised interim rule published in this issue of the **Federal Register** describes the process for selecting applicants to receive assistance and for determining award amounts. A multiple step procedure is outlined in the regulations that will be used to calculate the estimated award amounts. The Fund will calculate Actual Award Amounts based on increases in Qualified Activities (called the ''Score'') that occur during a 6-month or a 12-month Assessment Period in excess of activities that occurred during a 6-month or a 12-month Baseline Period. In calculating said award amounts, the Fund will count only the amount an applicant reasonably expects to disburse on a transaction within 12 months from the end of the Assessment Period, subject to applicable caps on Qualified Activity amounts set forth in this NOFA.

In the CDFI Related Activities category (except for Equity Investments in CDFIs), if an applicant is a CDFI, such estimated award amount will be equal to 18 percent of the total score calculated in the multiple step procedure. If an applicant is not a CDFI, such estimated award amount will be equal to 6 percent of the total score calculated in the multiple step procedure. Notwithstanding the foregoing, the award percentage applicable to an Equity Investment in a CDFI shall be 15 percent if the applicant is a CDFI, and 5 percent if the applicant is not a CDFI. For the Distressed Community Financing Activities and Service Activities categories, if an applicant is a CDFI, such estimated award amount will be equal to 9 percent of the total score calculated in the multiple step procedure. If an applicant is not a CDFI, such estimated award amount will be equal to 3 percent of the total score calculated in the multiple step procedure.

If the amount of funds available during the funding round is insufficient for all estimated award amounts, awardees will be selected based on the process described in the revised interim rule at 12 CFR 1806.203. This process gives priority to applicants in the following order:

(a) CDFI Related Activities;

(b) Distressed Community Financing Activities, and

(c) Service Activities.

Within each category, applicants will be ranked according to the ratio of the Actual Award Amount calculated by the Fund for the category to the total assets of the applicant. Within the Distressed Community Financing category as well as the Service Activities category, Applicants that are certified CDFIs will be ranked first, and then applicants that have carried out such Distressed Community Financing and Service Activities in a Distressed Community that encompasses an Indian Reservation.

The Fund, in its sole discretion:

(a) May adjust the Estimated Award Amount that an applicant may receive;

(b) may establish a maximum amount that may be awarded to an applicant; and

(c) reserves the right to limit the amount of an award to any applicant if the Fund deems it appropriate.

For purposes of calculating award disbursement amounts, the Fund will treat Qualified Activities with a total principal amount of less than $250,000 as fully disbursed. Awardees will have 12 months from the end of the Assessment Period to disburse on Qualified Activities and 18 months to request the corresponding portion of their awards.

XI. Award Decision Appeal Process

Each applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award, or a declination letter, if not selected for an award, which may be for reasons of application incompleteness, ineligibility or substantive issues. Any applicant that is not selected for an award due to application incompleteness or ineligibility, and that believes that such decision was made in error, may appeal said decision by notifying the Fund's Awards Manager in writing or by e-mail (at *cdfihelp@cdfi.treas.gov,* Attention: Awards Manager); such appeals must be received by the Fund within five business days of the date of the declination letter. Such appeal requests will be reviewed by the Fund's Deputy Director for Management and the Deputy Director for Policy and Programs, as appropriate, whose decision will be final. All Applicants that are not selected for awards based on substantive issues, will be given the opportunity to request feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund reserves the right to change these evaluation procedures, if the Fund deems it appropriate; if said procedural changes materially affect the Fund's award decisions, the Fund will provide information regarding the procedural changes through the Fund's Web site.

XII. Information Sessions

In connection with the Fiscal Year 2003 funding rounds of its programs, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Technical Assistance and Financial Assistance Components of the CDFI Program, the Native American CDFI Development Program, and the BEA Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–8401.

Catalog of Federal Domestic Assistance: 21.021.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Native American CDFI Development Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of funds availability (''NOFA'') inviting applications for the FY 2003 and FY 2004 funding rounds of the Native American CDFI Development (''NACD'') Program.

SUMMARY: This NOFA is issued in connection with the FY 2003 and FY 2004 funding rounds of the NACD Program. Through the NACD Program and subject to appropriation of funding for the purposes enumerated in this NOFA, the Community Development Financial Institutions Fund (the ''Fund'') will provide technical assistance (''TA'') grants to organizations that plan to create community development financial institutions (CDFIs) to serve Native American, Alaska Native and/or Native Hawaiian communities.

Interested parties should be aware that implementation of the FY 2003/04 NOFA for the NACD Program is contingent on the appropriation of funds for the purposes enumerated in this NOFA; as of the date of this NOFA, said appropriation is pending with Congress. The Fund will issue a notice on its Web site, at *http://www.cdfifund.gov,* at such time that the Fund has the authority to implement the FY 2003/04 NOFA for the NACD Program. Applicants may submit applications pursuant to this NOFA as set forth herein; however, the Fund will not review applications or make awards unless and until funds are appropriated for the purposes and uses set forth in this NOFA.

The Preamble to the Fund's NOFAs, published in this issue of the **Federal Register** also specifies other program information, including eligibility requirements, for each of the Fund's programs. The Fund encourages applicants to review the revised interim rule and the Preamble to the NOFAs.

The FY 2003 and FY 2004 Technical Assistance Component and the NACD Program together replace the Native American CDFI Technical Assistance (''NACTA'') Component that was made available in FY 2002.

Subject to funding availability, the Fund expects that it may award approximately $3 million for FY 2003 awards, and approximately $1.5 million for FY 2004 awards, in appropriated funds under this NACD Program NOFA. The Fund reserves the right to award in excess of said funds under this NOFA provided that the appropriated funds are available and the Fund deems it appropriate. The Fund intends to make information available on its website about the level of dollars remaining available on a regular basis.

Applicants should note that the Fund expects that the funding round for this NOFA (and the NOFA for the Technical Assistance Component of the CDFI Program, also published in the **Federal Register** on this date) will extend over a two year funding round, subject to funding availability and Fiscal Year 2004 appropriations.

Under this NOFA, the Fund anticipates making TA grants up to $100,000 per awardee. The Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award if the Fund deems it appropriate. The Fund reserves

the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

DATES: Shortly following the publication of this NOFA, the Fund will make available the FY 2003 funding application on its Web site at *http://www.cdfifund.gov*. Applicants may download the application from the Fund's Web site or request application packages by contacting the Fund, as described below.

The Fund will accept and review applications under this NACD Program NOFA as they are submitted and in the order in which they are submitted. Applications may be submitted at any time, commencing with the date of the publication of this NOFA. Applications must be received in the specific Bureau of the Public Debt—Franchise Services (BPD) office designated below not later than 5:00 p.m. ET on May 31, 2004. Any applicant whose application is declined may submit a new application before May 31, 2004. Applications received in the specific BPD office designated below after that date and time will be rejected and returned to the sender.

Applications sent by facsimile or e-mail will not be accepted; however, an electronic application may be made available for this NOFA at a later date and, if so, its availability and related guidance will be announced on the Fund's Web site.

ADDRESSES: Applications must be sent to: CDFI Fund Awards Manager, NACD Program, Bureau of Public Debt—Franchising, 200 Third Street, Room 211, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. Applications will not be accepted at the Fund's offices. Applications received in the Fund's offices will be rejected and returned to the sender.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Program Operations Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. Applications and other information regarding the Fund and its programs may be downloaded and printed from the Fund's Web site at *http://www.cdfifund.gov* or requested by contacting the Fund, as described above. Allow at least one to two weeks from the date the Fund receives the request for receipt of the application.

SUPPLEMENTARY INFORMATION:

I. Eligibility

The NACD Program application specifies the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth some additional detail and certain additional dates that relate to the submission of applications under this NOFA:

(1) *Eligible Applicants:* Eligible applicants for the NACD Program consist of:

(a) Category I, meaning Tribes, Tribal entities and nonprofit organizations that primarily (at least 50 percent of activities directed toward) serve Native American, Alaska Native and/or Native Hawaiian populations including:

(i) Tribes, Tribal entities, Alaska Native Villages, Village Corporations, Regional Corporations, Non-Profit Regional Corporations/Associations, or Inter-Tribal or Inter-Village organizations; and

(ii) non-profit community organizations engaged in related activities, including, but not limited to: Community development corporations (CDCs), training or educational organizations, Tribally-Controlled Community Colleges, Chambers of Commerce, or Urban Indian Centers that serve primarily a Native American, Alaska Native or Native Hawaiian Community (such entities were referred to as Category II applicants under the FY 2002 NACTA Component); and

(b) Category II, meaning TA providers or other suitable providers, including:

(i) TA providers such as firms that provide training or TA in community development finance or that specialize in economic development in Native American, Alaska Native and/or Native Hawaiian communities, and

(ii) other suitable providers, as defined by the Fund, that include, but are not limited to: CDCs, certified CDFIs, or organizations with experience and expertise in banking and lending in Native American, Alaska Native and/or Native Hawaiian communities) (such entities were referred to as Category III applicants under the FY 2002 NACTA Component).

Any applicant, under Category II above, including CDFIs, that does not serve primarily a Native American, Alaska Native and/or Native Hawaiian community must identify a Native American Partner that serves primarily a Native American, Alaska Native and/or Native Hawaiian community and with which the applicant will work with to establish a CDFI in the Native American Partner's community or service area that in turn will serve primarily a Native American, Alaska Native and/or Native Hawaiian community. The Native American Partner must be a party to both the application for funding and the Assistance Agreement, if the applicant is selected for funding. Category II applicants may propose to serve more than one Native American, Alaska Native and/or Native Hawaiian community. If more than one such communities are to be served, then more than one Native American Partner may be a party to the application and the Assistance Agreement, as long as such Native American Partner(s) is representative of the predominance (plurality) of the market to be served by the proposed CDFI. If not, the Fund may require that the applicant obtain additional Native American Partner(s).

(2) *Certification:* For purposes of this NACD Program NOFA, eligible applicants must establish entities that will become Fund-certified CDFIs by January 31, 2006 (for applications received by May 31, 2003) or by January 31, 2007 (for applications received between June 1, 2003 and May 31, 2004). Applicants may obtain CDFI certification applications through the Fund's Web site at *http://www.cdfifund.gov.*

(3) *Designation of Targeted Population:* For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997):

(a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment; and

(b) Native Hawaiian: a person having origins in any of the original peoples of Hawaii.

(4) *Previous Awardees:* Applicants must be aware that success in a previous round of the CDFI Program or the NACTA Program is not indicative of success under this NOFA. Previous awardees are eligible to apply under this NOFA, except as follows:

(a) the Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one CDFI and its Subsidiaries and Affiliates during any three-year period (further guidance on the calculation of the $5

million cap is available on the Fund's Web site at *http://www.cdfifund.gov*);

(b) the Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program if the applicant has failed to meet its reporting requirements, set forth in the previously executed assistance or award agreement(s), as of the date an application for funding under this NOFA is received by the CDFI Fund; and

(c) the Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program that has a balance of undisbursed funds under said previous award, as of the date an application for funding under this NOFA is received by the CDFI Fund. Accordingly, applicants that are previous awardees are advised to:

(i) submit all required reports by the deadlines specified in the assistance or award agreements governing said prior awards and to comply with all requirements found therein, and

(ii) contact the appropriate Program Operations representative of the Fund to ensure that actions are underway for the disbursement of any outstanding balance of said prior award.

II. Types of Assistance

An applicant may only submit an application for a TA grant under this NOFA. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses other than that which is requested by an applicant.

Applicants for TA grants under this NOFA shall describe the type(s) of TA requested, when the TA will be acquired, the provider(s) of the TA, the cost of the TA, and a narrative description of how the TA will enhance their community development impact by creating a CDFI. Eligible types of TA grant uses include, but are not limited to, the following:

(1) Acquiring consulting services;

(2) Paying staff salary for the limited purposes of completing tasks and/or fulfilling functions that are otherwise eligible TA grant uses under this NOFA;

(3) Acquiring/enhancing technology items; and

(4) Acquiring training for staff or management (under Category I only).

The Fund will generally not consider requests for TA grants under this NOFA for expenses that, in the determination of the Fund, are deemed to be ongoing operating expenses rather than non-recurring expenses. The Fund will consider requests for the use of TA to pay for staff salary only when the applicant demonstrates to the satisfaction of the Fund that:

(a) The staff salary relates directly to building the applicant's capacity to serve its target market;

(b) The proposed staff time to be paid for by the TA grant will be used for a non-recurring activity or the staff salary will build the applicant's capacity to achieve its objectives as set forth in its application;

(c) The proposed activity would otherwise be contracted to a consultant or not be undertaken; and

(d) The staff person assigned to the proposed task has the competence to successfully complete the activity. Further guidance on the limited uses of TA grants for staff salary expenditures is available on the Fund's Web site at *http://www.cdfifund.gov.*

III. Application Packet

Applicants under this NOFA must submit all materials described in the applicable application. An application must include a valid and current Employer Identification Number, issued by the Internal Revenue Service, or the application will be rejected as incomplete and returned to the sender.

IV. Evaluation

For purposes of this NACD Program NOFA, the Fund will evaluate applications through a merit-based, qualitative application process, in the order in which they are submitted, until such point as all appropriated funds allocated for this NOFA are obligated or May 31, 2004, whichever occurs first. Applications submitted after that point will not be considered for funding; said applications will be rejected and returned to the sender.

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described in the interim regulations, this NOFA and the application. In the first part of the substantive review, the Fund will evaluate each application on a 100-point scale, comprising the four criteria categories set forth below, and assign numeric scores. Applicants whose applications are assigned 60 points or more will be considered for TA awards.

(1) *Market Need and CDFI Strategy:* including a review of the applicant's understanding of the market context, the prospective customers, the extent of economic distress within the likely Investment Area(s) or the extent of need within the likely Targeted Population(s), the extent of need for the proposed CDFI, the level of support from the Target Market, and the appropriateness of the proposed products and services to meet the needs in the market of the proposed CDFI, appropriateness of the proposed organizational structure. For any entity that has already received an award from the Fund, the applicant also will be evaluated on the extent to which it proposes to create greater community development impact than to be achieved through the prior award and its track record in meeting previous performance goals and other Assistance Agreement requirements (maximum 25 points; minimum of 12 points required to be considered for an award);

(2) *Management:* including a review of the applicant's current and proposed management team, governing board, and key staff, its policies and procedures for financial management, and its track record in underwriting and portfolio management, if applicable, and its ability to create the proposed CDFI and to successfully use the requested TA. For any applicant that has received one or more prior awards through the CDFI Program, the Fund will consider the extent to which the applicant has submitted required reports in a timely manner and otherwise complied with the Fund's requirements (maximum 25 points; minimum of 12 points required to be considered for an award);

(3) *Financial Health and Resources:* including a review of the applicant's financial strength, its liquidity, and the likelihood of obtaining resources to initiate and sustain operations of the proposed CDFI, and a clear indication that the proposed CDFI will not be fiscally dependent on the Fund (maximum 10 points; minimum of 5 points required to be considered for an award);

(4) *Community Development Performance and Effective Use of TA:* including the projected level of activity within the Target Market of the proposed CDFI; the extent to which the applicant needs the Fund's assistance to achieve the objectives set forth in its application; and the likelihood that the Fund's assistance will enhance the applicant's ability to effectively serve its Target Market by creating a CDFI and achieve community development impact (maximum 40 points; minimum of 20 points required to be considered for an award).

Fund reviewers will evaluate and score each application and make recommendations for funding to the Fund's selecting official. As part of the substantive review process, applicants may receive a telephone interview or an on-site visit by Fund reviewers for the purpose of obtaining, clarifying, or

confirming application information. During the review process, the applicant may be required to submit additional information about its application in order to assist the Fund in its final evaluation process. Such requests must be responded to within the time parameters set by the Fund.

In the case of an applicant that has previously received funding from the Fund under the Bank Enterprise Award (BEA) Program, the CDFI Program or the NACTA Component, the Fund will consider, as appropriate:

(a) The applicant's level of success and extent of compliance in meeting its performance goals, financial soundness covenants (if applicable) and other requirements set forth in the assistance or award agreement(s) with the Fund;

(b) The benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance; and

(c) The extent and effectiveness to which the applicant has used previous assistance from the Fund.

The Fund's selecting official will make a final funding determination based on the applicant's file, reviewer scores and recommendations, and the amount of funds available. In the case of regulated CDFIs, the selecting official will take into consideration the views of the appropriate Federal banking agencies.

Each applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or a declination letter, if not selected for an award, which may be for reasons of application incompleteness, ineligibility or substantive issues. Any applicant that is not selected for an award due to application incompleteness or ineligibility, and that believes that such decision was made in error, may appeal said decision by notifying the Fund's Awards Manager in writing or by e-mail (at *cdfihelp@cdfi.treas.gov,* Attention: Awards Manager); such appeals must be received by the Fund within five business days of the date of the declination letter. Such appeal requests will be reviewed by the Fund's Deputy Director for Management and the Deputy Director for Policy and Programs, as appropriate, whose decision will be final. All applicants that are not selected for awards based on substantive issues, will be given the opportunity to request feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund.

The Fund reserves the right to change these evaluation procedures if the Fund deems it appropriate; if said procedural changes materially affect the Fund's award decisions, the Fund will provide information regarding the procedural changes through the Fund's Web site.

V. Notice of Award

The Fund will signify its selection of an applicant as an awardee by delivering a signed Notice of Award to the applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that an awardee and the Fund enter into an Assistance Agreement. The applicant shall execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the awardee's eligibility for an award, or adversely affects the Fund's evaluation of the awardee's application, or indicates fraud or mismanagement on the part of the awardee, the Fund may, in its discretion and without advance notice to the awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, an awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the awardee is not in compliance with the terms of any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Notice of Award, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

VI. Assistance Agreement

Each applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund. The Assistance Agreement will set forth certain required terms and conditions of the award, which may include, but not be limited to:

(a) The amount of the award;

(b) The approved uses of the award;

(c) The approved Target Market to which the award must be targeted;

(d) Performance goals and measures; and

(e) Reporting requirements for all awardees.

Assistance Agreements under this NOFA will generally have three-year performance periods. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Assistance Agreement, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

VII. Reporting and Monitoring

The Fund will collect information, on at least an annual basis, from NACD Program awardees, including:

(a) Annual reports related to, among other matters, awardee compliance with the performance goals and measures set forth in the Assistance Agreement; and

(b) Such other information as the Fund may require. The Fund will use such information to monitor each awardee's compliance with the requirements set forth in the Assistance Agreement. The Fund will also use such information to assess the impact of the NACD Program. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to the awardee.

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge award reservation and/or compliance monitoring fees to all entities receiving NACD Program awards. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

VIII. Information Sessions

In connection with the Fiscal Year 2003 funding rounds of its programs, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Technical Assistance and Financial Assistance Components of the CDFI Program, the NACD Program, and the BEA Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–8401.

(Catalog of Federal Domestic Assistance: 21.020)

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–2338 Filed 2–3–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program '' Technical Assistance Component (incorporating Native American Technical Assistance)

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of funds availability (''NOFA'') inviting applications for the FY 2003 and FY 2004 funding rounds of the Technical Assistance Component of the Community Development Financial Institutions (''CDFI'') Program.

SUMMARY: This NOFA is issued in connection with the FY 2003 and FY 2004 funding rounds of the Technical Assistance Component of the CDFI Program. Through the Technical Assistance Component of the CDFI Program, the Community Development Financial Institutions Fund (the ''Fund'') provides technical assistance (''TA'') grants to CDFIs, and entities proposing to become CDFIs, in order to build their capacity to better address the community development and capital access needs of their particular target markets, including Native American, Alaska Native, and Native Hawaiian communities.

Subject to funding availability, the Fund expects that it may award approximately $13 million for FY 2003 awards, and approximately $4.5 million for FY 2004 awards, in appropriated funds under this Technical Assistance Component NOFA. The Fund expects that, within the FY 2003 amount, it will award up to $3 million to CDFIs, and entities proposing to become CDFIs, that principally serve Native American, Alaska Native and/or Native Hawaiian communities. The Fund reserves the right to award in excess of said funds under this NOFA provided that the appropriated funds are available and the Fund deems it appropriate. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected. The Fund intends to make information available on its Web site about the level of dollars remaining available on a regular basis.

Applicants should note that the Fund expects that the funding round for this NOFA (and the NOFA for the NACD Program, also published in the **Federal Register** on this date) will extend over a two-year funding round, subject to funding availability and Fiscal Year 2004 appropriations.

Under this NOFA, the Fund anticipates making TA grants up to $50,000 per Technical Assistance Component awardee and up to $100,000 per awardee principally serving Native American, Alaska Native, or Native Hawaiian communities. The Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

The interim rule (12 CFR part 1805), also published in this issue of the **Federal Register**, provides guidance on evaluation criteria and other requirements of the CDFI Program. Detailed application content requirements are found in the application related to this NOFA. The Preamble to the Fund's NOFAs, published in this issue of the **Federal Register** also specifies other program information, including eligibility requirements, for each of the Fund's programs. While the Fund encourages applicants to review the interim rule and the Preamble to the NOFAs, all of the application content requirements and the evaluation criteria set forth in the interim rule are set forth in the application.

DATES: Simultaneously with or shortly following the publication of this NOFA, the Fund will make available the FY 2003 funding application on its Web site at *http://www.cdfifund.gov.* Applicants may download the application from the Fund's Web site or request application packages by contacting the Fund, as described below.

The Fund will accept and review applications under this Technical Assistance Component NOFA as they are submitted and in the order in which they are submitted. Applications may be submitted at any time, commencing with the date of the publication of this NOFA. Applications must be received in the specific Bureau of the Public Debt—Franchise Services (BPD) office designated below not later than 5 p.m. ET on May 31, 2004. Any applicant whose application is declined may submit a new application before May 31, 2004. Applications received in the specific BPD office designated below after that date and time will be rejected and returned to the sender.

Applications sent by facsimile or e-mail will not be accepted; however, an electronic application may be made available for this NOFA at a later date and, if so, its availability and related guidance will be announced on the Fund's Web site.

ADDRESSES: Applications must be sent to: CDFI Fund Awards Manager, TA Component, Bureau of Public Debt—Franchising, 200 Third Street, Room 211, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. Applications will not be accepted at the Fund's offices. Applications received in the Fund's offices will be rejected and returned to the sender.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Program Operations Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. Applications and other information regarding the Fund and its programs may be downloaded and printed from the Fund's Web site at *http://www.cdfifund.gov* or requested by contacting the Fund, as described above. Allow at least one to two weeks from the date the Fund receives the request for receipt of the application.

SUPPLEMENTARY INFORMATION:

I. Eligibility

The Act and the interim rule specify the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional details and certain additional dates that relate to the submission of applications under this NOFA:

(1) *Eligible Applicants:* Eligible applicants for the Technical Assistance Component of the CDFI Program consist of CDFIs and entities proposing to become CDFIs.

(2) *Certification:* For purposes of this Technical Assistance Component NOFA, eligible applicants consist of:

(i) Certified CDFIs whose certifications expire after June 30, 2003;

(ii) Entities that submit complete applications evidencing CDFI certification prior to or simultaneous with applications under this NOFA; or

(iii) Entities that demonstrate in their certification applications that, in the judgment of the Fund, they have reasonable plans to become certified CDFIs by January 31, 2005 (for applications received by May 31, 2003) or by January 31, 2006 (for applications received between June 1, 2003 and May 31, 2004). Applicants must be certified by the applicable date. Applicants may obtain CDFI certification applications through the Fund's Web site at *http://www.cdfifund.gov.*

(3) *Previous Awardees:* Applicants must be aware that success in a previous round of the CDFI Program or the Native American CDFI Technical Assistance (''NACTA'') Program is not indicative of success under this NOFA. Previous awardees are eligible to apply under this NOFA, except as follows:

(a) Any entity that has received a Notice of Award from the Fund for a previous CDFI Program or NACTA Program funding round, but that has not submitted a CDFI certification application nor been certified as a CDFI, is not eligible to receive funding under this NOFA (see Certification section, above);

(b) The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period (further guidance on the calculation of the $5 million cap is available on the Fund's Web site at *http://www.cdfifund.gov*);

(c) The Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program if the applicant has failed to meet its reporting requirements, set forth in a previously executed assistance or award agreement(s), as of the date an application for funding under this NOFA is received by the Fund; and

(d) The Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program that has a balance of undisbursed funds under said previous award, as of the date an application for funding under this NOFA is received by the CDFI Fund. Accordingly, applicants that are previous awardees are advised to:

(i) Submit all required reports by the deadlines specified in the assistance or award agreements governing said prior awards and to comply with all requirements found therein, and

(ii) Contact the appropriate Program Operations representative of the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of said prior award. In addition, in order to focus its resources on applicants that are most in need of TA awards, the Fund does not expect to make awards under this NOFA to any entity that has received Fund awards under the CDFI Program or the NACTA Program in excess of $250,000, in the aggregate.

(4) *Serving a Native American, Alaska Native, or Native Hawaiian community:* For the purposes of this NOFA, the Fund will determine, in its sole discretion, that an applicant serves a Native American, Alaska Native, or Native Hawaiian community if greater than 50 percent of its historic and projected activities benefit Native American, Alaska Native, or Native Hawaiian individuals.

(5) *Designation of Targeted Population:* For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997):

(a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment; and

(b) Native Hawaiian: a person having origins in any of the original peoples of Hawaii.

II. Types of Assistance

An applicant may only submit an application for a TA grant under this NOFA. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses other than that which is requested by an applicant.

Applicants for TA grants under this NOFA shall describe the type(s) of TA requested, when the TA will be acquired, the provider(s) of the TA, the cost of the TA, and a narrative description of how the TA will enhance their community development impact. Eligible types of TA grant uses include, but are not limited to, the following:

(1) Acquiring consulting services;

(2) Paying staff salary for the limited purposes of completing tasks and/or fulfilling functions that are otherwise eligible TA grant uses under this NOFA;

(3) Acquiring/enhancing technology items; and

(4) Acquiring training for staff or management.

The Fund will generally not consider requests for TA grants under this NOFA for expenses that, in the determination of the Fund, are deemed to be ongoing operating expenses rather than non-recurring expenses. The Fund will consider requests for use of TA to pay for staff salary only when the applicant demonstrates, to the Fund's satisfaction, that:

(i) The staff salary relates directly to building the applicant's capacity to serve its target market;

(ii) The proposed staff time to be paid for by the TA grant will be used for a non-recurring activity that will build the applicant's capacity to achieve its objectives as set forth in its application;

(iii) The proposed capacity-building activity would otherwise be contracted to a consultant or not be undertaken; and

(iv) The staff person assigned to the proposed task has the competence to successfully complete the activity. The Fund may consider funding requests for other staff salary uses, deemed appropriate by the Fund in its sole discretion, particularly for applicants that have been in operation 24 months or less as of the date of application. Further guidance on the limited uses of TA grants for staff salary expenditures is available on the Fund's Web site at *http://www.cdfifund.gov.*

III. Application

Applicants under this NOFA must submit all materials described in the applicable application form. An application must include a valid and current Employer Identification Number, issued by the Internal Revenue Service, or the application will be rejected as incomplete and returned to the sender.

IV. Evaluation

For purposes of this NOFA, the Fund will evaluate applications through a merit-based, qualitative application process, as they are submitted and in the order in which they are submitted, until such point as all appropriated funds allocated for this NOFA are obligated or May 31, 2004, whichever occurs first. Applications submitted after that point will not be considered for funding; said applications will be rejected and returned to the sender.

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, the Fund will conduct the substantive review of each application in

accordance with the criteria and procedures described in the interim regulations, this NOFA and the application. In the first part of the substantive review, the Fund will evaluate each application on a 100-point scale, comprising the four criteria categories set forth below, and assign numeric scores. Applicants must score at least 10 points for each of criteria 1, 2, and 3; and at least 20 points for criteria 4. Applicants whose applications are assigned 60 points or more will be considered for TA awards.

(1) *Market Need and CDFI Strategy:* including a review of the applicant's understanding of its market context, its current and prospective customers, the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), the extent of need for the CDFI, the level of support for the Target Market, and the appropriateness of the proposed products, services and delivery strategy to meet the needs in the market. For any entity that has already received an award from the Fund, the applicant also will be evaluated on the extent to which it proposes to create greater community development impact than to be achieved through the prior award and its track record in meeting previous performance goals and other Assistance Agreement requirements (maximum 20 points);

(2) *Management:* including a review of the applicant's current and proposed management team, governing board, and key staff, its policies and procedures for financial management, and its track record in underwriting and portfolio management and ability to achieve the objectives set forth in its application and to successfully use the requested TA. For any applicant that has received one or more prior awards through the CDFI Program, the Fund will consider the extent to which the applicant has submitted required reports in a timely manner and otherwise complied with the Fund's requirements (maximum 20 points);

(3) *Financial Health and Resources:* including a review of the applicant's financial strength, its liquidity, and the likelihood of obtaining resources to sustain operations, and a clear indication that the CDFI will not be fiscally dependent on the Fund (maximum 20 points); and

(4) *Community Development Performance and Effective Use of TA:* including the projected level of activity within the Target Market; the extent to which the proposed activities are expected to promote homeownership, affordable housing development, economic development, provision of affordable financial services, and other community development objectives; the extent to which the applicant needs the Fund's assistance to achieve the objectives set forth in its application; and the likelihood that the Fund's assistance will enhance the applicant's ability to effectively serve its Target Market and achieve community development impact (maximum 40 points).

Fund reviewers will evaluate and score each application and make recommendations for funding to the Fund's selecting official. As part of the substantive review process, applicants may receive a telephone interview or an on-site visit by Fund reviewers for the purpose of obtaining, clarifying, or confirming information. During the review process, the applicant may be required to submit additional information about its application in order to assist the Fund in its final evaluation process. Such requests must be responded to within the time parameters set by the Fund.

In the case of an applicant that has previously received funding from the Fund under the Bank Enterprise Award (BEA) Program, CDFI Program or the Native American CDFI Technical Assistance (NACTA) Program, the Fund will consider, as appropriate:

(a) The applicant's level of success and extent of compliance in meeting its performance goals, financial soundness covenants (if applicable), reporting requirements and other requirements set forth in the assistance or award agreement(s) with the Fund;

(b) The benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance; and

(c) The extent and effectiveness to which the applicant has used previous assistance from the Fund.

The Fund's selecting official will make a final funding determination based on the applicant's file, reviewer scores and recommendations, and the amount of funds available. In the case of regulated CDFIs, the selecting official will also take into consideration the views of the appropriate Federal banking agencies.

Each applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or a declination letter, if not selected for an award, which may be for reasons of application incompleteness, ineligibility or substantive issues. Any applicant that is not selected for an award due to application incompleteness or ineligibility, and that believes that such decision was made in error, may appeal said decision by notifying the Fund's Awards Manager in writing or by e-mail (at *cdfihelp@cdfi.treas.gov,* Attention: Awards Manager); such appeals must be received by the Fund within five business days of the date of the declination letter. Such appeal requests will be reviewed by the Fund's Deputy Director for Management and the Deputy Director for Policy and Programs, as appropriate, whose decision will be final. All applicants that are not selected for awards based on substantive issues, will be given the opportunity to request feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund reserves the right to change these evaluation procedures if the Fund deems it appropriate; if said procedural changes materially affect the Fund's award decisions, the Fund will provide information regarding the procedural changes through the Fund's Web site.

VI. Notice of Award

The Fund will signify its selection of an applicant as an awardee by delivering a signed Notice of Award to the applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that an awardee and the Fund enter into an Assistance Agreement. The applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the awardee's eligibility for an award, or adversely affects the Fund's evaluation of the awardee's application, or indicates fraud or mismanagement on the part of the awardee, the Fund may, in its discretion and without advance notice to the awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, an awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the awardee is not in compliance with the terms of any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the

awardee fails to return the Notice of Award, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

VII. Assistance Agreement

Each applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to:

(a) The amount of the award;

(b) The approved uses of the award;

(c) The approved Target Market to which the award must be targeted;

(d) Performance goals and measures; and

(e) Reporting requirements for all awardees.

Assistance Agreements under this NOFA will generally have two-year performance periods. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Assistance Agreement, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

VIII. Reporting and Monitoring

The Fund will collect information, on at least an annual basis, from all CDFI Program awardees, including:

(a) Annual reports related to, among other matters, awardee compliance with the performance goals and measures set forth in the Assistance Agreement;

(b) Audited financial statements;

(c) Annual surveys; and

(d) Such other information as the Fund may require, including loan level data.

The Fund will use such information to monitor each awardee's compliance with the requirements set forth in the Assistance Agreement. The Fund will also use such information to assess the impact of the CDFI Program. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to the awardee.

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge award reservation and/or compliance monitoring fees to all entities receiving CDFI Program awards. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

IX. Information Sessions

In connection with the Fiscal Year 2003 funding rounds of its programs, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Technical Assistance and Financial Assistance Components of the CDFI Program, the NACD Program, and the BEA Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–8401.

(Catalog of Federal Domestic Assistance: 21.020)

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–2339 Filed 2–3–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Financial Assistance Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (''NOFA'') inviting applications for the FY 2003 funding round of the Financial Assistance Component of the Community Development Financial Institutions (''CDFI'') Program.

SUMMARY: This NOFA is issued in connection with the FY 2003 round of the Financial Assistance Component of the CDFI Program. Through the Financial Assistance Component, the Community Development Financial Institutions Fund (the ''Fund'') makes financial investments in and may provide Technical Assistance (''TA'') grants to CDFIs that have comprehensive business plans for creating demonstrable community development impact through the deployment of capital within their respective target markets for community development finance purposes.

The Financial Assistance Component is designed to address capitalization needs of two types of CDFIs: (i) Category I includes CDFIs that have capitalization needs up to and including $1,000,000 and total assets as of December 31, 2002 that range up to $250 million (for insured depository institutions and depository institution holding companies), up to $25 million (for insured credit unions), or up to $15 million for other CDFIs, and (ii) Category II includes CDFIs with assets above those ranges and/or that can effectively deploy funding in an amount in excess of $1,000,000, either to leverage greater private sector resources in support of their lending and investing activities (such as through funding a loan loss reserve or credit enhancement), or to develop and effectively provide innovative financial products and services that address the capital needs of particularly underserved markets.

Through this NOFA, the Fund intends to target its resources and provide financial assistance awards to CDFIs that will use award proceeds to:

(a) Serve *Hot Zones,* meaning geographic areas designated by the Fund as having greater levels of economic distress, and/or

(b) Achieve the Fund's FY 2003 *Programmatic Priorities,* which are:

(i) To increase homeownership opportunities that are affordable to Low-Income households, and

(ii) To increase homeownership opportunities for Other Targeted Populations (as described below). For purposes of the FY 2003 NOFA for the Financial Assistance Component, the Hot Zones (and the Fund's methodology for Hot Zone designation) are identified through the Fund's Web site at *http://www.cdfifundhelp.gov.*

Subject to funding availability, the Fund expects that it may award approximately $30 million in appropriated funds under this Financial Assistance Component NOFA. The Fund reserves the right to award in excess of $30 million in appropriated funds under this NOFA provided that the funds are available and the Fund deems it appropriate. Under this NOFA, the Fund anticipates making awards up to $1,000,000 per award for Category I CDFIs and up to $2,000,000 per award for Category II CDFIs. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right

to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

While the Financial Assistance Component offers TA grants in conjunction with financial investments, entities seeking TA awards only should apply for funds through the Technical Assistance Component.

The interim rule governing the CDFI Program (12 CFR part 1805), revised and published in this issue of the **Federal Register**, provides guidance on evaluation criteria and other requirements of the CDFI Program. Detailed application content requirements are found in the application related to this NOFA. The Preamble to the Fund's NOFAs, published in this issue of the **Federal Register** also specifies other program information, including eligibility requirements, for each of the Fund's programs. The Fund encourages applicants to review the revised interim rule and the Preamble to the NOFAs; in addition, all of the application content requirements and the evaluation criteria set forth in the revised interim rule are set forth in the application.

DATES: Applicants may submit applications under this Financial Assistance Component NOFA either electronically or in paper form. In order to expedite application review, however, the Fund expects applicants to submit Financial Assistance Component applications electronically (via an Internet-based application) per the instructions provided on the Fund's Web site. Submission of an electronic application will facilitate the processing and review of applications and the selection of awardees.

Shortly following the publication of this NOFA, the Fund will make available the FY 2003 Financial Assistance Component funding electronic application on its Web site at *http://www.cdfifund.gov.* If an applicant is unable to submit an electronic application, it must submit to the Fund a request for a paper application and the request must be received by the Fund by February 21, 2003. The request must contain the applicant's name; the name and phone number of a contact person; a mailing address (provide a physical address for overnight deliveries) for delivery of the paper application; and an explanation of why the applicant cannot complete the electronic application. The request for a paper application should be directed to the Fund's Program Operations Manager and must be sent by e-mail to *paper_request@cdfi.treas.gov* or by facsimile to (202) 622–6453 .

Applicants will need access to Internet Explorer 5.5 or higher or Netscape Navigator 6.0 or higher and at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. Electronic applications must be submitted solely by using the format made available at the Fund's Web site for the Financial Assistance Component. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application.

The Fund will provide program and technical support for the Financial Assistance Component application between the hours of 9 a.m. and 5 p.m. starting Monday, February 3, 2003, through Friday, March 7, 2003. The Fund will not respond to phone calls or e-mails concerning the application that are received after 5 p.m. on March 7, 2003, until after the Financial Assistance Component application deadline of March 10, 2003. Program support can be obtained by calling (202) 622–6355. Technical support can be obtained by calling (202) 622–2455 and selecting option 1, then option 2, and then option 9. Program or technical support can also be obtained by e-mail at *cdfihelp@cdfi.treas.gov.*

The deadline for receipt of either paper or electronic applications is 5 p.m. ET on March 10, 2003. Paper applications must be received in their entirety by this time and date, including attachments. Electronic applications timely submitted may submit an original signature page not later than 5 p.m. ET on March 12, 2003. See application instructions, provided in the electronic application, for further detail. Applications received after this date and time will be rejected and returned to the sender.

Applications sent by facsimile or by e-mail will not be accepted.

ADDRESSES: Paper applications must be sent to: CDFI Fund Awards Manager, Financial Assistance Component, Bureau of Public Debt '' Franchising, 200 Third Street, Room 211, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. Applications will not be accepted at the Fund's offices in Washington, DC. Applications received in the Fund's offices will be rejected and returned to the sender. Electronic applications must be submitted solely by using the Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Program Operations Manager and the Awards Manager may be reached by e-mail at cdfihelp@cdfi.treas.gov, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

I. Eligibility

The Act and the interim rule specify the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOFA:

(1) *Certification:* For purposes of this Financial Assistance Component NOFA, an application for an award will not be considered unless:

(a) An applicant is already certified as a CDFI with a certification expiration date after June 30, 2003; or

(b) The Fund receives from an applicant a complete CDFI certification application no later than February 14, 2003, evidencing that the applicant can be certified as a CDFI. With respect to any CDFI that is currently certified by the Fund and whose certification expiration date is on or before June 30, 2003, the Fund must receive an application for re-certification no later than February 14, 2003, evidencing that the applicant can be re-certified as a CDFI. Applicants may obtain CDFI certification applications through the Fund's Web site at *http://www.cdfifund.gov.* Applications for certification and re-certification must be submitted as instructed in the application form.

(2) *Previous Awardees:* Applicants must be aware that success in a previous round of the CDFI Program or the Native American CDFI Technical Assistance (''NACTA'') Program is not indicative of success under this NOFA. Previous awardees are eligible to apply under this NOFA, except as follows:

(a) Any entity that has received a Notice of Award from the Fund for a previous CDFI Program or NACTA Program funding round, but that has not

submitted a CDFI certification application nor been certified as a CDFI, is not eligible to receive funding under this NOFA (see Certification section, above);

(b) The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period (further guidance on the calculation of the $5 million cap is available on the Fund's Web site at *http://www.cdfifund.gov);*

(c) The Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program if the applicant has failed to meet its reporting requirements, set forth in the previously executed assistance or award agreement(s), as of the application deadline of this NOFA; and

(d) The Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program that has a balance of undisbursed funds under said previous award, as of the application deadline of this NOFA. Accordingly, applicants that are previous awardees are advised to:

(i) Submit all required reports by the deadlines specified in the assistance or award agreements governing said prior awards and to comply with all requirements found therein and

(ii) Contact the appropriate Program Operations representative of the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of said prior award.

(3) *Other Targeted Populations:* Other Targeted Populations are defined as identifiable groups of individuals in the applicant's service area for which there exists a strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. The Fund has determined that there is strong basis in evidence that the following groups of individuals lack access to loans, Equity Investments and/or Financial Services on a national level: Blacks or African Americans, Native Americans or American Indians, and Hispanics or Latinos. In addition, for purposes of this NOFA, the Fund has determined that there is a strong basis in evidence that Alaska Natives residing in Alaska and Native Hawaiians or Other Pacific Islanders residing in Hawaii or other Pacific Islands lack adequate access to loans, Equity Investments or Financial Services. An applicant designating any of the above-cited Other Targeted Populations is not required to provide additional narrative explaining the Other Targeted Population's lack of adequate access to loans, Equity Investments or Financial Services. Additionally, the Fund recognizes that there may be other such groups for which there is strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. Such groups may be identified, and evidence of such lack of access may be provided, in the Market Need section of the application associated with this NOFA, and the application for CDFI certification (if not identified in the Target Market of a currently certified CDFI).

For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997):

(a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment;

(b) Black or African American: a person having origins in any of the black racial groups of Africa (terms such as ''Haitian'' or ''Negro'' can be used in addition to ''Black or African American'');

(c) Hispanic or Latino: a person of Cuban, Mexican, or Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (the term ''Spanish origin'' can be used in addition to ''Hispanic or Latino''); and

(d) Native Hawaiian or Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

For further detail, please visit the Fund's Web site at *http://www.cdfifund.gov,* under Certification\Supplemental Information.

II. Types of Assistance

An applicant may submit an application either for financial assistance (''FA'') only or for FA and a TA grant, under this NOFA. FA may be provided by the Fund through an equity investment (including, in the case of certain insured credit unions, secondary capital accounts), a grant, loan, deposit, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide FA in a form other than that which is requested by an applicant, or a TA grant for uses other than that which are requested by an applicant.

Applicants for TA grants under this NOFA shall describe the type(s) of TA requested, when the TA will be acquired, the provider(s) of the TA, the cost of the TA, and a narrative description of how the TA will enhance their community development impact. Eligible types of TA grant uses include, but are not limited to, the following:

(1) Acquiring consulting services;

(2) Paying staff salary for the limited purposes of completing tasks and/or fulfilling functions that are otherwise eligible TA grant uses under this NOFA (use of TA for this purpose is limited to applicants with total assets not exceeding $5 million as of December 31, 2002);

(3) Acquiring/enhancing technology items; and

(4) Acquiring training for staff or management.

The Fund will not consider requests for TA grants under this NOFA for expenses that, in the determination of the Fund, are deemed to be ongoing operating expenses rather than non-recurring expenses. The Fund will consider requests for use of TA to pay for staff salary only when the applicant demonstrates, to the Fund's satisfaction, that:

(i) The staff salary relates directly to building the applicant's capacity to serve its target market;

(ii) The proposed staff time to be paid for by the TA grant will be used for a non-recurring activity that will build the applicant's capacity to achieve its objectives as set forth in its Comprehensive Business Plan;

(iii) The proposed capacity-building activity would otherwise be contracted to a consultant or not be undertaken; and

(iv) The staff person assigned to the proposed task has the competence to successfully complete the activity. Further guidance on the limited uses of TA grants for staff salary expenditures is available on the Fund's Web site at *http://www.cdfifund.gov.*

III. Application

An applicant under this NOFA must submit all materials described in the application. An application must include a valid and current Employer Identification Number, issued by the Internal Revenue Service, or the application will be rejected as incomplete and returned to the sender.

IV. Matching Funds

Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of

FA provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA provided by the Fund (for example, if an applicant seeks a FA grant from the Fund, the applicant must obtain matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund).

Due to funding constraints and the desire to quickly deploy CDFI Fund dollars, the Fund will not consider for funding any applicant that does not have at least the following level of matching funds committed or in-hand: 25 percent of requested FA in-hand and 50 percent of requested FA firmly committed. Matching funds in-hand (received), or firm commitments for matching funds made, on or after January 1, 2002, and before April 30, 2004, will be considered when determining matching funds eligibility. The Fund reserves the right to recapture and reprogram an award if an applicant fails to raise the required matching funds by April 30, 2004 (with documentation of such receipt received by the CDFI Fund not later than May 15, 2004), or to grant an extension of such matching funds deadline for specific applicants selected to receive FA, if the Fund deems it appropriate. For purposes of this NOFA, ''matching funds in-hand'' means that the applicant has actually received the matching funds and has documentation (such as a copy of a check) to evidence such receipt; ''firm commitment for matching funds'' means that the applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds have been committed to be disbursed to the applicant and the applicant has documentation (such as a copy of a loan agreement, promissory note or grant agreement) to evidence such firm commitment.

Funds used by an applicant as matching funds for a previous award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement. If an applicant seeks to use as matching funds monies received from an organization that was a previous awardee under the CDFI Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds.

V. Evaluation

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described in the interim regulations, this NOFA and the application. First, the Fund will determine whether the applicant has a need for capital, based on the applicant's projections of capital available and activities projected. Applicants not projecting a need for capital will not be considered. Next, the Fund will determine whether the applicant has a minimum of 25 percent of the requested FA in matching funds in-hand and 50 percent of the matching funds for the requested assistance firmly committed. If this level of matching funds is not documented as in-hand or firmly committed, the applicant will not be considered for funding. Following these determinations, the Fund will evaluate each application on a 100-point scale, comprising the four criteria categories set forth below; each applicant must obtain a minimum score in each section to be considered for funding. Numeric scores will be related to:

(1) *Market Need and Community Development Performance:* including an evaluation of:

(a) The applicant's understanding of its market context and its current and prospective customers, the extent of economic distress within the designated Investment Area(s) (including serving Hot Zones) or the extent of need within the designated Targeted Population(s), the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the applicant's products and services;

(b) The extent to which the applicant demonstrates that it will target its activities to Hot Zones and/or the Fund's Programmatic Priorities;

(c) The applicant's realistic projections for community development impact, including the extent to which the applicant will concentrate its activities on serving its Target Market, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market (including achieving the Fund's Programmatic Priorities);

(d) Product design and strategy, including an assessment of the applicant's products and services, marketing and outreach efforts, and delivery strategy (including the applicant's track record in community development and serving the target market);

(e) The extent to which the applicant will provide products that meet key community development needs (such as low-down-payment mortgage products for Low-Income homebuyers and provision of financial services to individuals previously lacking such services); and

(f) The degree to which the applicant's strategy is integral to Federal community development initiatives (for example, Empowerment Zones) particularly targeted to benefit Low-Income people or underserved communities. For any entity that has already received an award from the Fund, the applicant also will be evaluated on the extent to which it proposes to create greater community development impact than to be achieved through the prior award and its track record in meeting previous performance goals and other Assistance Agreement requirements (maximum of 40 points; minimum of 20 points required to be considered for an award);

(2) *Management and Underwriting:* including an evaluation of:

(a) The applicant's underwriting and portfolio quality;

(b) Risk mitigation strategies; and

(c) The capacity, skills and experience of the applicant's management team as appropriate to deliver the proposed products and services (maximum of 20 points; minimum of 10 points required to be considered for an award);

(3) *Financial Health:* including an evaluation of the applicant's liquidity and other elements of financial strength, including earnings, capital adequacy, and deployment of resources (maximum of 20 points; minimum of 10 points required to be considered for an award); and

(4) *Financial Sustainability and Matching Funds:* including an evaluation of:

(a) The applicant's projected financial health, including its ability to raise operating support from sources other than the Fund and its capitalization strategy (including participation in a secondary market); and

(b) Extent to which the applicant has matching funds in-hand or firmly committed, as described above. Applicants must demonstrate 100 percent of the requested FA can be matched with matching funds in-hand or fully committed in order to receive more than 15 out of 20 points in this section. Under this category, applicants

are expected to have strategies for ensuring financial viability (of both financing capital and operating funds) and reasonable amounts of matching funds in-hand, committed or likely to be raised (maximum of 20 points; minimum of 10 points required to be considered for an award).

The Fund will consider the institutional and geographic diversity of applicants in making its funding determinations.

Fund reviewers will evaluate and score each application and make recommendations for funding to the Fund's selecting official. A minimum of 50 points total, and the required minimum number of points in each section (with points allotted per evaluation criterion, as set forth above), is required for an application to be further considered for an award. As part of the substantive review process, applicants may receive a telephone interview or an on-site visit by Fund reviewers for the purpose of obtaining, clarifying, or confirming application information. During the review process, the applicant may be required to submit additional information about its application in order to assist the Fund in its final evaluation process. Such requests must be responded to within the time parameters set by the Fund.

In the case of an applicant that has previously received funding from the Fund through the Bank Enterprise Award (BEA) Program, CDFI Program or the NACTA Program, the Fund will consider, as appropriate:

(a) The applicant's level of success and extent of compliance in meeting its performance goals, financial soundness covenants (if applicable) and other requirements set forth in the assistance or award agreement(s) with the Fund, including submission of required reports on time;

(b) The benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance; and

(c) The extent and effectiveness to which the applicant has used previous assistance from the Fund.

The Fund's selecting official will make a final funding determination based on the applicant's file, reviewer scores and recommendations, and the amount of funds available. In the case of regulated CDFIs, the selecting official will take into consideration the views of the appropriate Federal banking agencies.

Each applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (*see* Notice of Award section, below) or a declination letter, if not selected for an award, which may be for reasons of application incompleteness, ineligibility or substantive issues. Any applicant that is not selected for an award due to application incompleteness or ineligibility, and that believes that such decision was made in error, may appeal said decision by notifying the Fund's Awards Manager in writing or by e-mail (at *cdfihelp@cdfi.treas.gov,* Attention: Awards Manager); such appeals must be received by the Fund within five business days of the date of the declination letter. Such appeal requests will be reviewed by the Fund's Deputy Director for Management and the Deputy Director for Policy and Programs, as appropriate, whose decision will be final. All applicants that are not selected for awards based on substantive issues, will be given the opportunity to request feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund reserves the right to change these evaluation procedures, if the Fund deems it appropriate; if said procedural changes materially affect the Fund's award decisions, the Fund will provide information regarding the procedural changes through the Fund's Web site.

VI. Notice of Award

The Fund will signify its selection of an applicant as an awardee by delivering a signed Notice of Award to the applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that an awardee and the Fund enter into an Assistance Agreement. The applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the awardee's eligibility for an award, or adversely affects the Fund's evaluation of the awardee's application, or indicates fraud or mismanagement on the part of the awardee, the Fund may, in its discretion and without advance notice to the awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, an awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the awardee is not in compliance with the terms of any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Notice of Award, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

VII. Assistance Agreement

Each applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to,

(a) The amount of the award;

(b) The type of award;

(c) The approved uses of the award;

(d) The approved Target Market to which the award must be targeted;

(e) Performance goals and measures; and

(f) reporting requirements for all awardees. Assistance Agreements under this NOFA will generally have three-year performance periods. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Assistance Agreement, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

In addition to entering into an Assistance Agreement, each awardee that receives an award either:

(a) In the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or

(b) A FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the awardee:

(i) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates;

(ii) Has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and

(iii) Has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement.

VIII. Performance Rating: PLUM

In order to better manage its portfolio of awards, the Fund is developing a

performance rating system, entitled ''PLUM,'' that will grade each CDFI according to its overall financial strength and potential for creating community development impact. Initially, PLUM will serve as the Fund's portfolio risk rating tool. PLUM will cover four areas: Performance effectiveness/community development impact; Leverage, liquidity and solvency; Underwriting (including portfolio quality); and Management. The Fund will analyze and grade several indicators under each of those areas, and aggregate them into an overall rating. The Fund is currently conducting the analyses needed to identify appropriate peer groups and target ranges for each indicator. Based on this information, the Fund will conduct targeted analyses of its portfolio, highlight ''best practices'' that can be shared with the CDFI field, and better assess CDFIs' ability to expand or stabilize underserved market areas. In order that additional data can be collected for the Fund's analyses, indicators within the above four areas have been incorporated into the FY 2003 Financial Assistance Component application.

VIIII. Reporting and Monitoring

The Fund will collect information, on at least an annual basis, from all CDFI Program awardees, including:

(a) Annual reports related to, among other matters, awardee compliance with the performance goals and measures set forth in the Assistance Agreement;

(b) Audited financial statements;

(c) Annual surveys; and

(d) Such other information that the Fund may require, including loan level data. The Fund will use such information to monitor each awardee's compliance with the requirements set forth in the Assistance Agreement. The Fund will also use such information to assess the impact of the CDFI Program.

The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to the awardee.

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge award reservation and/or compliance monitoring fees to all entities receiving CDFI Program awards. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

X. Accounting

The Fund will require each awardee that receives FA and TA under this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA received from the Fund, the awardee will be required to inform the Fund of its specific uses. This may require awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. OMB Circular A–110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations) states that, as applicable, recipients of Federal funds ''must be able to account for the receipt, obligation, and expenditure of funds.'' Further, OMB Circular A–110 states that ''Recipients shall maintain advances of Federal funds in interest bearing accounts unless (1), (2), or (3) apply:

(1) The recipient receives less than $120,000 in Federal awards per year;

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash advances; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.'' The Fund will provide guidance to awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used.

XI. Information Sessions

In connection with the Fiscal Year 2003 funding rounds of its programs, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Technical Assistance and Financial Assistance Components of the CDFI Program, the NACD Program, and the BEA Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–8401.

Catalog of Federal Domestic Assistance: 21.020.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–2340 Filed 2–3–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program, the Native American CDFI Development Program, and the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Preamble for Notices of Funds Availability (''NOFA'') inviting applications for the FY 2003 funding round of the Technical Assistance Component and Financial Assistance Component of the Community Development Financial Institutions (''CDFI'') Program, the Native American CDFI Development (''NACD'') Program, and the Bank Enterprise Award (''BEA'') Program.

SUMMARY:

I. Legislative Background

The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (the ''Act'') authorizes the Community Development Financial Institutions Fund (the ''Fund'') of the U.S. Department of the Treasury to promote economic revitalization and community development through investment in and assistance to Fund-certified community development financial institutions (''CDFIs'') through the CDFI Program. The Act also authorizes the Fund to provide incentives, through the BEA Program, to insured depository institutions for the purposes of promoting investments in or other support to CDFIs and facilitating increased lending and provision of financial and other services in economically distressed communities. In addition, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. No. 107–73) authorizes the Fund to provide technical assistance grants to promote economic development in Native American, Alaska Native and Native Hawaiian communities by building the capacity of

CDFIs that serve Native American, Alaska Native and Native Hawaiian populations. Further, Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000, as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. No. 106–554, December 21, 2000), established the New Markets Tax Credit (''NMTC'') Program which will provide an incentive to investors in the form of a tax credit over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities.

II. The CDFI Fund's Programs: A Continuum of Capital, Investment and Incentive Opportunities

Credit and investment capital are essential ingredients for developing affordable housing, promoting homeownership, starting or expanding businesses, meeting unmet market needs, and stimulating economic growth. Access to financial services is critical to helping bring more Americans into the economic mainstream. Provision of counseling and technical assistance is needed for Americans to effectively use the nation's financial system and avoid ''predatory'' financial products.

Through the CDFI Program, the BEA Program and the NMTC Program, the Fund supports financial institutions around the country that are specifically dedicated to financing and supporting community and economic development activities. This strategy builds strong institutions that make loans and investments and provide financial services in markets (including economically distressed investment areas and disadvantaged targeted populations) whose needs for loans, investments, and financial services have not been fully met by traditional financial institutions, particularly in the areas of promoting homeownership, developing affordable housing, and stimulating small business development, as well as providing financial services to those that have not previously accessed financial institutions. The Fund's programs are designed to address the unique capitalization and/or technical capacity needs of CDFIs and other community development entities, so that they may better meet the needs of their particular target markets through loans, investments, financial services and other related activities.

Pursuant to the Act, in 2001, the Fund completed and published the Native American Lending Study (''the Study''), which identifies significant barriers to lending and investment in Native American, Alaska Native and Native Hawaiian communities and strategies for overcoming those barriers. One of the barriers identified by the Study is the small number of CDFIs and other financial institutions in Native American, Alaska Native and Native Hawaiian communities. Since CDFIs are important tools for developing self-sustaining economies in many underserved communities, the Fund seeks to assist Native American, Alaska Native and Native Hawaiian communities to create and develop CDFIs that serve such communities.

In Fiscal Year 2003, the components of the CDFI Program, the NACD Program, the New Markets Tax Credit (''NMTC'') Program, and the BEA Program (each described below), together constitute a continuum of programmatic and investment alternatives to support financial institutions in their efforts to provide capital and financial services to underserved communities. These program alternatives range from capacity-building and technical assistance grants to emerging entities, to financial investments to capitalize CDFIs, to community development investment incentives for insured depository institutions, to Federal tax credit incentives for community development investors.

(1) *Technical Assistance Component (CDFI Program):* Through the Technical Assistance Component of the CDFI Program, the Fund provides technical assistance (''TA'') grants to CDFIs, and entities proposing to become CDFIs, in order to build their capacity to better address the community development and capital access needs of their particular target markets including, but not limited to, entities specifically serving or proposing to serve Native American, Alaska Native and/or Native Hawaiian communities. The FY 2003 and 2004 NOFA for the Technical Assistance Component is published in this issue of the **Federal Register**.

(2) *Native American CDFI Development Program:* Through the NACD Program, the Fund may provide TA grants to entities in order to create CDFIs designed to address the community development and capital access needs of Native American, Alaska Native and/or Native Hawaiian communities. The FY 2003 and 2004 NOFA for the NACD Program is published in this issue of the **Federal Register**. Interested parties should be aware that implementation of the FY 2003/04 NOFA for the NACD Program is contingent on the appropriation of funds for the purposes enumerated in the NOFA; as of the date of this NOFA, said appropriation is pending with Congress. The Fund will issue a notice on its Web site, at *http://www.cdfifund.gov,* at such time that the Fund has the authority to implement the FY 2003/04 NOFA for the NACD Program.

(3) *Financial Assistance Component (CDFI Program):* Through the Financial Assistance Component of the CDFI Program the Fund makes financial investments in, and provides TA grants to, CDFIs that have comprehensive business plans for creating demonstrable community development impact through the deployment of capital within their respective target markets and CDFIs that demonstrate the ability to effectively leverage private sector sources of capital. The FY 2003 NOFA for the Financial Assistance Component is published in this issue of the **Federal Register**.

(4) *New Markets Tax Credit Program:* Through the NMTC Program, the Fund provides an incentive to investors in the form of a tax credit over seven years, which is expected to stimulate investment in private capital that, in turn, will facilitate economic and community development in low-income communities. The calendar year 2003 Notice of Allocation Availability for the NMTC Program will be published in the **Federal Register** at a later date.

(5) *Bank Enterprise Award Program:* Through the BEA Program, the Fund provides financial incentives to insured depository institutions for the purpose of promoting investments in, or other support to, CDFIs and facilitating increased lending and provision of financial and other services in economically distressed communities. The FY 2003 NOFA for the BEA Program is published in this issue of the **Federal Register**.

The revised interim rule for the CDFI Program (12 CFR 1805) and the revised interim rule for the BEA Program (12 CFR 1806) are also published in this issue of the **Federal Register**. Please refer to the program regulations for an in-depth understanding of the respective programs.

The following table provides a brief summary of certain aspects found in each NOFA for the Fund's components or programs for FY 2003 and is intended to offer guidance to potential applicants as to which components or programs they might be eligible to apply. Please refer to each individual NOFA for specific application, eligibility, and evaluation information for the particular component or program for FY 2003.

Component or program	Purpose; types and amounts of assistance available	Eligible applicants	Application deadlines
Technical Assistance Component (CDFI Program).	TA grants to build capacity to share target markets; up to $50,000 per award; up to $100,000 per award for entities principally serving or proposing to serve Native American, Alaska Native, or Native Hawaiian communities.	CDFIs and other entities proposing to become CDFIs; except those that have been previously selected to receive in aggregate over $250,000 in TA or FA from the Fund.	Applications will be accepted and evaluated on a first-come, first-reviewed basis, beginning with the date of this NOFA, through May 31, 2004 (subject to FY 2004 funding availability).
Native American CDFI Development (''NACD'') Program.	TA grants to build capacity to create CDFIs to serve target markets; up to $100,000 per award.	Entities that are not, or will not become certified CDFIs but instead plan to create CDFIs to principally serve Native American, Alaska Native and/or Native Hawaiian communities.	Applications will be accepted and evaluated on a first-come, first-reviewed basis, beginning with the date of this NOFA, through May 31, 2004 (subject to FY 2003 and 2004 funding availability).
Financial Assistance Component (CDFI Program).	To (i) address community development finance needs in ''Hot Zones,'' and/or (ii) increase affordable homeownership opportunities, increase homeownership opportunities for Other Targeted Populations, generate employment opportunities, and/or expand the availability of financial services to people who have not previously had a banking relationship with a financial institution. FA investments (grants, loans, equity investments, secondary capital accounts, deposits, credit union shares) and TA grants; up to $1,000,000 per award for Category I CDFIs and up to $2,000,000 per award for Category II CDFIs.	*Category I* includes CDFIs that have capitalization needs up to and including $1,000,000 and total assets as of December 31, 2002 that range up to $250 million (for insured depository institutions and depository institution holding companies), up to $25 million (for insured credit unions), or up to $15 million for other CDFIs; *Category II* includes CDFIs with assets above those ranges and/or that can effectively deploy funding in an amount in excess of $1,000,000, either to leverage greater private sector resources in support of their lending and investing activities (through funding a loan loss reserve or credit enhancement), or to develop and effectively provide innovative financial products and services that address the capital needs of particularly underserved markets.	March 10, 2003.
Bank Enterprise Award (''BEA'') Program.	Grants	FDIC insured depository institutions.	July 17, 2003 for six month assessment period and February 25, 2004 for twelve month assessment period.
New Markets Tax Credit (''NMTC'') Program.	Federal tax credits for investors ...	Community Development Entities, certified by the Fund.	To be determined.

An applicant may only apply for an award through one of the CDFI Program Components or the NACD Program, with the sole exception of a certified CDFI that applies for funds through the NACD Program in collaboration with a Native American Partner (such a CDFI may also apply for the CDFI Program, provided that the applications seek funding for different activities). While an applicant may receive only one award through the CDFI Program, an applicant, its Subsidiaries or Affiliates may apply for and receive both a tax credit allocation through the NMTC Program and an award through the CDFI Program or the NACD Program.

III. Hot Zones and Programmatic Priorities

Through the FY 2003 NOFA for the Financial Assistance Component of the CDFI Program, the Fund intends to target its resources and provide financial assistance awards to CDFIs that will use award proceeds to:

(a) Serve *Hot Zones,* meaning geographic areas designated by the Fund as having greater levels of economic distress, and/or

(b) Achieve the Fund's FY 2003 *Programmatic Priorities,* which are:

(i) To increase homeownership opportunities that are affordable to Low-Income households, and

(ii) To increase homeownership opportunities for Other Targeted Populations (as said term is defined in the FY 2003 NOFA for the Financial Assistance Component).

For purposes of the FY 2003 NOFA for the Financial Assistance Component, the Hot Zones (and the Fund's methodology for Hot Zone designation) are identified through the Fund's Web site at *http://www.cdfifundhelp.gov* and the Financial Assistance Component application.

IV. Funding Availability

Subject to funding availability, and provided that the Fund deems it appropriate, the Fund expects to make funds available for Fiscal Year 2003 awards (and FY 2004 awards, as the case may be) as follows:

(a) *Technical Assistance Component:* approximately $13 million (including approximately $3 million for entities

serving or proposing to serve Native American, Alaska Native, or Native Hawaiian communities) for FY 2003 awards, and approximately $4.5 million for FY 2004 awards, in appropriated funds;

(b) *NACD Program:* approximately $3 million for FY 2003 awards, and approximately $1.5 million for FY 2004 awards, in appropriated funds;

(c) *Financial Assistance Component:* approximately $30 million for FY 203 awards, in appropriated funds; and

(d) *BEA Program:* approximately $17 million for FY 2003 awards, and approximately $8 million for FY 2004 awards, in appropriated funds.

The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under any particular NOFA, to other Fund programs, particularly if the Fund determines that the number of awards made under a particular NOFA(s) is/are fewer than projected based on the applications received. The Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award if the Fund deems it appropriate. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to any of the NOFAs.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for the CDFI Program or the NACD Program, contact the Fund's Program Operations Manager. If you have any questions about the programmatic requirements for the BEA Program, contact the Fund's Depository Institutions Manager. If you have any questions about the programmatic requirements for the NMTC Program, contact the Fund's Financial Equity Manager. If you wish to request an application or have questions regarding administrative requirements for any of the Fund's programs, contact the Fund's Awards Manager. The Program Operations Manager, the Depository Institutions Manager, the Financial Equity Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. Allow at least one to two weeks from the date the Fund receives a request for receipt of the application. Applications and other information regarding the Fund and its programs may be accessed and/or downloaded from the Fund's Web site at *http://www.cdfifund.gov.*

Information Sessions

In connection with the Fiscal Year 2003 funding rounds of its programs, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Technical Assistance and the Financial Assistance Components of the CDFI Program, the NACD Program, and the BEA Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov.* If you do not have Internet access, you may register by calling the Fund at (202) 622–8401.

(Catalog of Federal Domestic Assistance: 21.020, 21.021)

Authority: 12 U.S.C. 1834a; 4703, 4703 note, 4704, 4706, 4707, 4713, 4717; 31 U.S.C. 321; 12 CFR part 1805; 12 CFR part 1806; 26 U.S.C. 45D.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–2341 Filed 2–3–03; 8:45 am]

BILLING CODE 4810–70–P

Federal Register

Tuesday,
February 4, 2003

Part III

Department of Labor

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582

ACTION: Notice.

EFFECTIVE DATE: The annual list of labor surplus areas is effective October 1, 2002 for all States.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year 2003.

FOR FURTHER INFORMATION CONTACT: Gay Gilbert, Division Chief, U.S. Employment Service, Employment and Training Administration, 200 Constitution Avenue, NW., Room C 4512, Washington, DC 20210. Telephone: (202) 693–3046.

SUPPLEMENTARY INFORMATION: The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. These regulations require the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is hereby publishing the annual list of labor surplus areas.

In addition, the regulations provide an exceptional circumstance criteria for classifying labor surplus areas when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

Dated: January 16, 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Eligible Labor Surplus Areas

Procedures for Classifying Labor Surplus Areas

Labor surplus areas are classified on the basis of civil jurisdictions. Civil jurisdictions are now defined as all cities with a population of at least 25,000 and all counties. Townships of 25,000 or more population are also considered as civil jurisdictions in 4 states (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico, and Rhode Island where counties have very limited or no government functions, the classifications are done for individual towns.

A civil jurisdiction is classified as a labor surplus area when its average unemployment rate was at least 20 percent above the average unemployment rate for all states (including the District of Columbia and Puerto Rico) during the previous two calendar years. During periods of high national unemployment, the 20 percent ratio is disregarded and an area is classified as a labor surplus area if its unemployment rate during the previous two calendar years was ten percent or more. This ten percent ceiling concept comes into operation whenever the two-year average unemployment rate for all states was 8.3 percent or above (*i.e.*, 8.3 percent times the 1.20 ratio equals ten percent). Similarly, a ''floor'' concept of six percent is used during periods of low national unemployment for an area to be classified as a labor surplus area. The six percent ''floor'' comes into effect whenever the average unemployment rate for all states during the two-year reference period was five percent or less.

The classification procedures also provide for the designation of labor surplus areas under exceptional circumstance criteria. The exceptional circumstance procedures permit the regular classification criteria to be waived when an area experiences a significant increase in unemployment which is not temporary or seasonal and which was not adequately reflected in the data for the two-year reference period. In order for an area to be classified as a labor surplus area under the exceptional circumstance criteria, the State Workforce Agency must submit a petition requesting such classification to the U.S. Department of Labor's Employment and Training Administration (ETA). The current conditions for exceptional circumstance classification are: an area unemployment rate of at least six percent for each of the three most recent months; projected unemployment rate of at least six percent for each of the next twelve months; and documented information that the exceptional circumstance event has already occurred. The State Workforce Agency may file petitions on behalf of civil jurisdictions, as well as Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas, as defined by the Office of Management and Budget. The addresses of State Workforce Agencies are available at the end of this description.

The Department of Labor issues the labor surplus area listing on a fiscal year basis. The listing becomes effective each October 1 and remains in effect through the following September 30. The reference period used in preparing the current list was January 2000 through December 2001. The national average unemployment rate during this period (including data for Puerto Rico) fell below five percent. As a result, the six percent ''floor'' rate explained in the second paragraph, went into effect for the Fiscal Year 2003 labor surplus area classifications. Therefore, areas are included on the current annual labor surplus area listing because their average unemployment rate during the reference period was six percent or above. During the course of the fiscal year, the annual listing is updated on the basis of exceptional circumstances petitions submitted by State Workforce Agencies and approved by the Employment and Training Administration. The Fiscal Year 2003 classifications will be in effect from October 1, 2002, through September 30, 2003.

State Workforce Agencies

Alabama	Department of Industrial Relations, 649 Monroe St., Montgomery 36130.
Alaska	Department of Labor & Workforce Development, PO Box 25509, Juneau, 99802.
Arizona	Arizona Department of Economic Security, PO Box 6123, Phoenix 85005.
Arkansas	Employment Security Department, Department of Labor, PO Box 2981, Little Rock 72203.
California	Employment Development Department, 800 Capitol Mall, Sacramento 95814.
Colorado	Department Of Labor and Employment, 1515 Arapahoe Street, Denver 80233–2117.
Connecticut	Connecticut Labor Dept., Office of Workforce Competitiveness, 805 Brook Street, Building #4, Rocky Hill CT 06067.
Delaware	Delaware Department of Labor, Division of Employment & Training, 4425 North Market Street, Wilmington, 19802.
District of Columbia	Department of Employment Services, 609 H Street, NE Washington, DC 20002.
Florida	Agency for Workforce Innovation, Atkins Building, 1320 Executive Center Drive, Tallahassee 32399–0667.

Georgia	Georgia Department of Labor, 148 International Blvd, NE, Atlanta 30303.
Guam	Department of Labor, Government of Guam, PO Box 23548 GMF, Agana 96921.
Hawaii	Department of Labor and Industrial Relations, 830 Punchbowl St., Honolulu 96813.
Idaho	Department of Labor, 317 Main St., PO Box 35, Boise 83735.
Illinois	Department of Employment Security, 401 South State St., Chicago 60605–1289.
Indiana	Department of Employment and Training Services, 10 North Senate Ave., Indianapolis 46204.
Iowa	Iowa Workforce Development, 1000 Grand Ave., Des Moines 50319.
Kansas	Dept of Human Resources, Division of Employment, 401 Topeka Ave., Topeka 66612.
Kentucky	Department of Employment Services, 275 East Main St., Frankfort 40621.
Louisiana	Department of Labor, PO Box 94094, Baton Rouge 70804–9094.
Maine	Department of Labor, Bureau of Employment Services, 55 State Street Station House, Augusta 04330–0055.
Maryland	Department of Economic and Employment Development, 1100 N. Eutaw St., Baltimore 21201.
Massachusetts	Division of Employment and Training, 19 Stanford St., Charles F. Hurley Bldg., Boston, 02114.
Michigan	Department of Career Development, Employment Service Agency, Victor Office Center, 201 N. Washington Square, 5th Floor, Lansing 48913.
Minnesota	Department of Economic Security, 390 North Robert St., St. Paul 55101.
Mississippi	Employment Security Commission, 1520 W. Capital St., PO Box 1699, Jackson 39215.
Missouri	Department of Labor & Industrial Relations, 3315 West Truman Boulevard, PO Box 504, Jefferson City 65102.
Montana	Dept. of Labor & Industry, Employment Security Division of Montana, PO Box 1728, Helena 59624.
Nebraska	Dept. of Labor, Div of Employment, 550 South 16th St., PO Box 94600, State House Station, Lincoln 68509.
Nevada	Nevada Department of Employment, Training and Rehabilitation; 500 East 3rd St., Carson City 89713.
New Hampshire	Department of Employment Security, 32 S. Main St., Room 204, Concord 03301.
New Jersey	Department of Labor, John Fitch Plaza, Trenton 08625.
New Mexico	Department of Labor, 401 Broadway, NE., PO Box 1928, Albuquerque 87103.
New York	Department of Labor, State Campus, Building 12, Albany 12240.
North Carolina	Employment Security Commission of North Carolina, 700 Wade Ave., PO Box 25903, Raleigh 27611.
North Dakota	Job Service North Dakota, 1000 E. Divide Ave., PO Box 5507, Bismarck, 58506–5507.
Ohio	Bureau of Employment Services, 145 South Front St., PO Box 1618, Columbus 43216.
Oklahoma	Employment Security Commission, 200 Will Rogers Memorial Office Bldg., Oklahoma City 73105.
Oregon	Employment Department, Dept of Human Resources, 875 Union St., N.E., Salem 97311.
Pennsylvania	Department of Labor & Industry, 1720 Labor & Industry Bldg. Harrisburg 17121.
Puerto Rico	Employment Services Division, Right To Employment Administration, PO Box 364452, San Juan, PR 00936.
Rhode Island	Department of Labor & Training, 1511 Pontiac Avenue, Cranston, 02920–4407.
South Carolina	Employment & Training, Employment Security Commission, PO Box 1406, Columbia 29202.
South Dakota	Department of Labor, 700 Governors Drive, Pierre 57501–2291.
Tennessee	TN Department of Labor & Workforce Development, Division of Employment Security, 500 James Robertson Parkway 12th Floor, Davy Crockett Tower, Nashville 37245–1700.
Texas	Employment Services, Texas Workforce Commission, 101 East 15th Street 440T, Austin, 78778.
Utah	Department of Workforce Services, 140 East 300 South, PO Box 45249, Salt Lake City 84111.
Vermont	Department of Employment & Training, PO Box 488, 5 Green Mountain Drive, Montpelier 05601–0488.
Virgin Islands	Department of Labor, 53A & 54B Kronprindsen Gade, Charlotte Amalie, 00802.
Virginia	Virginia Employment Commission, 703 East Main Street, Richmond 23219.
Washington	Employment Security Department, PO Box 9046, Olympia 98507–9046.
West Virginia	Bureau of Employment Programs, 112 California Ave., Charleston 25305–0112.
Wisconsin	Division of Workforce Solutions, Department of Workforce Development, 201 East Washington Avenue, Room A200, Madison 53703.
Wyoming	Division of Employment Resources, Department of Employment, PO Box 2760, Casper 82602.

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
ALABAMA	
ANNISTON CITY	ANNISTON CITY IN CALHOUN COUNTY
BARBOUR COUNTY	BARBOUR COUNTY
BESSEMER CITY	BESSEMER CITY IN JEFFERSON COUNTY
BIBB COUNTY	BIBB COUNTY
BULLOCK COUNTY	BULLOCK COUNTY
BUTLER COUNTY	BUTLER COUNTY
CHOCTAW COUNTY	CHOCTAW COUNTY
CLARKE COUNTY	CLARKE COUNTY
CLAY COUNTY	CLAY COUNTY
COFFEE COUNTY	COFFEE COUNTY
COLBERT COUNTY	COLBERT COUNTY
CONECUH COUNTY	CONECUH COUNTY
COOSA COUNTY	COOSA COUNTY
COVINGTON COUNTY	COVINGTON COUNTY
CRENSHAW COUNTY	CRENSHAW COUNTY
DALLAS COUNTY	DALLAS COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FLORENCE CITY	FLORENCE CITY IN LAUDERDALE COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
GADSDEN CITY	GADSDEN CITY IN

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
	ETOWAH COUNTY
GENEVA COUNTY	GENEVA COUNTY
GREENE COUNTY	GREENE COUNTY
HALE COUNTY	HALE COUNTY
HENRY COUNTY	HENRY COUNTY
JACKSON COUNTY	JACKSON COUNTY
LAMAR COUNTY	LAMAR COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LOWNDES COUNTY	LOWNDES COUNTY
MACON COUNTY	MACON COUNTY
MARION COUNTY	MARION COUNTY
MOBILE CITY	MOBILE CITY IN
	MOBILE COUNTY
MONROE COUNTY	MONROE COUNTY
PERRY COUNTY	PERRY COUNTY
PICKENS COUNTY	PICKENS COUNTY
PIKE COUNTY	PIKE COUNTY
PRICHARD CITY	PRICHARD CITY IN
	MOBILE COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
SUMTER COUNTY	SUMTER COUNTY
TALLADEGA COUNTY	TALLADEGA COUNTY
WALKER COUNTY	WALKER COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WILCOX COUNTY	WILCOX COUNTY
WINSTON COUNTY	WINSTON COUNTY
ALASKA	
ALEUTIAN ISLAND WEST CENSUS AREA	ALEUTIAN ISLAND WEST CENSUS AREA
BETHEL CENSUS AREA	BETHEL CENSUS AREA
BRISTOL BAY BOROUGH DIV	BRISTOL BAY BOROUGH DIV
DENALI BOROUGH	DENALI BOROUGH
DILLINGHAM CENSUS AREA	DILLINGHAM CENSUS AREA
FAIRBANKS CITY	FAIRBANKS CITY IN
	FAIRBANKS NORTH STAR BOROUGH
HAINES BOROUGH	HAINES BOROUGH
KENAI PENINSULA BOROUGH	KENAI PENINSULA BOROUGH
KETCHIKAN GATEWAY BOROUGH	KETCHIKAN GATEWAY BOROUGH
KODIAK ISLAND BOROUGH	KODIAK ISLAND BOROUGH
LAKE AND PENINSULA BOROUGH	LAKE AND PENINSULA BOROUGH
MATANUSKA-SUSITNA BOROUGH	MATANUSKA-SUSITNA BOROUGH
NOME CENSUS AREA	NOME CENSUS AREA
NORTH SLOPE BOROUGH	NORTH SLOPE BOROUGH
NORTHWEST ARCTIC BOROUGH	NORTHWEST ARCTIC BOROUGH
PRINCE OF WALES OUTER KETCHIKAN	PRINCE OF WALES OUTER KETCHIKAN
SKAGWAY-HOONAH-ANGOON CEN AREA	SKAGWAY-HOONAH-ANGOON CEN AREA
SOUTHEAST FAIRBANKS CENSUS AREA	SOUTHEAST FAIRBANKS CENSUS AREA
VALDEZ CORDOVA CENSUS AREA	VALDEZ CORDOVA CENSUS AREA
WADE HAMPTON CENSUS AREA	WADE HAMPTON CENSUS AREA
WRANGELL-PETERSBURG CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA
YAKUTAT BOROUGH	YAKUTAT BOROUGH
YUKON-KOYUKUK CENSUS AREA	YUKON-KOYUKUK CENSUS AREA
ARIZONA	
APACHE COUNTY	APACHE COUNTY
AVONDALE CITY	AVONDALE CITY
	MARICOPA COUNTY
BALANCE OF COCONINO COUNTY	COCONINO COUNTY LESS
	FLAGSTAFF CITY
GRAHAM COUNTY	GRAHAM COUNTY
GREENLEE COUNTY	GREENLEE COUNTY
LA PAZ COUNTY	LA PAZ COUNTY
NAVAJO COUNTY	NAVAJO COUNTY
SANTA CRUZ COUNTY	SANTA CRUZ COUNTY
YUMA CITY	YUMA CITY IN
	YUMA COUNTY
BALANCE OF YUMA COUNTY	YUMA COUNTY LESS
	YUMA CITY
ARKANSAS	
ASHLEY COUNTY	ASHLEY COUNTY
BRADLEY COUNTY	BRADLEY COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHICOT COUNTY	CHICOT COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
CLAY COUNTY	CLAY COUNTY
CLEVELAND COUNTY	CLEVELAND COUNTY
CONWAY COUNTY	CONWAY COUNTY
BALANCE OF CRITTENDEN COUNTY	CRITTENDEN COUNTY LESS WEST MEMPHIS CITY
CROSS COUNTY	CROSS COUNTY
DALLAS COUNTY	DALLAS COUNTY
DESHA COUNTY	DESHA COUNTY
DREW COUNTY	DREW COUNTY
GREENE COUNTY	GREENE COUNTY
JACKSON COUNTY	JACKSON COUNTY
LAFAYETTE COUNTY	LAFAYETTE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEE COUNTY	LEE COUNTY
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY
MONROE COUNTY	MONROE COUNTY
OUACHITA COUNTY	OUACHITA COUNTY
PERRY COUNTY	PERRY COUNTY
PHILLIPS COUNTY	PHILLIPS COUNTY
PINE BLUFF CITY	PINE BLUFF CITY JEFFERSON COUNTY
POINSETT COUNTY	POINSETT COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
SHARP COUNTY	SHARP COUNTY
ST. FRANCIS COUNTY	ST. FRANCIS COUNTY
VAN BUREN COUNTY	VAN BUREN COUNTY
WOODRUFF COUNTY	WOODRUFF COUNTY
CALIFORNIA	
ALPINE COUNTY	ALPINE COUNTRY
AZUSA CITY	AZUSA CITY IN LOS ANGELES COUNTY
BAKERSFIELD CITY	BAKERSFIELD CITY IN KERN COUNTY
BALDWIN PARK CITY	BALDWIN PARK CITY IN LOS ANGELES COUNTY
BANNING CITY	BANNING CITY IN RIVERSIDE COUNTY
BELL CITY	BELL CITY IN LOS ANGELES COUNTY
BELL GARDENS CITY	BELL GARDENS CITY IN LOS ANGELES COUNTY
BALANCE OF BUTTE COUNTY	BUTTE COUNTY LESS CHICO CITY PARADISE CITY
CALAVERAS COUNTY	CALAVERAS COUNTY
CALEXICO CITY	CALEXICO CITY IN IMPERIAL COUNTY
CERES CITY	CERES CITY IN STANISLAUS COUNTY
CHICO CITY	CHICO CITY IN BUTTE COUNTY
CLOVIS CITY	CLOVIS CITY IN FRESNO COUNTY
COLTON CITY	COLTON CITY IN SAN BERNARDINO COUNTY
COLUSA COUNTY	COLUSA COUNTY
COMPTON CITY	COMPTON CITY IN LOS ANGELES COUNTY
DEL NORTE COUNTY	DEL NORTE COUNTY
DELANO CITY	DELANO CITY IN KERN COUNTY
EL CENTRO CITY	EL CENTRO CITY IN IMPERIAL COUNTY
EL MONTE CITY	EL MONTE CITY IN LOS ANGELES COUNTY
EUREKA CITY	EUREKA CITY IN HUMBOLDT COUNTY
FRESNO CITY	FRESNO CITY IN FRESNO COUNTY
BALANCE OF FRESNO COUNTY	FRESNO COUNTY LESS CLOVIS CITY FRESNO CITY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
GLENN COUNTY	GLENN COUNTY
HANFORD CITY	HANFORD CITY IN KINGS COUNTY
HEMET CITY	HEMET CITY IN RIVERSIDE COUNTY
HOLISTER CITY	HOLISTER CITY IN SAN BENITO COUNTY
BALANCE OF HUMBOLDT COUNTY	HUMBOLDT COUNTY LESS EUREKA CITY
HUNTINGTON PARK CITY	HUNTINGTON PARK CITY IN LOS ANGELES COUNTY
BALANCE OF IMPERIAL COUNTY	IMPERIAL COUNTY LESS CALEXICO CITY EL CENTRO CITY
INDIO CITY	INDIO CITY IN RIVERSIDE COUNTY
INGLEWOOD CITY	INGLEWOOD CITY IN LOS ANGELES COUNTY
BALANCE OF KERN COUNTY	KERN COUNTY LESS BAKERSFIELD CITY DELANO CITY RIDGECREST CITY
BALANCE OF KINGS COUNTY	KINGS COUNTY LESS HANFORD CITY
LA PUENTE CITY	LA PUENTE CITY IN LOS ANGELES COUNTY
LAKE COUNTY	LAKE COUNTY
LAKE ELSINORE CITY	LAKE ELSINORE CITY IN RIVERSIDE COUNTY
LASSEN COUNTY	LASSEN COUNTY
LODI CITY	LODI CITY IN SAN JOAQUIN COUNTY
LOS ANGELES CITY	LOS ANGELES CITY IN LOS ANGELES COUNTY
LOS BANOS CITY	LOS BANOS CITY IN MERCED COUNTY
LYNWOOD CITY	LYNWOOD CITY IN LOS ANGELES COUNTY
MADERA CITY	MADERA CITY IN MADERA COUNTY
BALANCE OF MADERA COUNTY	MADERA COUNTY LESS MADERA CITY
MANTECA CITY	MANTECA CITY IN SAN JOAQUIN COUNTY
MARINA CITY	MARINA CITY IN MONTEREY COUNTY
MARIPOSA COUNTY	MARIPOSA COUNTY
MAYWOOD CITY	MAYWOOD CITY IN LOS ANGELES COUNTY
MENDOCINO COUNTY	MENDOCINO COUNTY
MERCED CITY	MERCED CITY IN MERCED COUNTY
BALANCE OF MERCED COUNTY	MERCED COUNTY LESS LOS BANOS CITY MERCED CITY
MODESTO CITY	MODESTO CITY IN STANISLAUS COUNTY
MODOC COUNTY	MODOC COUNTY
BALANCE OF MONTEREY COUNTY	MONTEREY COUNTY LESS MARINA CITY MONTEREY CITY SALINAS CITY SEASIDE CITY
OXNARD CITY	OXNARD CITY IN VENTURA COUNTY
PARAMOUNT CITY	PARAMOUNT CITY IN LOS ANGELES COUNTY
PERRIS CITY	PERRIS CITY IN RIVERSIDE COUNTY
PICO RIVERA CITY	PICO RIVERA CITY IN LOS ANGELES COUNTY
PLUMAS COUNTY	PLUMAS COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
POMONA CITY	POMONA CITY IN LOS ANGELES COUNTY
PORTERVILLE CITY	PORTERVILLE CITY IN TULARE COUNTY
REDDING CITY	REDDING CITY IN SHASTA COUNTY
ROSEMEAD CITY	ROSEMEAD CITY IN LOS ANGELES COUNTY
SALINAS CITY	SALINAS CITY IN MONTEREY COUNTY
SAN BERNARDINO CITY	SAN BERNARDINO CITY IN SAN BERNARDINO COUNTY
SAN JACINTO CITY	SAN JACINTO CITY IN RIVERSIDE COUNTY
BALANCE OF SAN JOAQUIN COUNTY	SAN JOAQUIN COUNTY LESS LODI CITY MANTECA CITY STOCKTON CITY TRACEY CITY
SAN PABLO CITY	SAN PABLO CITY IN CONTRA COSTA COUNTY
SANTA PAULA CITY	SANTA PAULA CITY IN VENTURA COUNTY
SEASIDE CITY	SEASIDE CITY IN MONTEREY COUNTY
BALANCE OF SHASTA COUNTY	SHASTA COUNTY LESS REDDING CITY
SIERRA COUNTY	SIERRA COUNTY
SISKIYOU COUNTY	SISKIYOU COUNTY
SOUTH GATE CITY	SOUTH GATE CITY IN LOS ANGELES COUNTY
BALANCE OF STANISLAUS COUNTY	STANISLAUS COUNTY LESS CERES CITY MODESTO CITY TURLOCK CITY
STOCKTON CITY	STOCKTON CITY IN SAN JOAQUIN COUNTY
BALANCE OF SUTTER COUNTY	SUTTER COUNTY LESS YUBA CITY
TEHAMA COUNTY	TEHAMA COUNTY
TRACEY CITY	TRACEY CITY IN SAN JOAQUIN COUNTY
TRINITY COUNTY	TRINITY COUNTY
TULARE CITY	TULARE CITY IN TULARE COUNTY
BALANCE OF TULARE COUNTY	TULARE COUNTY LESS PORTERVILLE CITY TULARE CITY VISALIA CITY
TURLOCK CITY	TURLOCK CITY IN STANISLAUS COUNTY
VICTORVILLE CITY	VICTORVILLE CITY IN SAN BERNARDINO COUNTY
VISALIA CITY	VISALIA CITY IN TULARE COUNTY
WATSONVILLE CITY	WATSONVILLE CITY IN SANTA CRUZ COUNTY
YUBA CITY	YUBA CITY IN SUTTER COUNTY
YUBA COUNTY	YUBA COUNTY
COLORADO	
CONEJOS COUNTY	CONEJOS COUNTY
COSTILLA COUNTY	COSTILLA COUNTY
DOLORES COUNTY	DOLORES COUNTY
RIO GRANDE COUNTY	RIO GRANDE COUNTY
SAGUACHE COUNTY	SAGUACHE COUNTY
SAN JUAN COUNTY	SAN JUAN COUNTY
DISTRICT OF COLUMBIA	
WASHINGTON DC CITY	WASHINGTON DC CITY IN DISTRICT OF COLUMBIA
FLORIDA	
DELRAY BEACH CITY	DELRAY BEACH CITY IN

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
	PALM BEACH COUNTY
FORT PIERCE CITY	FORT PIERCE CITY IN ST. LUCIE COUNTY
GLADES COUNTY	GLADES COUNTY
GULF COUNTY	GULF COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
HARDEE COUNTY	HARDEE COUNTY
HENDRY COUNTY	HENDRY COUNTY
HIALEAH CITY	HIALEAH CITY IN MIAMI-DADE COUNTY
HOLMES COUNTY	HOLMES COUNTY
INDIAN RIVER COUNTY	INDIAN RIVER COUNTY
LAUDERDALE LAKES CITY	LAUDERDALE LAKES CITY IN BROWARD COUNTY
MIAMI BEACH CITY	MIAMI BEACH CITY IN MIAMI-DADE COUNTY
MIAMI CITY	MIAMI CITY IN MIAMI-DADE COUNTY
NORTH MIAMI CITY	NORTH MIAMI CITY IN MIAMI-DADE COUNTY
OKEECHOBEE COUNTY	OKEECHOBEE COUNTY
PANAMA CITY	PANAMA CITY IN BAY COUNTY
PORT ST. LUCIE CITY	PORT ST. LUCIE CITY IN ST. LUCIE COUNTY
RIVIERA BEACH CITY	RIVIERA BEACH CITY IN PALM BEACH COUNTY
BALANCE OF ST. LUCIE COUNTY	ST. LUCIE COUNTY LESS FORT PIERCE CITY PORT ST. LUCIE CITY
TAYLOR COUNTY	TAYLOR COUNTY
WEST PALM BEACH CITY	WEST PALM BEACH CITY IN PALM BEACH COUNTY
GEORGIA	
ALBANY CITY	ALBANY CITY IN DOUGHERTY COUNTY
APPLING COUNTY	APPLING COUNTY
ATKINSON COUNTY	ATKINSON COUNTY
BACON COUNTY	BACON COUNTY
BURKE COUNTY	BURKE COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHATTAHOOCHEE COUNTY	CHATTAHOOCHEE COUNTY
CLAY COUNTY	CLAY COUNTY
CLINCH COUNTY	CLINCH COUNTY
COLQUITT COUNTY	COLQUITT COUNTY
CRISP COUNTY	CRISP COUNTY
DECATUR COUNTY	DECATUR COUNTY
DOOLY COUNTY	DOOLY COUNTY
EARLY COUNTY	EARLY COUNTY
ELBERT COUNTY	ELBERT COUNTY
EMANUEL COUNTY	EMANUEL COUNTY
GREENE COUNTY	GREENE COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
JEFF DAVIS COUNTY	JEFF DAVIS COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JENKINS COUNTY	JENKINS COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
LA GRANGE CITY	LA GRANGE CITY IN TROUP COUNTY
LAMAR COUNTY	LAMAR COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
MACON COUNTY	MACON COUNTY
MC DUFFIE COUNTY	MC DUFFIE COUNTY
MERIWETHER COUNTY	MERIWETHER COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
QUITMAN COUNTY	QUITMAN COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
SCREVEN COUNTY	SCREVEN COUNTY
STEWART COUNTY	STEWART COUNTY
TALBOT COUNTY	TALBOT COUNTY
TALIAFERRO COUNTY	TALIAFERRO COUNTY
TATTNALL COUNTY	TATTNALL COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
TELFAIR COUNTY	TELFAIR COUNTY
TERRELL COUNTY	TERRELL COUNTY
TOOMBS COUNTY	TOOMBS COUNTY
TREUTLEN COUNTY	TREUTLEN COUNTY
TURNER COUNTY	TURNER COUNTY
UPSON COUNTY	UPSON COUNTY
WARREN COUNTY	WARREN COUNTY
WHEELER COUNTY	WHEELER COUNTY
WILKES COUNTY	WILKES COUNTY
WORTH COUNTY	WORTH COUNTY
HAWAII	
HAWAII COUNTY	HAWAII COUNTY
KAUAI COUNTY	KAUAI COUNTY
IDAHO	
ADAMS COUNTY	ADAMS COUNTY
BENEWAH COUNTY	BENEWAH COUNTY
BOISE COUNTY	BOISE COUNTY
BONNER COUNTY	BONNER COUNTY
BOUNDARY COUNTY	BOUNDARY COUNTY
CLEARWATER COUNTY	CLEARWATER COUNTY
CUSTER COUNTY	CUSTER COUNTY
ELMORE COUNTY	ELMORE COUNTY
FREMONT COUNTY	FREMONT COUNTY
GEM COUNTY	GEM COUNTY
IDAHO COUNTY	IDAHO COUNTY
BALANCE OF KOOTENAI COUNTY	KOOTENAI COUNTY LESS COEUR D ALENE CITY
LEMHI COUNTY	LEMHI COUNTY
LEWIS COUNTY	LEWIS COUNTY
MINIDOKA COUNTY	MINIDOKA COUNTY
BALANCE OF NEZ PERCE COUNTY	NEZ PERCE COUNTY LESS LEWISTON CITY
PAYETTE COUNTY	PAYETTE COUNTY
POWER COUNTY	POWER COUNTY
SHOSHONE COUNTY	SHOSHONE COUNTY
VALLEY COUNTY	VALLEY COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
ILLINOIS	
ALEXANDER COUNTY	ALEXANDER COUNTY
ALTON CITY	ALTON CITY IN MADISON COUNTY
BELLEVILLE CITY	BELLEVILLE CITY IN ST. CLAIR COUNTY
BOONE COUNTY	BOONE COUNTY
CALUMET CITY	CALUMET CITY IN COOK COUNTY
CARPENTERSVILLE CITY	CARPENTERSVILLE CITY IN KANE COUNTY
CARROLL COUNTY	CARROLL COUNTY
CHICAGO CITY	CHICAGO CITY IN COOK COUNTY
CHICAGO HEIGHTS CITY	CHICAGO HEIGHTS CITY IN COOK COUNTY
CICERO CITY	CICERO CITY IN COOK COUNTY
CLAY COUNTY	CLAY COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
CUMBERLAND COUNTY	CUMBERLAND COUNTY
DANVILLE CITY	DANVILLE CITY IN VERMILION COUNTY
DE WITT COUNTY	DE WITT COUNTY
DECATUR CITY	DECATUR CITY IN MACON COUNTY
DOLTON VILLAGE	DOLTON VILLAGE IN COOK COUNTY
EAST ST. LOUIS CITY	EAST ST. LOUIS CITY IN ST. CLAIR COUNTY
ELGIN CITY	ELGIN CITY IN COOK COUNTY KANE COUNTY
FAYETTE COUNTY	FAYETTE COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
FRANKLIN COUNTY	FRANKLIN COUNTY
FREEPORT CITY	FREEPORT CITY IN STEPHENSON COUNTY
FULTON COUNTY	FULTON COUNTY
GALLATIN COUNTY	GALLATIN COUNTY
GRANITE CITY	GRANITE CITY IN MADISON COUNTY
GRUNDY COUNTY	GRUNDY COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
HARDIN COUNTY	HARDIN COUNTY
HARVEY CITY	HARVEY CITY IN COOK COUNTY
JASPER COUNTY	JASPER COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOLIET CITY	JOLIET CITY IN WILL COUNTY
KANKAKEE CITY	KANKAKEE CITY IN KANKAKEE COUNTY
LA SALLE COUNTY	LA SALLE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
MARION COUNTY	MARION COUNTY
MASON COUNTY	MASON COUNTY
MAYWOOD VILLAGE	MAYWOOD VILLAGE IN COOK COUNTY
MERCER COUNTY	MERCER COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NORTH CHICAGO CITY	NORTH CHICAGO CITY IN LAKE COUNTY
PERRY COUNTY	PERRY COUNTY
POPE COUNTY	POPE COUNTY
PULASKI COUNTY	PULASKI COUNTY
RICHLAND COUNTY	RICHLAND COUNTY
ROCKFORD CITY	ROCKFORD CITY IN WINNEBAGO COUNTY
ROUND LAKE BEACH VILLAGE	ROUND LAKE BEACH VILLAGE IN LAKE COUNTY
SALINE COUNTY	SALINE COUNTY
STARK COUNTY	STARK COUNTY
UNION COUNTY	UNION COUNTY
WABASH COUNTY	WABASH COUNTY
WAUKEGAN CITY	WAUKEGAN CITY IN LAKE COUNTY
WAYNE COUNTY	WAYNE COUNTY
WILLIAMSON COUNTY	WILLIAMSON COUNTY
INDIANA	
BLACKFORD COUNTY	BLACKFORD COUNTY
EAST CHICAGO CITY	EAST CHICAGO CITY IN LAKE COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FULTON COUNTY	FULTON COUNTY
GARY CITY	GARY CITY IN LAKE COUNTY
GREENE COUNTY	GREENE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
MARION CITY	MARION CITY IN GRANT COUNTY
MICHIGAN CITY	MICHIGAN CITY IN LA PORTE COUNTY
ORANGE COUNTY	ORANGE COUNTY
PERRY COUNTY	PERRY COUNTY
PULASKI COUNTY	PULASKI COUNTY
STARKE COUNTY	STARKE COUNTY
SULLIVAN COUNTY	SULLIVAN COUNTY
SWITZERLAND COUNTY	SWITZERLAND COUNTY
TERRE HAUTE CITY	TERRE HAUTE CITY IN VIGO COUNTY
IOWA	
CHICKASAW COUNTY	CHICKASAW COUNTY
KANSAS	
ALLEN COUNTY	ALLEN COUNTY
BROWN COUNTY	BROWN COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
CHEROKEE COUNTY	CHEROKEE COUNTY
DONIPHAN COUNTY	DONIPHAN COUNTY
GARDEN CITY	GARDEN CITY IN FINNEY COUNTY
GEARY COUNTY	GEARY COUNTY
KANSAS CITY KN	KANSAS CITY KN IN WYANDOTTE COUNTY
LINN COUNTY	LINN COUNTY
WOODSON COUNTY	WOODSON COUNTY
KENTUCKY	
ALLEN COUNTY	ALLEN COUNTY
BALLARD COUNTY	BALLARD COUNTY
BATH COUNTY	BATH COUNTY
BELL COUNTY	BELL COUNTY
BREATHITT COUNTY	BREATHITT COUNTY
BRECKINRIDGE COUNTY	BRECKINRIDGE COUNTY
CARTER COUNTY	CARTER COUNTY
CASEY COUNTY	CASEY COUNTY
BALANCE OF CHRISTIAN COUNTY	CHRISTIAN COUNTY LESS HOPKINSVILLE CITY
CLAY COUNTY	CLAY COUNTY
CRITTENDEN COUNTY	CRITTENDEN COUNTY
CUMBERLAND COUNTY	CUMBERLAND COUNTY
ELLIOTT COUNTY	ELLIOTT COUNTY
FLOYD COUNTY	FLOYD COUNTY
FULTON COUNTY	FULTON COUNTY
GRAVES COUNTY	GRAVES COUNTY
GRAYSON COUNTY	GRAYSON COUNTY
GREEN COUNTY	GREEN COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HARLAN COUNTY	HARLAN COUNTY
HOPKINS COUNTY	HOPKINS COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
KNOTT COUNTY	KNOTT COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEE COUNTY	LEE COUNTY
LETCHER COUNTY	LETCHER COUNTY
LEWIS COUNTY	LEWIS COUNTY
LIVINGSTON COUNTY	LIVINGSTON COUNTY
LOGAN COUNTY	LOGAN COUNTY
MAGOFFIN COUNTY	MAGOFFIN COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MARTIN COUNTY	MARTIN COUNTY
MC CREARY COUNTY	MC CREARY COUNTY
MC LEAN COUNTY	MC LEAN COUNTY
MENIFEE COUNTY	MENIFEE COUNTY
MONROE COUNTY	MONROE COUNTY
MORGAN COUNTY	MORGAN COUNTY
MUHLENBERG COUNTY	MUHLENBERG COUNTY
NELSON COUNTY	NELSON COUNTY
NICHOLAS COUNTY	NICHOLAS COUNTY
OHIO COUNTY	OHIO COUNTY
PERRY COUNTY	PERRY COUNTY
POWELL COUNTY	POWELL COUNTY
ROCKCASTLE COUNTY	ROCKCASTLE COUNTY
RUSSELL COUNTY	RUSSELL COUNTY
TAYLOR COUNTY	TAYLOR COUNTY
TODD COUNTY	TODD COUNTY
TRIMBLE COUNTY	TRIMBLE COUNTY
UNION COUNTY	UNION COUNTY
BALANCE OF WARREN COUNTY	WARREN COUNTY LESS BOWLING GREEN
WAYNE COUNTY	WAYNE COUNTY
WEBSTER COUNTY	WEBSTER COUNTY
WOLFE COUNTY	WOLFE COUNTY
LOUISIANA	
ACADIA PARISH	ACADIA PARISH
ALEXANDRIA CITY	ALEXANDRIA CITY IN RAPIDES PARISH
ALLEN PARISH	ALLEN PARISH
ASCENSION PARISH	ASCENSION PARISH

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
ASSUMPTION PARISH	ASSUMPTION PARISH
AVOYELLES PARISH	AVOYELLES PARISH
BEAUREGARD PARISH	BEAUREGARD PARISH
BIENVILLE PARISH	BIENVILLE PARISH
CALDWELL PARISH	CALDWELL PARISH
CAMERON PARISH	CAMERON PARISH
CATAHOULA PARISH	CATAHOULA PARISH
CLAIBORNE PARISH	CLAIBORNE PARISH
CONCORDIA PARISH	CONCORDIA PARISH
DE SOTO PARISH	DE SOTO PARISH
EAST CARROLL PARISH	EAST CARROLL PARISH
EAST FELICIANA PARISH	EAST FELICIANA PARISH
EVANGELINE PARISH	EVANGELINE PARISH
FRANKLIN PARISH	FRANKLIN PARISH
GRANT PARISH	GRANT PARISH
IBERVILLE PARISH	IBERVILLE PARISH
JACKSON PARISH	JACKSON PARISH
JEFFERSON DAVIS PARISH	JEFFERSON DAVIS PARISH
LA SALLE PARISH	LA SALLE PARISH
LAKE CHARLES CITY	LAKE CHARLES CITY IN CALCASIEU PARISH
LIVINGSTON PARISH	LIVINGSTON PARISH
MADISON PARISH	MADISON PARISH
MONROE CITY	MONROE CITY IN OUACHITA PARISH
MOREHOUSE PARISH	MOREHOUSE PARISH
NATCHITOCHES PARISH	NATCHITOCHES PARISH
NEW IBERIA CITY	NEW IBERIA CITY IN IBERIA PARISH
POINTE COUPEE PARISH	POINTE COUPEE PARISH
RED RIVER PARISH	RED RIVER PARISH
RICHLAND PARISH	RICHLAND PARISH
SABINE PARISH	SABINE PARISH
SHREVEPORT CITY	SHREVEPORT CITY IN BOSSIER PARISH CADDO PARISH
ST. HELENA PARISH	ST. HELENA PARISH
ST. JAMES PARISH	ST. JAMES PARISH
ST. JOHN BAPTIST PARISH	ST. JOHN BAPTIST PARISH
ST. LANDRY PARISH	ST. LANDRY PARISH
ST. MARTIN PARISH	ST. MARTIN PARISH
ST. MARY PARISH	ST. MARY PARISH
TANGIPAHOA PARISH	TANGIPAHOA PARISH
TENSAS PARISH	TENSAS PARISH
VERMILION PARISH	VERMILION PARISH
WASHINGTON PARISH	WASHINGTON PARISH
WEBSTER PARISH	WEBSTER PARISH
WEST CARROLL PARISH	WEST CARROLL PARISH
WINN PARISH	WINN PARISH
MAINE	
FRANKLIN COUNTY	FRANKLIN COUNTY
PISCATAQUIS COUNTY	PISCATAQUIS COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
MARYLAND	
ALLEGANY COUNTY	ALLEGANY COUNTY
BALTIMORE CITY	BALTIMORE CITY
DORCHESTER COUNTY	DORCHESTER COUNTY
GARRETT COUNTY	GARRETT COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
WORCESTER COUNTY	WORCESTER COUNTY
MASSACHUSETTS	
LAWRENCE CITY	LAWRENCE CITY IN ESSEX COUNTY
NEW BEDFORD CITY	NEW BEDFORD CITY IN BRISTOL COUNTY
PHILLIPSTON TOWN	PHILLIPSTON TOWN IN WORCESTER COUNTY
PROVINCETOWN TOWN	PROVINCETOWN TOWN IN BARNSTABLE COUNTY
TRURO TOWN	TRURO TOWN IN

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
	BARNSTABLE COUNTY
MICHIGAN	
ALCONA COUNTY	ALCONA COUNTY
ALPENA COUNTY	ALPENA COUNTY
ANTRIM COUNTY	ANTRIM COUNTY
ARENAC COUNTY	ARENAC COUNTY
BARAGA COUNTY	BARAGA COUNTY
BAY CITY	BAY CITY IN
	BAY COUNTY
BENZIE COUNTY	BENZIE COUNTY
BURTON CITY	BURTON CITY IN
	GENESEE COUNTY
CHEBOYGAN COUNTY	CHEBOYGAN COUNTY
CHIPPEWA COUNTY	CHIPPEWA COUNTY
CLARE COUNTY	CLARE COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
DELTA COUNTY	DELTA COUNTY
DETROIT CITY	DETROIT CITY IN
	WAYNE COUNTY
EMMET COUNTY	EMMET COUNTY
FLINT CITY	FLINT CITY IN
	GENESEE COUNTY
GLADWIN COUNTY	GLADWIN COUNTY
	GOGEBIC COUNTY
	HIGHLAND PARK CITY IN
	WAYNE COUNTY
HURON COUNTY	HURON COUNTY
IOSCO COUNTY	IOSCO COUNTY
IRON COUNTY	IRON COUNTY
JACKSON CITY	JACKSON CITY IN
	JACKSON COUNTY
KALKASKA COUNTY	KALKASKA COUNTY
KEWEENAW COUNTY	KEWEENAW COUNTY
LAKE COUNTY	LAKE COUNTY
LUCE COUNTY	LUCE COUNTY
MACKINAC COUNTY	MACKINAC COUNTY
MANISTEE COUNTY	MANISTEE COUNTY
MASON COUNTY	MASON COUNTY
MONTCALM COUNTY	MONTCALM COUNTY
MONTMORENCY COUNTY	MONTMORENCY COUNTY
MOUNT MORRIS TOWNSHIP	MOUNT MORRIS TOWNSHIP IN
	GENESEE COUNTY
MUSKEGON CITY	MUSKEGON CITY IN
	MUSKEGON COUNTY
NEWAYGO COUNTY	NEWAYGO COUNTY
OCEANA COUNTY	OCEANA COUNTY
OGEMAW COUNTY	OGEMAW COUNTY
ONTONAGON COUNTY	ONTONAGON COUNTY
OSCEOLA COUNTY	OSCEOLA COUNTY
OSCODA COUNTY	OSCODA COUNTY
PONTIAC CITY	PONTIAC CITY IN
	OAKLAND COUNTY
PORT HURON CITY	PORT HURON CITY IN
	ST. CLAIR COUNTY
PRESQUE ISLE COUNTY	PRESQUE ISLE COUNTY
ROSCOMMON COUNTY	ROSCOMMON COUNTY
SAGINAW CITY	SAGINAW CITY IN
	SAGINAW COUNTY
SANILAC COUNTY	SANILAC COUNTY
SCHOOLCRAFT COUNTY	SCHOOLCRAFT COUNTY
TUSCOLA COUNTY	TUSCOLA COUNTY
WEXFORD COUNTY	WEXFORD COUNTY
MINNESOTA	
AITKIN COUNTY	AITKIN COUNTY
BECKER COUNTY	BECKER COUNTY
CASS COUNTY	CASS COUNTY
CHIPPEWA COUNTY	CHIPPEWA COUNTY
CLEARWATER COUNTY	CLEARWATER COUNTY
GRANT COUNTY	GRANT COUNTY
ITASCA COUNTY	ITASCA COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
KANABEC COUNTY	KANABEC COUNTY
KITTSON COUNTY	KITTSON COUNTY
KOOCHICHING COUNTY	KOOCHICHING COUNTY
MAHNOMEN COUNTY	MAHNOMEN COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MEEKER COUNTY	MEEKER COUNTY
MILLE LACS COUNTY	MILLE LACS COUNTY
MORRISON COUNTY	MORRISON COUNTY
PENNINGTON COUNTY	PENNINGTON COUNTY
PINE COUNTY	PINE COUNTY
RED LAKE COUNTY	RED LAKE COUNTY
MISSISSIPPI	
ADAMS COUNTY	ADAMS COUNTY
ATTALA COUNTY	ATTALA COUNTY
BENTON COUNTY	BENTON COUNTY
BOLIVAR COUNTY	BOLIVAR COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CARROLL COUNTY	CARROLL COUNTY
CHICKASAW COUNTY	CHICKASAW COUNTY
CHOCTAW COUNTY	CHOCTAW COUNTY
CLAIBORNE COUNTY	CLAIBORNE COUNTY
CLARKE COUNTY	CLARKE COUNTY
CLAY COUNTY	CLAY COUNTY
COAHOMA COUNTY	COAHOMA COUNTY
COLUMBUS CITY	COLUMBUS CITY IN LOWNDES COUNTY
COPIAH COUNTY	COPIAH COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
GEORGE COUNTY	GEORGE COUNTY
GREENE COUNTY	GREENE COUNTY
GREENVILLE CITY	GREENVILLE CITY IN WASHINGTON COUNTY
GRENADA COUNTY	GRENADA COUNTY
HOLMES COUNTY	HOLMES COUNTY
HUMPHREYS COUNTY	HUMPHREYS COUNTY
ISSAQUENA COUNTY	ISSAQUENA COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JEFFERSON DAVIS COUNTY	JEFFERSON DAVIS COUNTY
KEMPER COUNTY	KEMPER COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEFLORE COUNTY	LEFLORE COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MERIDIAN CITY	MERIDIAN CITY IN LAUDERDALE COUNTY
MONROE COUNTY	MONROE COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NOXUBEE COUNTY	NOXUBEE COUNTY
PANOLA COUNTY	PANOLA COUNTY
PASCAGOULA CITY	PASCAGOULA CITY IN JACKSON COUNTY
PERRY COUNTY	PERRY COUNTY
PIKE COUNTY	PIKE COUNTY
QUITMAN COUNTY	QUITMAN COUNTY
SHARKEY COUNTY	SHARKEY COUNTY
STONE COUNTY	STONE COUNTY
SUNFLOWER COUNTY	SUNFLOWER COUNTY
TALLAHATCHIE COUNTY	TALLAHATCHIE COUNTY
TISHOMINGO COUNTY	TISHOMINGO COUNTY
TUNICA COUNTY	TUNICA COUNTY
WALTHALL COUNTY	WALTHALL COUNTY
BALANCE OF WASHINGTON COUNTY	WASHINGTON COUNTY LESS GREENVILLE CITY
WAYNE COUNTY	WAYNE COUNTY
WEBSTER COUNTY	WEBSTER COUNTY
WILKINSON COUNTY	WILKINSON COUNTY
WINSTON COUNTY	WINSTON COUNTY
YALOBUSHA COUNTY	YALOBUSHA COUNTY
YAZOO COUNTY	YAZOO COUNTY
MISSOURI	
BENTON COUNTY	BENTON COUNTY
BOLLINGER COUNTY	BOLLINGER COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
CARTER COUNTY	CARTER COUNTY
CLARK COUNTY	CLARK COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
DALLAS COUNTY	DALLAS COUNTY
DENT COUNTY	DENT COUNTY
DOUGLAS COUNTY	DOUGLAS COUNTY
DUNKLIN COUNTY	DUNKLIN COUNTY
HICKORY COUNTY	HICKORY COUNTY
IRON COUNTY	IRON COUNTY
LINN COUNTY	LINN COUNTY
MACON COUNTY	MACON COUNTY
MADISON COUNTY	MADISON COUNTY
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY
MONROE COUNTY	MONROE COUNTY
NEW MADRID COUNTY	NEW MADRID COUNTY
PEMISCOT COUNTY	PEMISCOT COUNTY
PULASKI COUNTY	PULASKI COUNTY
REYNOLDS COUNTY	REYNOLDS COUNTY
RIPLEY COUNTY	RIPLEY COUNTY
SHANNON COUNTY	SHANNON COUNTY
SHELBY COUNTY	SHELBY COUNTY
ST LOUIS CITY	ST LOUIS CITY
ST. FRANCOIS COUNTY	ST. FRANCOIS COUNTY
STODDARD COUNTY	STODDARD COUNTY
STONE COUNTY	STONE COUNTY
TANEY COUNTY	TANEY COUNTY
TEXAS COUNTY	TEXAS COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WAYNE COUNTY	WAYNE COUNTY
WRIGHT COUNTY	WRIGHT COUNTY
MONTANA	
ANACONDA-DEER LODGE COUNTY	ANACONDA-DEER LODGE COUNTY
BIG HORN COUNTY	BIG HORN COUNTY
BLAINE COUNTY	BLAINE COUNTY
FLATHEAD COUNTY	FLATHEAD COUNTY
GLACIER COUNTY	GLACIER COUNTY
GRANITE COUNTY	GRANITE COUNTY
LAKE COUNTY	LAKE COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
MEAGHER COUNTY	MEAGHER COUNTY
MINERAL COUNTY	MINERAL COUNTY
MUSSELSHELL COUNTY	MUSSELSHELL COUNTY
ROOSEVELT COUNTY	ROOSEVELT COUNTY
ROSEBUD COUNTY	ROSEBUD COUNTY
SANDERS COUNTY	SANDERS COUNTY
NEBRASKA	
JOHNSON COUNTY	JOHNSON COUNTY
THURSTON COUNTY	THURSTON COUNTY
NEVADA	
CHURCHILL COUNTY	CHURCHILL COUNTY
ESMERALDA COUNTY	ESMERALDA COUNTY
LANDER COUNTY	LANDER COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LYON COUNTY	LYON COUNTY
MINERAL COUNTY	MINERAL COUNTY
NORTH LAS VEGAS CITY	NORTH LAS VEGAS CITY IN CLARK COUNTY
NYE COUNTY	NYE COUNTY
NEW JERSEY	
ATLANTIC CITY	ATLANTIC CITY IN ATLANTIC COUNTY
CAMDEN CITY	CAMDEN CITY IN CAMDEN COUNTY
CAPE MAY COUNTY	CAPE MAY COUNTY
BALANCE OF CUMBERLAND COUNTY	BALANCE OF CUMBERLAND LESS MILLVILLE CITY VINELAND CITY
EAST ORANGE CITY	EAST ORANGE CITY IN ESSEX COUNTY
ELIZABETH CITY	ELIZABETH CITY IN

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
	UNION COUNTY
JERSEY CITY	JERSEY CITY IN
	HUDSON COUNTY
MILLVILLE CITY	MILLVILLE CITY IN
	CUMBERLAND COUNTY
NEW BRUNSWICK CITY	NEW BRUNSWICK CITY IN
	MIDDLESEX COUNTY
NEWARK CITY	NEWARK CITY
	ESSEX COUNTY
PASSAIC CITY	PASSAIC CITY IN
	PASSAIC COUNTY
PATERSON CITY	PATERSON CITY IN
	PASSAIC COUNTY
PERTH AMBOY CITY	PERTH AMBOY CITY IN
	MIDDLESEX COUNTY
PLAINFIELD CITY	PLAINFIELD CITY IN
	UNION COUNTY
TRENTON CITY	TRENTON CITY
	MERCER COUNTY
UNION CITY	UNION CITY IN
	HUDSON COUNTY
VINELAND CITY	VINELAND CITY IN
	CUMBERLAND COUNTY
NEW MEXICO	
CARLSBAD CITY	CARLSBAD CITY IN
	EDDY COUNTY
CATRON COUNTY	CATRON COUNTY
CIBOLA COUNTY	CIBOLA COUNTY
BALANCE OF DONA ANA COUNTY	DONA ANA COUNTY LESS
	LAS CRUCES CITY
GRANT COUNTY	GRANT COUNTY
GUADALUPE COUNTY	GUADALUPE COUNTY
HIDALGO COUNTY	HIDALGO COUNTY
LAS CRUCES CITY	LAS CRUCES CITY IN
	DONA ANA COUNTY
LUNA COUNTY	LUNA COUNTY
MC KINLEY COUNTY	MC KINLEY COUNTY
MORA COUNTY	MORA COUNTY
BALANCE OF OTERO COUNTY	OTERO COUNTY LESS
	ALAMOGORDO CITY
RIO ARRIBA COUNTY	RIO ARRIBA COUNTY
ROSWELL CITY	ROSWELL CITY
	CHAVES COUNTY
BALANCE OF SAN JUAN COUNTY	SAN JUAN COUNTY LESS
	FARMINGTON CITY
SAN MIGUEL COUNTY	SAN MIGUEL COUNTY
TAOS COUNTY	TAOS COUNTY
NEW YORK	
ALLEGANY COUNTY	ALLEGANY COUNTY
BRONX COUNTY	BRONX COUNTY
BUFFALO CITY	BUFFALO CITY
	ERIE COUNTY
CATTARAUGUS COUNTY	CATTARAUGUS COUNTY
ELMIRA CITY	ELMIRA CITY IN
	CHEMUNG COUNTY
ESSEX COUNTY	ESSEX COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
BALANCE OF JEFFERSON COUNTY	JEFFERSON COUNTY LESS
	WATERTOWN CITY
KINGS COUNTY	KINGS COUNTY
LEWIS COUNTY	LEWIS COUNTY
LOCKPORT CITY	LOCKPORT CITY IN
	NIAGARA COUNTY
NEWBURGH CITY	NEWBURGH CITY IN
	ORANGE COUNTY
NIAGARA FALLS CITY	NIAGARA FALLS CITY IN
	NIAGARA COUNTY
OSWEGO COUNTY	OSWEGO COUNTY
ROCHESTER CITY	ROCHESTER CITY
	MONROE COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
SCHUYLER COUNTY	SCHUYLER COUNTY
ST. LAWRENCE COUNTY	ST. LAWRENCE COUNTY
SYRACUSE CITY	SYRACUSE CITY IN ONONDAGA COUNTY
UTICA CITY	UTICA CITY IN ONEIDA COUNTY
WATERTOWN CITY	WATERTOWN CITY IN JEFFERSON COUNTY
NORTH CAROLINA	
ALLEGHANY COUNTY	ALLEGHANY COUNTY
ANSON COUNTY	ANSON COUNTY
ASHE COUNTY	ASHE COUNTY
BEAUFORT COUNTY	BEAUFORT COUNTY
BERTIE COUNTY	BERTIE COUNTY
BLADEN COUNTY	BLADEN COUNTY
CHEROKEE COUNTY	CHEROKEE COUNTY
CLEVELAND COUNTY	CLEVELAND COUNTY
COLUMBUS COUNTY	COLUMBUS COUNTY
BALANCE OF EDGECOMBE COUNTY	EDGECOMBE COUNTY LESS ROCKY MOUNT CITY
BALANCE OF GASTON COUNTY N.C.	GASTON COUNTY N.C. LESS GASTONIA CITY N.C. GASTON COUNTY N.C.
GASTONIA CITY	GASTONIA CITY N.C. IN
GOLDSBORO CITY	GOLDSBORO CITY IN WAYNE COUNTY
GRAHAM COUNTY	GRAHAM COUNTY
GREENVILLE CITY	GREENVILLE CITY IN PITT COUNTY
HALIFAX COUNTY	HALIFAX COUNTY
HERTFORD COUNTY	HERTFORD COUNTY
HICKORY CITY	HICKORY CITY IN BURKE COUNTY CATAWBA COUNTY
HOKE COUNTY	HOKE COUNTY
HYDE COUNTY	HYDE COUNTY
KANNAPOLIS CITY	KANNAPOLIS CITY IN CABARRUS COUNTY N.C. ROWAN COUNTY N.C.
KINSTON CITY	KINSTON CITY IN LENOIR COUNTY
MARTIN COUNTY	MARTIN COUNTY
MC DOWELL COUNTY	MC DOWELL COUNTY
MITCHELL COUNTY	MITCHELL COUNTY
MONROE CITY	MONROE CITY UNION COUNTY
NORTHAMPTON COUNTY	NORTHAMPTON COUNTY
PERSON COUNTY	PERSON COUNTY
RICHMOND COUNTY	RICHMOND COUNTY
ROBESON COUNTY	ROBESON COUNTY
ROCKINGHAM COUNTY	ROCKINGHAM COUNTY
ROCKY MOUNT CITY	ROCKY MOUNT CITY IN EDGECOMBE COUNTY NASH COUNTY
RUTHERFORD COUNTY	RUTHERFORD COUNTY
SALISBURY CITY	SALISBURY CITY IN ROWAN COUNTY N.C.
SCOTLAND COUNTY	SCOTLAND COUNTY
STANLY COUNTY	STANLY COUNTY
SWAIN COUNTY	SWAIN COUNTY
TYRRELL COUNTY	TYRRELL COUNTY
VANCE COUNTY	VANCE COUNTY
WARREN COUNTY	WARREN COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WILSON CITY	WILSON CITY IN WILSON COUNTY
YANCEY COUNTY	YANCEY COUNTY
NORTH DAKOTA	
BENSON COUNTY	BENSON COUNTY
ROLETTE COUNTY	ROLETTE COUNTY
SHERIDAN COUNTY	SHERIDAN COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
OHIO	
ADAMS COUNTY	ADAMS COUNTY
ASHTABULA COUNTY	ASHTABULA COUNTY
BROWN COUNTY	BROWN COUNTY
CANTON CITY	CANTON CITY
	STARK COUNTY
CLEVELAND CITY	CLEVELAND CITY
	CUYAHOGA COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
DAYTON CITY	DAYTON CITY IN
	MONTGOMERY COUNTY
EAST CLEVELAND CITY	EAST CLEVELAND CITY IN
	CUYAHOGA COUNTY
GALLIA COUNTY	GALLIA COUNTY
GUERNSEY COUNTY	GUERNSEY COUNTY
HOCKING COUNTY	HOCKING COUNTY
HURON COUNTY	HURON COUNTY
JACKSON COUNTY	JACKSON COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LIMA CITY	LIMA CITY IN
	ALLEN COUNTY
LORAIN CITY	LORAIN CITY IN
	LORAIN COUNTY
MANSFIELD CITY	MANSFIELD CITY IN
	RICHLAND COUNTY
MEIGS COUNTY	MEIGS COUNTY
MONROE COUNTY	MONROE COUNTY
MORGAN COUNTY	MORGAN COUNTY
NOBLE COUNTY	NOBLE COUNTY
PERRY COUNTY	PERRY COUNTY
PIKE COUNTY	PIKE COUNTY
SANDUSKY CITY	SANDUSKY CITY IN
	ERIE COUNTY
SCIOTO COUNTY	SCIOTO COUNTY
SPRINGFIELD CITY	SPRINGFIELD CITY IN
	CLARK COUNTY
VINTON COUNTY	VINTON COUNTY
WARREN CITY	WARREN CITY
	TRUMBULL COUNTY
YOUNGSTOWN CITY	YOUNGSTOWN CITY IN
	MAHONING COUNTY
ZANESVILLE CITY	ZANESVILLE CITY IN
	MUSKINGUM COUNTY
OKLAHOMA	
CHOTAW COUNTY	CHOTAW COUNTY
COAL COUNTY	COAL COUNTY
MC CURTAIN COUNTY	MC CURTAIN COUNTY
OKMULGEE COUNTY	OKMULGEE COUNTY
OTTAWA COUNTY	OTTAWA COUNTY
OREGON	
ALBANY CITY	ALBANAY CITY IN
	LINN COUNTY
BAKER COUNTY	BAKER COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY
COOS COUNTY	COOS COUNTY
CROOK COUNTY	CROOK COUNTY
CURRY COUNTY	CURRY COUNTY
BALANCE OF DESCHUTES COUNTY	DESCHUTES COUNTY LESS
	BEND CITY
DOUGLAS COUNTY	DOUGLAS COUNTY
GRANT COUNTY	GRANT COUNTY
HARNEY COUNTY	HARNEY COUNTY
HOOD RIVER COUNTY	HOOD RIVER COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOSEPHINE COUNTY	JOSEPHINE COUNTY
KLAMATH COUNTY	KLAMATH COUNTY
LAKE COUNTY	LAKE COUNTY
BALANCE OF LANE COUNTY	LANE COUNTY LESS
	EUGENE CITY
	SPRINGFIELD CITY
LINCOLN COUNTY	LINCOLN COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
BALANCE OF LINN COUNTY	LINN COUNTY LESS ALBANY CITY
MALHEUR COUNTY	MALHEUR COUNTY
MORROW COUNTY	MORROW COUNTY
SALEM CITY	SALEM CITY IN MARION COUNTY POLK COUNTY
SHERMAN COUNTY	SHERMAN COUNTY
SPRINGFIELD CITY	SPRINGFIELD CITY IN LANE COUNTY
UMATILLA COUNTY	UMATILLA COUNTY
WALLOWA COUNTY	WALLOWA COUNTY
WASCO COUNTY	WASCO COUNTY
WHEELER COUNTY	WHEELER COUNTY
PENNSYLVANIA	
ARMSTRONG COUNTY	ARMSTRONG COUNTY
BEDFORD COUNTY	BEDFORD COUNTY
BALANCE OF CAMBRIA COUNTY	CAMBRIA COUNTY LESS JOHNSTOWN CITY
CAMERON COUNT	CAMERON COUNTY
CHESTER CITY	CHESTER CITY IN DELAWARE COUNTY
CLEARFIELD COUNTY	CLEARFIELD COUNTY
CLINTON COUNTY	CLINTON COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
ELK COUNTY	ELK COUNTY
ERIE CITY	ERIE CITY IN ERIE COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FOREST COUNTY	FOREST COUNTY
GREENE COUNTY	GREENE COUNTY
HAZLETON CITY	HAZLETON COUNTY LUZERNE COUNTY
HUNTINGDON COUNTY	HUNTINGDON COUNTY
INDIANA COUNTY	INDIANA COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOHNSTOWN CITY	JOHNSTOWN CITY IN CAMBRIA COUNTY
NEW CASTLE CITY	NEW CASTLE CITY IN LAWRENCE COUNTY
PHILADELPHIA CITY	PHILADELPHIA CITY IN PHILADELPHIA COUNTY
READING CITY	READING CITY IN BERKS COUNTY
SCHUYLKILL COUNTY	SCHUYLYKILL COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
WILLIAMSPORT CITY	WILLIAMSPORT CITY IN LYCOMING COUNTY
YORK CITY	YORK CITY IN YORK COUNTY
PUERTO RICO	
ADJUNTAS MUNICIPIO	ADJUNTAS MUNICIPIO
AGUADA MUNICIPIO	AGUADA MUNICIPIO
AGUADILLA MUNICIPIO	AGUADILLA MUNICIPIO
AGUAS BUENAS MUNICIPIO	AGUAS BUENAS MUNICIPIO
AIBONITO MUNICIPIO	AIBONITO MUNICIPIO
ANASCO MUNICIPIO	ANASCO MUNICIPIO
ARECIBO MUNICIPIO	ARECIBO MUNICIPIO
ARROYO MUNICIPIO	ARROYO MUNICIPIO
BARCELONETA MUNICIPIO	BARCELONETA MUNICIPIO
BARRANQUITAS MUNICIPIO	BARRANQUITAS MUNICIPIO
BAYAMON MUNICIPIO	BAYAMON MUNICIPIO
CABO ROJO MUNICIPIO	CABO ROJO MUNICIPIO
CAGUAS MUNICIPIO	CAGUAS MUNICIPIO
CAMUY MUNICIPIO	CAMUY MUNICIPIO
CANOVANAS MUNICIPIO	CANOVANAS MUNICIPIO
CAROLINA MUNICIPIO	CAROLINA MUNICIPIO
CATANO MUNICIPIO	CATANO MUNICIPIO
CAYEY MUNICIPIO	CAYEY MUNICIPIO
CEIBA MUNICIPIO	CEIBA MUNICIPIO
CIALES MUNICIPIO	CIALES MUNICIPIO

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
CIDRA MUNICIPIO	CIDRA MUNICIPIO
COAMO MUNICIPIO	COAMO MUNICIPIO
COMERIO MUNICIPIO	COMERIO MUNICIPIO
COROZAL MUNICIPIO	COROZAL MUNICIPIO
DORADO MUNICIPIO	DORADO MUNICIPIO
FAJARDO MUNICIPIO	FAJARDO MUNICIPIO
FLORIDA MUNICIPIO	FLORIDA MUNICIPIO
GUANICA MUNICIPIO	GUANICA MUNICIPIO
GUAYAMA MUNICIPIO	GUAYAMA MUNICIPIO
GUAYANILLA MUNICIPIO	GUAYANILLA MUNICIPIO
GURABO MUNICIPIO	GURABO MUNICIPIO
HATILLO MUNICIPIO	HATILLO MUNICIPIO
HORMIGUEROS MUNICIPIO	HORMIGUEROS MUNICIPIO
HUMACAO MUNICIPIO	HUMACAO MUNICIPIO
ISABELA MUNICIPIO	ISABELA MUNICIPIO
JAYUYA MUNICIPIO	JAYUYA MUNICIPIO
JUANA DIAZ MUNICIPIO	JUANA DIAZ MUNICIPIO
JUNCOS MUNICIPIO	JUNCOS MUNICIPIO
LAJAS MUNICIPIO	LAJAS MUNICIPIO
LARES MUNICIPIO	LARES MUNICIPIO
LAS MARIAS MUNICIPIO	LAS MARIAS MUNICIPIO
LAS PIEDRAS MUNICIPIO	LAS PIEDRAS MUNICIPIO
LOIZA MUNICIPIO	LOIZA MUNICIPIO
LUQUILLO MUNICIPIO	LUQUILLO MUNICIPIO
MANATI MUNICIPIO	MANATI MUNICIPIO
MARICAO MUNICIPIO	MARICAO MUNICIPIO
MAUNABO MUNICIPIO	MAUNABO MUNICIPIO
MAYAGUEZ MUNICIPIO	MAYAGUEZ MUNICIPIO
MOCA MUNICIPIO	MOCA MUNICIPIO
MOROVIS MUNICIPIO	MOROVIS MUNICIPIO
NAGUABO MUNICIPIO	NAGUABO MUNICIPIO
NARANJITO MUNICIPIO	NARANJITO MUNICIPIO
OROCOVIS MUNICIPIO	OROCOVIS MUNICIPIO
PATILLAS MUNICIPIO	PATILLAS MUNICIPIO
PENUELAS MUNICIPIO	PENUELAS MUNICIPIO
PONCE MUNICIPIO	PONCE MUNICIPIO
QUEBRADILLAS MUNICIPIO	QUEBRADILLAS MUNICIPIO
RINCON MUNICIPIO	RINCON MUNICIPIO
RIO GRANDE MUNICIPIO	RIO GRANDE MUNICIPIO
SABANA GRANDE MUNICIPIO	SABANA GRANDE MUNICIPIO
SALINAS MUNICIPIO	SALINAS MUNICIPIO
SAN GERMAN MUNICIPIO	SAN GERMAN MUNICIPIO
SAN JUAN MUNICIPIO	SAN JUAN MUNICIPIO
SAN LORENZO MUNICIPIO	SAN LORENZO MUNICIPIO
SAN SEBASTIAN MUNICIPIO	SAN SEBASTIAN MUNICIPIO
SANTA ISABEL MUNICIPIO	SANTA ISABEL MUNICIPIO
TOA ALTA MUNICIPIO	TOA ALTA MUNICIPIO
TOA BAJA MUNICIPIO	TOA BAJA MUNICIPIO
UTUADO MUNICIPIO	UTUADO MUNICIPIO
VEGA ALTA MUNICIPIO	VEGA ALTA MUNICIPIO
VEGA BAJA MUNICIPIO	VEGA BAJA MUNICIPIO
VIEQUES MUNICIPIO	VIEQUES MUNICIPIO
VILLALBA MUNICIPIO	VILLALBA MUNICIPIO
YABUCOA MUNICIPIO	YABUCOA MUNICIPIO
YAUCO MUNICIPIO	YAUCO MUNICIPIO
RHODE ISLAND	
CENTRAL FALLS CITY	CENTRAL FALLS CITY
NEW SHOREHAM TOWN	NEW SHOREHAM TOWN
PROVIDENCE CITY	PROVIDENCE CITY
SOUTH CAROLINA	
ABBEVILLE COUNTY	ABBEVILLE COUNTY
ANDERSON CITY	ANDERSON CITY IN ANDERSON COUNTY
BARNWELL COUNTY	BARNWELL COUNTY
CHEROKEE COUNTY	CHEROKEE COUNTY
CHESTER COUNTY	CHESTER COUNTY
CHESTERFIELD COUNTY	CHESTERFIELD COUNTY
CLARENDON COUNTY	CLARENDON COUNTY
DARLINGTON COUNTY	DARLINGTON COUNTY
DILLON COUNTY	DILLON COUNTY
FAIRFIELD COUNTY	FAIRFIELD COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
FLORENCE CITY	FLORENCE CITY IN FLORENCE COUNTY
GEORGETOWN COUNTY	GEORGETOWN COUNTY
GREENWOOD COUNTY	GREENWOOD COUNTY
LEE COUNTY	LEE COUNTY
MARION COUNTY	MARION COUNTY
MARLBORO COUNTY	MARLBORO COUNTY
MC CORMICK COUNTY	MC CORMICK COUNTY
ORANGEBURG COUNTY	ORANGEBURG COUNTY
SUMTER CITY	SUMTER CITY IN SUMTER COUNTY
UNION COUNTY	UNION COUNTY
WILLIAMSBURG COUNTY	WILLIAMSBURG COUNTY
SOUTH DAKOTA	
BUFFALO COUNTY	BUFFALO COUNTY
CAMPBELL COUNTY	CAMPBELL COUNTY
CLARK COUNTY	CLARK COUNTY
CORSON COUNTY	CORSON COUNTY
DEWEY COUNTY	DEWEY COUNTY
JACKSON COUNTY	JACKSON COUNTY
MELLETTE COUNTY	MELLETTE COUNTY
SHANNON COUNTY	SHANNON COUNTY
TODD COUNTY	TODD COUNTY
ZIEBACH COUNTY	ZIEBACH COUNTY
TENNESSEE	
BENTON COUNTY	BENTON COUNTY
CAMPBELL COUNTY	CAMPBELL COUNTY
CARROLL COUNTY	CARROLL COUNTY
CLAY COUNTY	CLAY COUNTY
COCKE COUNTY	COCKE COUNTY
DECATUR COUNTY	DECATUR COUNTY
DYER COUNTY	DYER COUNTY
FENTRESS COUNTY	FENTRESS COUNTY
GIBSON COUNTY	GIBSON COUNTY
GREENE COUNTY	GREENE COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HARDEMAN COUNTY	HARDEMAN COUNTY
HAYWOOD COUNTY	HAYWOOD COUNTY
HENDERSON COUNTY	HENDERSON COUNTY
HOUSTON COUNTY	HOUSTON COUNTY
HUMPHREYS COUNTY	HUMPHREYS COUNTY
JACKSON COUNTY	JACKSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
LAUDERDALE COUNTY	LAUDERDALE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEWIS COUNTY	LEWIS COUNTY
MC MINN COUNTY	MC MINN COUNTY
MEIGS COUNTY	MEIGS COUNTY
MONROE COUNTY	MONROE COUNTY
OVERTON COUNTY	OVERTON COUNTY
PERRY COUNTY	PERRY COUNTY
PICKETT COUNTY	PICKETT COUNTY
SCOTT COUNTY	SCOTT COUNTY
SEVIER COUNTY	SEVIER COUNTY
STEWART COUNTY	STEWART COUNTY
TROUSDALE COUNTY	TROUSDALE COUNTY
UNICOI COUNTY	UNICOI COUNTY
VAN BUREN COUNTY	VAN BUREN COUNTY
WAYNE COUNTY	WAYNE COUNTY
TEXAS	
BEAUMONT CITY	BEAUMONT CITY IN JEFFERSON COUNTY
BALANCE OF BRAZORIA COUNTY	BRAZORIA COUNTY LESS LAKE JACKSON CITY PEARLAND CITY
BROOKS COUNTY	BROOKS COUNTY
BROWNSVILLE CITY	BROWNSVILLE CITY IN CAMERON COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
BALANCE OF CAMERON COUNTY	CAMERON COUNTY LESS BROWNSVILLE CITY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
	HARLINGEN CITY
COCHRAN COUNTY	COCHRAN COUNTY
CULBERSON COUNTY	CULBERSON COUNTY
DEL RIO CITY	DEL RIO CITY IN
	VAL VERDE COUNTY
DIMMIT COUNTY	DIMMIT COUNTY
DUVAL COUNTY	DUVAL COUNTY
EAGLE PASS CITY	EAGLE PASS CITY IN
	MAVERICK COUNTY
BALANCE OF ECTOR COUNTY	ECTOR COUNTY LESS
	ODESSA CITY
EDINBURG CITY	EDINBURG CITY IN
	HIDALGO COUNTY
EL PASO CITY	EL PASO CITY IN
	EL PASO COUNTY
BALANCE OF EL PASO COUNTY	EL PASO COUNTY LESS
	EL PASO CITY
	SOCORRO CITY
FLOYD COUNTY	FLOYD COUNTY
FRIO COUNTY	FRIO COUNTY
GALVESTON CITY	GALVESTON CITY IN
	GALVESTON COUNTY
BALANCE OF GALVESTON COUNTY	GALVESTON COUNTY LESS
	FRIENDSWOOD CITY
	GALVESTON CITY
	LEAGUE CITY
	TEXAS CITY
HARDIN COUNTY	HARDIN COUNTY
HARLINGEN CITY	HARLINGEN CITY IN
	CAMERON COUNTY
BALANCE OF HIDALGO COUNTY	HIDALGO COUNTY LESS
	EDINBURG CITY
	MC ALLEN CITY
	MISSION CITY
	PHARR CITY
	SAN JUAN CITY
	WESLACO CITY
JASPER COUNTY	JASPER COUNTY
JIM HOGG COUNTY	JIM HOGG COUNTY
JIM WELLS COUNTY	JIM WELLS COUNTY
KILLEEN CITY	KILLEEN CITY IN
	BELL COUNTY
KINNEY COUNTY	KINNEY COUNTY
LA SALLE COUNTY	LA SALLE COUNTY
LAMB COUNTY	LAMB COUNTY
LAREDO CITY	LAREDO CITY IN
	WEBB COUNTY
LIBERTY COUNTY	LIBERTY COUNTY
LOVING COUNTY	LOVING COUNTY
MARION COUNTY	MARION COUNTY
MATAGORDA COUNTY	MATAGORDA COUNTY
BALANCE OF MAVERICK COUNTY	MAVERICK COUNTY LESS
	EAGLE PASS CITY
MC ALLEN CITY	MC ALLEN CITY IN
	HIDALGO COUNTY
MISSION CITY	MISSION CITY IN
	HIDALGO COUNTY
MORRIS COUNTY	MORRIS COUNTY
NEWTON COUNTY	NEWTON COUNTY
BALANCE OF NUECES COUNTY	NUECES COUNTY LESS
	CORPUS CHRISTI CITY
ORANGE COUNTY	ORANGE COUNTY
PANOLA COUNTY	PANOLA COUNTY
PARIS CITY	PARIS CITY IN
	LAMAR COUNTY
PHARR CITY	PHARR CITY IN
	HIDALGO COUNTY
PORT ARTHUR CITY	PORT ARTHUR CITY IN
	JEFFERSON COUNTY
PRESIDIO COUNTY	PRESIDIO COUNTY
RED RIVER COUNTY	RED RIVER COUNTY
REEVES COUNTY	REEVES COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
SABINE COUNTY	SABINE COUNTY
SAN JUAN CITY	SAN JUAN CITY IN HIDALGO COUNTY
SAN PATRICIO COUNTY	SAN PATRICIO COUNTY
SHELBY COUNTY	SHELBY COUNTY
SOCORRO CITY	SOCORRO CITY IN EL PASO COUNTY
SOMERVELL COUNTY	SOMERVELL COUNTY
STARR COUNTY	STARR COUNTY
TEXAS CITY	TEXAS CITY IN GALVESTON COUNTY
TYLER COUNTY	TYLER COUNTY
UVALDE COUNTY	UVALDE COUNTY
WARD COUNTY	WARD COUNTY
BALANCE OF WEBB COUNTY	WEBB COUNTY LESS LAREDO CITY
WESLACO CITY	WESLACO CITY IN HIDALGO COUNTY
WILLACY COUNTY	WILLACY COUNTY
WINKLER COUNTY	WINKLER COUNTY
ZAPATA COUNTY	ZAPATA COUNTY
ZAVALA COUNTY	ZAVALA COUNTY
UTAH	
CARBON COUNTY	CARBON COUNTY
DUCHESNE	DUCHESNE COUNTY
EMERGY COUNTY	EMERGY COUNTY
GARFIELD COUNTY	GARFIELD COUNTY
GRAND COUNTY	GRAND COUNTY
OGDEN CITY	OGDEN CITY IN WEBER COUNTY
PIUTE COUNTY	PIUTEY COUNTY
SAN JUAN COUNTY	SAN JUAN COUNTY
TOOELE COUNTY	TOOELE COUNTY
VERMONT	
ESSEX	ESSEX COUNTY
KILLINGTON TOWN	KILLINGTON TOWN IN RUTLAND COUNTY
ORELANS COUNTY	ORLEANS COUNTY
VIRGINIA	
BUCHANAN COUNTY	BUCHANAN COUNTY
CARROLL COUNTY	CARROLL COUNTY
DANVILLE COUNTY	DANVILLE COUNTY DICKERSON COUNTY
GALAX CITY	GALAX CITY
GILES COUNTY	GILES COUNTY
GRAYSON COUNTY	GRAYSON COUNTY
HALIFAX COUNTY	HALIFAX COUNTY
HENRY COUNTY	HENRY COUNTY
LANCASTER COUNTY	LANCASTER COUNTY
MARTINSVILLE CITY	MARTINSVILLE CITY
NORTHUMBERLAND COUNTY	NORTHUMBERLAND COUNTY
PATRICK COUNTY	PATRICK COUNTY
PITTSYLVANIA COUNTY	PITTSYLVANIA COUNTY
PULASKI COUNTY	PULASKI COUNTY
RUSSELL COUNTY	RUSSELL COUNTY
SMYTH COUNTY	SMYTH COUNTY
WYTHE COUNTY	WYTHE COUNTY
WASHINGTON	
ADAMS COUNTY	ADAMS COUNTY
BELLINGHAM CITY	BELLINGHAM CITY WHATCOM COUNTY
BALANCE OF BENTON COUNTY	BENTON COUNTY LESS KENNEWICK CITY RICHLAND CITY
BREMERTON CITY	BREMERTON CITY IN KITSAP COUNTY
BALANCE OF CHELAN COUNTY	CHELAN COUNTY LESS WENATCHEE CITY
CLALLAM COUNTY	CLALLAHAM COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
BALANCE OF COWLITZ COUNTY	COWLITZ COUNTY LESS LONGVIEW CITY
DOUGLAS COUNTY	DOUGLAS COUNTY
EVERETT CITY	EVERETT CITY IN SNOHOMISH COUNTY
FERRY COUNTY	FERRY COUNTY
GRANT COUNTY	GRANT COUNTY
GRAYS HARBOR COUNTY	GRAYS HARBOR COUNTY
KENNEWICK CITY	KENNEWICK CITY IN BENTON COUNTY
KITTITAS COUNTY	KITTITAS COUNTY
KLICKITAT COUNTY	KLICKITAT COUNTY
LAKEWOOD CITY	LAKEWOOD CITY IN PIERCE COUNTY
LEWIS COUNTY	LEWIS COUNTY
LONGVIEW CITY	LONGVIEW CITY IN COWLITZ COUNTY
MASON COUNTY	MASON COUNTY
MOUNT VERNON CITY	MOUNT VERNON CITY IN THURSTON COUNTY
OKANOGAN COUNTY	OKANOGAN COUNTY
PACIFIC COUNTY	PACIFIC COUNTY
PASCO CITY	PASCO CITY IN FRANKLIN COUNTY
PEND OREILLE COUNTY	PEND OREILLE COUNTY
SKAGIT COUNTY	SKAGIT COUNTY
SKAMANIA COUNTY	SKAMANIA COUNTY
SPOKANE CITY	SPOKANE CITY IN SPOKANE COUNTY
STEVENS COUNTY	STEVENS COUNTY
TACOMA CITY	TACOMA CITY IN PIERCE COUNTY
VANCOUVER CITY	VANCOUVER CITY IN CLARK COUNTY
WAHKIAKUM COUNTY	WAHKIAKUM COUNTY
WALLA WALLA CITY	WALLA WALLA CITY IN WALLA WALLA COUNTY
WENATCHEE CITY	WENATCHEE CITY IN CHELAN COUNTY
BALANCE OF WHATCOM COUNTY	WHATCOM COUNTY LESS BELLINGHAM CITY
YAKIMA CITY	YAKIMA CITY IN YAKIMA COUNTY
BALANCE OF YAKIMA COUNTY	YAKIMA COUNTY LESS YAKIMA CITY
WEST VIRGINIA	
BARBOUR COUNTY	BARBOUR COUNTY
BOONE COUNTY	BOONE COUNTY
BRAXTON COUNTY	BRAXTON COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CLAY COUNTY	CLAY COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
GILMER COUNTY	GILMER COUNTY
GRANT COUNTY	GRANT COUNTY
GREENBRIER COUNTY	GREENBRIER COUNTY
JACKSON COUNTY	JACKSON COUNTY
LEWIS COUNTY	LEWIS COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LOGAN COUNTY	LOGAN COUNTY
BALANCE OF MARSHALL COUNTY	MARSHALL COUNTY LESS WHEELING CITY
MASON COUNTY	MASON COUNTY
MC DOWELL COUNTY	MC DOWELL COUNTY
MINERAL COUNTY	MINERAL COUNTY
MINGO COUNTY	MINGO COUNTY
NICHOLAS COUNTY	NICHOLAS COUNTY
PENDLETON COUNTY	PENDLETON COUNTY
PLEASANTS COUNTY	PLEASANTS COUNTY
POCAHONTAS COUNTY	POCAHONTAS COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
RITCHIE COUNTY	RITCHIE COUNTY
ROANE COUNTY	ROANE COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
SUMMERS COUNTY	SUMMERS COUNTY
TUCKER COUNTY	TUCKER COUNTY
WEBSTER COUNTY	WEBSTER COUNTY
WETZEL COUNTY	WETZEL COUNTY
WIRT COUNTY	WIRT COUNTY
WYOMING COUNTY	WYOMING COUNTY
WISCONSIN	
ASHLAND COUNTY	ASHLAND COUNTY
BAYFIELD COUNTY	BAYFIELD COUNTY
BELOIT CITY	BELOIT CITY
	ROCK COUNTY
CLARK COUNTY	CLARK COUNTY
FLORENCE COUNTY	FLORENCE COUNTY
FOREST COUNTY	FOREST COUNTY
IRON COUNTY	IRON COUNTY
JUNEAU COUNTY	JUNEAU COUNTY
LANGLADE COUNTY	LANGLADE COUNTY
MARQUETTE COUNTY	MARQUETTE COUNTY
MENOMINEE COUNTY	MENOMINEE COUNTY
MILWAUKEE CITY	MILWAUKEE CITY IN
	MILWAUKEE COUNTY
PRICE COUNTY	PRICE COUNTY
RACINE CITY	RACINE CITY IN
	RACINE COUNTY
RUSK COUNTY	RUSK COUNTY
WASHBURN COUNTY	WASHBURN COUNTY
WYOMING	
FREMONT COUNTY	FREMONT COUNTY

[FR Doc. 03–2461 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P



Federal Register

Tuesday,

February 4, 2003

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2 and 31

Federal Acquisition Regulation; General Provisions of the Cost Principles; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 31

[FAR Case 2001–034]

RIN 9000–AJ60

Federal Acquisition Regulation; General Provisions of the Cost Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the general provisions of the cost principles contained in the Federal Acquisition Regulation (FAR).

DATES: Interested parties should submit comments in writing on or before April 7, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2001–034@gsa.gov.* Please submit comments only and cite FAR case 2001–034 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano at (202) 501–1758. Please cite FAR case 2001–034.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have performed an analysis of the general provisions at FAR 31.106–2, Exceptions to general rule on allowability and allocability; FAR 31.201–1, Composition of total cost; FAR 31.201–2, Determining allowability; FAR 31.202, Direct costs; and FAR 31.203, Indirect costs, and propose the following revisions:

1. *FAR 31.106–2.* When the contractor's usual method of allocating indirect costs to a facilities contract will yield inequitable results, the current language at paragraph (b) requires a contractor to vary its usual method and make appropriate adjustments to the indirect cost pool and base. This requirement is intended to provide the special treatment needed to produce an equitable allocation of cost to applicable facilities contracts. Although FAR 31.106–2 requires appropriate adjustments to the indirect cost pool and base, this subsection does not provide sufficient detail as to how the contractor must make the adjustment.

Therefore, the Councils propose to amend this subsection to explicitly recognize the concept of special allocations for application to facilities contracts that are not subject to full Cost Accounting Standards (CAS) coverage. The CAS provide for special allocations in 48 CFR 9904.403—Allocation of Home Office Expenses in Segments (CAS 403), 48 CFR 9904.410—Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives (CAS 410), 48 CFR 9904.418—Allocation of Direct and Indirect costs (CAS 418), and 48 CFR 9904.420—Accounting for Independent Research and Development Costs and Bid and Proposal Costs (CAS 420). The proposed special allocation provisions provide the treatment that the contractor must use to produce an equitable allocation to applicable facilities contracts.

In addition, proposed language has been added to provide the specific methodology to be used when employing the concept of a special allocation. In conjunction with these changes, the Councils propose a new title, ''Special allocations,'' which is more descriptive of the revised subsection.

2. *FAR 31.201–1.* This subsection was revised to delete unnecessary language that is adequately addressed elsewhere in the FAR, CAS, or generally accepted accounting principles (GAAP).

3. *FAR 31.201–2.* The rule revises paragraph (a) to clarify that costs must meet all five requirements in order to be reimbursable by the Government.

4. *FAR 31.202.* The rule adds a definition in FAR Part 2 for direct costs that is virtually identical to the definition at 48 CFR 9904.418–30(a)(2). Consequently, language in FAR Part 31 that duplicates the language in the new definition has been removed from paragraph 31.203(a).

5. *FAR 31.203.* The proposed rule removes the reference to CAS and GAAP since the subject matter is adequately addressed in FAR 31.201–2. The rule revises paragraph (e) of 31.203 to recognize that a transition period longer or shorter than 12 months may be appropriate in special circumstances. The rule revises paragraphs (c) and (f) to include the concept of a special allocation contained in CAS 403, 410, 418, and 420, since the Councils recognize there are other special situations, in addition to Government-owned contractor-operated facilities, in which the contractor's established accounting practices may not yield an equitable allocation to a particular intermediate or final cost objective. The proposed special allocation provisions provide the treatment that the contractor must use to produce an equitable allocation in these special situations, including the specific methodology for adjusting the indirect cost pool and its applicable allocation base.

6. *Other editorial changes.* The rule makes other editorial changes, including revising the definition of ''indirect cost'' in FAR 2.101, changing the term ''distributing'' to ''allocating,'' and changing the phrase ''several cost objectives'' to ''intermediate or final cost objectives'' to be consistent with the terminology used in CAS and FAR Part 31.

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

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the general provisions relating to cost principles that are discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2 and 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–034), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the

approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2 and 31

Government procurement.

Dated: January 30, 2003.

Ralph De Stefano,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2 and 31 as set forth below:

1. The authority citation for 48 CFR parts 2 and 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101(b) by adding, in alphabetical order, the definition ''Direct cost''; and by revising the definition ''Indirect cost'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Direct cost means any cost that is identified specifically with a particular final cost objective. Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

* * * * *

Indirect cost means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Amend section 31.106–2 by revising the section heading and paragraphs (b) through (e) to read as follows:

31.106–2 Special allocations.

* * * * *

(b) When a facilities contract in relation to other cost objectives receives significantly more or less benefit from an indirect cost pool than would be reflected by an allocation of such costs using the contractor's normal methods, the contractor shall—

(1) Use a special allocation from that indirect cost pool to the facilities contract commensurate with the benefits received;

(2) Exclude the amount of the special allocation from the indirect cost pool; and

(3) Exclude the allocation base data for the facilities contract from the base used to allocate the pool.

(c) The cognizant Federal agency is responsible for determining whether the conditions necessitating a special allocation exist and negotiating the terms of an advance agreement (see 31.109) implementing an appropriate special allocation.

(d) A special allocation is appropriate for—

(1) The purchase of completed facilities (or services in connection with the facilities) from outside sources. Since such purchases do not involve the contractor's direct labor or indirect plant maintenance personnel, a special allocation is appropriate for indirect manufacturing and plant overhead costs that are primarily incurred or generated by reason of direct labor or maintenance labor operations; and

(2) Contracts providing for the installation of new facilities or the rehabilitation of existing facilities that involve the use of the contractor's plant maintenance labor, as distinguished from direct labor engaged in the production of the company's normal products. A special allocation to a facilities contract that involves the use of plant maintenance labor only should recognize that such a contract receives less benefit from such cost items as direct productive labor supervision, depreciation, and maintenance expense applicable to productive machinery and equipment, or raw material and finished goods storage costs.

(e) A special allocation is not appropriate for a facilities contract that calls for the construction, production, or rehabilitation of equipment or other items that are involved in the regular course of the contractor's business using the contractor's direct labor and manufacturing processes.

4. Amend section 31.201–1 by revising paragraph (a); and by removing the word ''which'' from paragraph (b) and adding ''that'' in its place. The revised text reads as follows:

31.201–1 Composition of total cost.

(a) The total cost, including standard costs properly adjusted for applicable variances, of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, plus any allocable cost of money pursuant to 31.205–10, less any allocable credits. In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used, including standard costs properly adjusted for applicable variances.

* * * * *

5. Amend section 31.201–2 by—

a. Revising the introductory text of paragraph (a);

b. Revising paragraph (c); and

c. Removing the word ''which'' from the last sentence of paragraph (d) and adding ''that'' in its place. The revised text reads as follows:

31.201–2 Determining allowability.

(a) A cost is allowable only when all of the following requirements are met:

* * * * *

(c) When contractor accounting practices are inconsistent with this Subpart 31.2, costs resulting from such inconsistent practices in excess of the amount that would have resulted from using practices consistent with this subpart are unallowable.

* * * * *

6. Amend section 31.202 by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

31.202 Direct costs.

(a) No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective. Direct costs of the contract shall be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(b) For reasons of practicality, the contractor may treat any direct cost of a minor dollar amount as an indirect cost if the accounting treatment—

* * * * *

7. Revise section 31.203 to read as follows:

31.203 Indirect costs.

(a) After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to intermediate or final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective.

(b) The contractor shall accumulate indirect costs by logical cost groupings with due consideration of the reasons

for incurring such costs. The contractor shall determine each grouping so as to permit use of an allocation base that is common to all cost objectives to which the grouping is to be allocated. The base selected must allocate the grouping on the basis of the benefits accruing to intermediate and final cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(c) Once an appropriate base for allocating indirect costs has been accepted, the contractor shall not fragment the base by removing individual elements. All items properly includable in an indirect cost base must bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the allocation of G&A costs, the contractor must include in the base all items that would properly be part of the cost input base, whether allowable or unallowable, and these items must bear their pro rata share of G&A costs.

(d) The method of allocating indirect costs may require revision when significant changes occur in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

(e) Separate indirect cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(f)(1) Where a particular cost objective in relation to other cost objectives receives significantly more or less benefit from an indirect cost pool than would be reflected by the allocation of such costs using the provisions in this section (*e.g.*, Government-owned contractor operated plants), the contractor shall—

(i) Use a special allocation from that indirect cost pool to the particular intermediate or final cost objective commensurate with the benefits received;

(ii) Exclude the amount of the special allocation to any such intermediate or final cost objective from the indirect cost pool; and

(iii) Exclude the particular intermediate or final cost objective's allocation base data from the base used to allocate the pool.

(2) The cognizant Federal agency is responsible for determining whether the conditions necessitating a special allocation exist and negotiating the terms of an advance agreement (see 31.109) implementing an appropriate special allocation.

(g) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for allocation to work performed in that period.

(1) For contracts subject to full or modified CAS coverage, the contractor must follow the criteria and guidance in 48 CFR 9904.406 for selecting the cost accounting periods to be used in allocating indirect costs.

(2) For contracts other than those subject to paragraph (g)(1) of this section, the base period for allocating indirect costs shall be the contractor's fiscal year used for financial reporting purposes in accordance with generally accepted accounting principles. The fiscal year will normally be 12 months, but a different period may be appropriate (*e.g.*, when a change in fiscal year occurs due to a business combination or other circumstances).

[FR Doc. 03–2581 Filed 2–3–03; 8:45 am]

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Federal Register

Tuesday,
February 4, 2003

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52
Federal Acquisition Regulation; Debriefing—Competitive Acquisition; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 2002–014]

RIN 9000–AJ59

Federal Acquisition Regulation; Debriefing—Competitive Acquisition

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 on requirements for debriefing unsuccessful offerors under competitive proposals.

DATES: Interested parties should submit comments in writing on or before April 7, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–014@gsa.gov*. Please submit comments only and cite FAR case 2002–014 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2002–014.

SUPPLEMENTARY INFORMATION:

A. Background

Sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 amended 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively, to include requirements for debriefing unsuccessful offerors under competitive proposals. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) require each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. In addition to the aforementioned minimal statutory disclosure information requirement, FAR 15.506(d) added the following required disclosure information:

1. Unit price information, if applicable, of the successful and debriefed offerors as an element of the statutory requirement to disclose the overall evaluated cost or price; and

2. Past performance information on the debriefed offeror.

Some of the requirements were incorporated into the clause at FAR 52.215–1, Instructions to Offerors—Competitive Acquisitions, but the notification for debriefings was overlooked during the drafting of the clause at 52.212–1, Instruction to Offerors—Commercial Items. The rule amends FAR 52.212–1 and 52.215–1 to implement the statutory requirement and the additional FAR past performance requirement by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

The unit price information, if applicable, on the debriefed and successful offerors was intentionally not included. As a result of recent court cases, especially *MCI WorldCom* v. *GSA*, 163 F. Supp. 2d 28, the treatment of unit prices under exemption no. 4 of the Freedom of Information Act (5 U.S.C. 552(b)(3)) is in a state of flux which may cause a revision to FAR 15.503(b)(1)(iv) to clarify the release of unit prices. The requirements are addressed in FAR 15.506(d) and FAR 12.203.

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

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily clarifies language pertaining to disclosure of information in postaward debriefings currently authorized by statute and does not change existing policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR part 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–014), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: January 30, 2003.

Ralph De Stefano,

Acting Director, Acquisition Policy Division.

Therefore, DOD, GSA, and NASA propose amending 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.212–1 by revising the date of the provision; and adding paragraph (k) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions To Offerors—Commercial Items (Date)

* * * * *

(k) *Debriefing.* If a postaward debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer;

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror;

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

3. Amend section 52.215–1 by revising the date of the provision and paragraph (f)(11) to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions To Offerors—Competitive Acquisition (Date)

* * * * *

(f) * * *

(11) If a postaward debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer;

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror;

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iv) A summary of the rationale for award;

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

* * * * *

[FR Doc. 03–2580 Filed 2–3–03; 8:45 am]

BILLING CODE 6820–EP–U



Federal Register

Tuesday,

February 4, 2003

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 119, 121 et al.

Aging Airplane Safety; Advisory Circulars, Extension of Comment Period to Notices of Availability; Interim Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 129, 135, and 183

[Dkt. No. FAA–1999–5401; Amdt. Nos. 119–6, 121–284, 129–34, 135–81, and 183–11]

RIN 2120–AE42

Aging Airplane Safety

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; extension of comment period.

SUMMARY: This action extends the comment period for the interim final rule, Aging Airplane Safety, issued on December 6, 2002. In that final rule, the FAA requires airplanes operated under Title 14, Code of Federal Regulations (14 CFR) part 121, U.S.-registered multiengine airplanes operated under 14 CFR part 129, and multiengine airplanes used in scheduled operations under 14 CFR part 135 to undergo inspections and records reviews by the Administrator or a designated representative. This is to occur after the airplane's 14th year in service and at named intervals thereafter.

This extension results from a joint request made by the Air Transport Association (ATA) and the Regional Airline Association (RAA).

DATES: This interim final rule is effective December 8, 2003. The FAA must receive comments by May 5, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–1999–5401 at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also send comments and review public dockets through the Internet at *http://dms.dot.gov.* The public docket containing comments to this interim final rule may be viewed in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the Nassif Building at the Department of Transportation.

Do not send comments you consider to be of a sensitive nature to the docket management system. Instead, send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, Airplane Maintenance Division, AFS–304, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7355; facsimile (202) 267–5115.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites anyone with an interest to take part in this rulemaking by filing written comments, data, or views. The most helpful comments reference a specific portion of the rule, 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 all comments received in the docket, including a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. 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 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Before acting on this rulemaking, we will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this interim final rule because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this interim final rule, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On December 6, 2002, the FAA issued Docket No. FAA–1999–5401, Aging Airplane Safety (67 FR 72726, December 6, 2002). Comments to that document were to be received by February 4, 2003.

By letter dated January 9, 2003, ATA and RAA asked the FAA to extend the comment period for this docket an extra three months. In their joint petition, ATA and RAA state that industry needs more time to address the undefined, complex, and far-reaching maintenance and inspection issues.

ATA and RAA also sought a one-year extension of the rule's effective and related compliance dates. To justify this extension, the petitioners cite the time needed by the FAA to review and act upon comments from industry. While the FAA strives to work with industry to ensure this rule is effectively implemented, we do not believe more time is needed. In addition, the compliance dates within this rule offer industry adequate time to prepare and carry out all necessary actions. As a result, the effective and compliance dates for this rule will remain unchanged.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by ATA and RAA for extension of the comment period to Docket No. FAA–1999–5401. The FAA finds that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action. These petitioners have a substantive interest in the interim final rule and good cause for the extension.

Therefore, the FAA has extended the comment period for Docket No. FAA–1999–5401 until May 5, 2003.

Issued in Washington, DC, January 31, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 03–2679 Filed 1–31–03; 1:58 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circulars (AC) 91–60A, 120–XX, and 91–56B; Extension of Comment Period to Notices of Availability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments; extension of comment period.

SUMMARY: This action extends the comment period for proposed advisory circulars 91–60A, 120–XX, and 91–56B. The extension is a result of a joint request received from the Air Transport Association (ATA) and the Regional Airline Association (RAA). The FAA published previous notices of availability in the **Federal Register** on December 6, 2002.

DATES: Comments must be received by May 5, 2003.

ADDRESSEES: Send all comments on the proposed ACs to: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: (202) 267–7355.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: (202) 267–7355.

SUPPLEMENTARY INFORMATION:

Comments Invited

Anyone with an interest may obtain a copy of these draft ACs by accessing the FAA's Web page at *http://www.faa.gov/avr/arm/nprm.* cfm? nav=nprm or *http://faa.gov/avr/afs/acs/ac-idx.htm.* The FAA invites interested parties to present comments on the proposed ACs. Those sending comments must specifically identify the AC to which the comments apply (*i.e.*, AC 91–60A, 120–XX, or 91–56B). Comments should be sent to the address given above. The FAA will consider all communications received by the closing date for comments before issuing the final ACs.

Discussion

By letter dated January 9, 2003, ATA and RAA asked for a 3-month extension of the comment period for the interim final rule, Aging Airplane Safety, Docket No. FAA–1999–5401. They also requested the same consideration be given to the associated ACs.

In that final rule, the FAA requires airplanes operated under Title 14, Code of Federal Regulations (14 CFR) part 121, U.S.-registered multiengine airplanes operated under 14 CFR part 129, and multiengine airplanes used in scheduled operations under 14 CFR part 135 to undergo inspections and records reviews by the Administrator or a designated representative. This is to occur after the airplane's 14th year in service and at named intervals thereafter. The three ACs cited provide the industry with valuable compliance information.

In their joint petition, ATA and RAA state that industry needs more time to address the undefined, complex, and far-reaching maintenance and inspection issues.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petition filed by ATA and RAA for extension of the comment period. The FAA finds that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action. These petitioners have a substantive interest in proposed ACs 91–60A, 120–XX, and 91–56B and have good cause for the extension.

Therefore, the FAA has extended the comment period for the referenced ACs until May 5, 2003.

Issued in Washington, DC on January 31, 2003.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 03–2680 Filed 1–31–03; 1:58 pm]

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CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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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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JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Admission and Orientation Program; removed; published 2-4-03

PERSONNEL MANAGEMENT OFFICE

Health benefits, Federal employees:

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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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Animal and Plant Health Inspection Service

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AGRICULTURE DEPARTMENT

Commodity Credit Corporation

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AGRICULTURE DEPARTMENT

Farm Service Agency

Farm marketing quotas, acreage allotments, and production adjustments:

Tobacco marketing cards, penalties, identification of marketings, and recordkeeping and reporting requirements; comments due by 2-12-03; published 1-13-03 [FR 03-00368]

AGRICULTURE DEPARTMENT

Rural Utilities Service

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COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

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Salmon and steelhead; evolutionarily significant units in California; status review updates and information request; comments due by 2-14-03; published 12-31-02 [FR 02-32953]

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HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Quarantine, inspection, and licensing:

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INTERIOR DEPARTMENT

Land Management Bureau

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INTERIOR DEPARTMENT

Fish and Wildlife Service

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TRANSPORTATION DEPARTMENT

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.J. Res. 13/P.L. 108–4

Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Jan. 31, 2003; 117 Stat. 8)

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