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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV03–993–2 FIR]

Dried Prunes Produced in California; Temporary Suspension of the Prune Reserve and the Voluntary Producer Prune Plum Diversion Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule suspending the prune reserve and the voluntary producer prune plum diversion provisions in the California Dried Prune Marketing Order (order) and the administrative rules and regulations related to volume control restrictions for a five-year period. The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (PMC). Suspension of these provisions ensures that volume control restrictions will not be implemented under the order. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or continue unchanged. In the absence of additional rulemaking to modify or terminate these provisions, they will come back into effect automatically at the end of the five-year period.

EFFECTIVE DATE: November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), both as amended, regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

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

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

This rule continues in effect the suspension for five years of all provisions in the order and administrative rules and regulations concerning the prune reserve and voluntary producer prune plum diversion. This action was unanimously recommended by the PMC. This rule will continue to ensure that reserve percentages are not established, and that a prune plum diversion program is not implemented pursuant to these provisions. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or remain unchanged.

Marketing Order Authority To Suspend

Section 993.90(a) states in part: ''The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he/she finds that such provisions do not tend to effectuate the declared policy of the act.''

Volume Regulation Provisions

Section 993.54 of the order provides authority for volume regulation through establishing salable and reserve percentages of prunes received by handlers (prune reserve). When the prune reserve is in effect, the salable percentage of the California prune crop may be sold to any market while the reserve percentage must be held by the handlers for the account of the PMC. Reserve prunes may be sold to meet either domestic or foreign trade demand or for use in outlets noncompetitive with normal outlets for salable prunes. Net proceeds from sales of reserve prunes are ultimately distributed to producers. The prune reserve is designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns.

Voluntary Prune Plum Diversion Program

Section 993.62 of the order authorizes a producer diversion program, which prune producers may use when a prune reserve is implemented. Section 993.162 of the administrative rules and regulations specifies implementing procedures. Under the producer diversion program, any prune producer may divert prune plums of his own production for eligible purposes and receive a diversion certificate from the PMC. The certificate may be submitted to any handler in lieu of reserve prunes

and the handler may apply the quantity represented by the certificate towards his reserve obligation. Participation in this program reduces a producer's expenses to convert prune plums into dried prunes that will ultimately be placed in a relatively low value prune reserve.

Background and Action Taken

The prune reserve was last implemented in 1974 and the producer diversion program was last used in 1971. These programs were controversial in the 1970's and have become increasingly so since then. Some of the independent prune handlers who are also prune producers now oppose any regulatory marketing restrictions because they want to sell all of the prunes they have produced. If additional tonnage were needed, such handlers would buy prunes from other producers to meet their market demand. In addition, if a prune reserve is implemented, it may require these handlers to contract for additional tonnage in order to meet their reserve obligation.

Recently in 2001, when the PMC recommended using supply control techniques, some of the independent handlers and producers opposed the use of these programs. Ultimately, the supply control programs were not implemented at that time. Also, some in the industry do not support the use of these supply control provisions because the industry has successfully reduced crop sizes through other means.

Through industry and USDA funded tree pull programs, the industry has removed over 18,000 acres of prune plum trees; thus reducing the annual prune production by at least 27,000 tons of prunes over the five-year suspension period.

During the five-year suspension period, the industry will have the opportunity to either recommend that these provisions be terminated through rulemaking procedures, or recommend modifications to the provisions to make them more acceptable to all segments of the industry. In the interim, the suspension of these provisions continues to ensure that these provisions are not implemented. In the absence of any additional action, the provisions will automatically come back into effect at the end of the five-year suspension period.

The PMC unanimously recommended this action at an April 3, 2003, meeting. This rule continues to suspend §§ 993.21d, 993.36(i), 993.54, 993.55, 993.56, 993.57, 993.58, 993.59, 993.62, and 993.65 of the order, and §§ 993.156, 993.157, 993.158, 993.159, 993.162, 993.165 and 993.172(e) of the administrative rules and regulations in effect under the order. Portions of §§ 993.33 and 993.41(b) of the order and portions of §§ 993.173(a)(6), 993.173(b)(3), and 993.173(c)(1) of the administrative rules and regulations continue to be suspended. These sections of the order and administrative rules and regulations pertain to the various requirements of the prune reserve and producer diversion programs.

Final Regulatory Flexibility Analysis

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

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

Industry Profile

There are approximately 1,205 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Eight of the 21 handlers (38 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped less than $5,000,000 worth of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

Summary of Rule Change

This rule continues to suspend for five years all provisions in the order and administrative rules and regulations concerning the prune reserve and voluntary producer diversion programs. These supply control programs have been and continue to be controversial in the industry. Furthermore, the industry has successfully reduced crop sizes through other means. Through industry and USDA funded tree pull programs, over 18,000 acres of prune plum trees have been removed, reducing production by at least 27,000 tons over the five-year suspension period.

This rule continues to ensure that the reserve and diversion volume control programs will not be implemented for the five-year suspension period. Also, during the suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or remain the same. In the absence of further rulemaking, these provisions will automatically come back into effect at the end of the suspension period. Authority to suspend these provisions of the marketing order and administrative rules and regulations is provided in § 993.90(a) of the order.

Impact of Regulation

Regarding the impact of this rule on affected entities, this action could reduce the reporting and recordkeeping burden on California prune handlers and producers and reduce some of the PMC's administrative costs. Although the prune reserve and producer diversion programs have not been implemented since the 1970s and handlers and producers have not been required to file reports pertaining to these programs, suspending these provisions continues to reduce the potential reporting burden on handlers and producers. Suspension of the provisions continues to eliminate the possibility of requiring handlers and producers to file reports associated with the programs. It also continues to reduce some of the potential PMC administrative costs of managing these programs. The PMC estimates that 21 California prune handlers are subject to these provisions and to filing reports pertaining to these programs. Also, if a producer diversion program was implemented, it is estimated that as many as 300 producers would file forms applicable to this program. If handlers filed reports under the prune reserve program, their estimated burden would be 57 hours. If growers filed reports under the diversion program, their estimated burden would be 75.58 hours. Thus, there is a potential for reducing the estimated annual burden of 132.58 hours. The benefits of this rule apply to all prune handlers and producers, regardless of their size of operation.

The forms applicable to these programs are as follows: (1) Form PMC 4.1, Reserve Prunes Held—Handler; (2) Form PMC 4.2, Prune Reserve Tonnage Sales Agreement; (3) Form PMC 4.5, Certificate of Insurance Coverage; (4) Form PMC 5.1, Notice of Proposed Intent to Store Reserve Prunes; (5) Form PMC 8.44, Request for Replacement of Draft; (6) Form PMC 8.443, Claim for Reserve Pool Proceeds; (7) Form PMC 9.1, Notification of Desire for Deferment of Reserve Withholding; (8) Form PMC 10.1, Application for Prune Plum Diversion; (9) No form number, Proof of Diversion; and (10) No form number, Notification of Report of Diversion.

It should be noted that if the PMC determines this action is having an unfavorable impact on the industry, it could meet and recommend rescinding the suspension. Also, as previously mentioned, the provisions automatically come back into effect at the end of the suspension period.

Alternatives Considered

The PMC and industry members discussed different alternatives to this action at the PMC's April 3, 2003, meeting. The PMC discussed the possibility of amending the marketing order provisions relating to reserve and producer diversion programs but decided to eliminate the prune reserve and producer diversion provisions from the order and administrative rules and regulations in a more timely fashion. During the suspension, the industry will have the opportunity to consider possible order amendments to the volume control provisions. Another alternative was to terminate the marketing order. Many on the PMC and in the industry deemed termination too drastic an action and preferred to preserve the marketing order and make necessary changes to it to meet current industry needs and to reflect current industry marketing practices.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the applicable forms being suspended by this rule were approved previously by the Office of Management and Budget and assigned OMB No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

The PMC's April 3, 2003, meeting where this issue was deliberated was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in the industry's deliberations. Like all PMC meetings, this meeting was a public meeting and all entities, both large and small, were able to express their views on these issues.

An interim final rule concerning this action was published in the **Federal Register** on July 9, 2003. The PMC's staff mailed copies of the rule to all PMC members, alternates, and prune handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period which ended on September 8, 2003. No comments were received.

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

After consideration of all relevant material presented, including the PMC's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 40754, July 9, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 993 which was published at 68 FR 40754 on July 9, 2003, is adopted as a final rule without change.

Dated: October 1, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–25312 Filed 10–6–03; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH27

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –32PT, and –24PHB Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized NUHOMS'' Horizontal Modular Storage System (Standardized NUHOMS'' System) listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 6 in Certificate of Compliance (CoC) Number 1004. Amendment No. 6 will add the NUHOMS'–24PHB cask design to the Standardized NUHOMS'' System. The NUHOMS'–24PHB cask will permit a part 72 licensee to store high burnup Babcock & Wilcox 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days/metric ton of uranium, enrichment equal to 4.5 weight percent uranium-235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask, under a general license.

DATES: The final rule is effective December 22, 2003, unless significant adverse comments are received by November 6, 2003. A significant adverse comment is one which explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH27) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail

confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on public computers located at the NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. 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.* An electronic copy of the proposed CoC and preliminary Safety Evaluation Report (SER) can be found under ADAMS Accession Nos. ML031980369 and ML031980374.

CoC No. 1004, the revised Technical Specifications (TS), the underlying SER for Amendment No. 6, and the Environmental Assessment (EA) may be viewed electronically on public computers located at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Margaret Stambaugh, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5449, e-mail mxs8@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Margaret Stambaugh, telephone (301) 415–5449, e-mail *mxs8@nrc.gov,* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65920), that approved the Standardized NUHOMS® System (NUHOMS®–24P and –52B) cask designs and added them to the list of NRC-approved cask designs in § 72.214 as CoC No. 1004. Amendments 3 and 5, respectively, added the –61BT and –32PT designs to the Standardized NUHOMS® System.

Discussion

On August 31, 2001, and as supplemented June 13, 2002, November 18, 2002, and March 7, 2003, the certificate holder (Transnuclear, Inc.) submitted an application to the NRC to amend CoC No. 1004 to add the NUHOMS®–24PHB cask design to the Standardized NUHOMS® System. The amendment will permit a part 72 licensee to use the NUHOMS®–24PHB cask design to store high burnup Babcock & Wilcox (B&W) 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days (MWd)/metric ton of uranium (MTU); enrichment equal to 4.5 weight percent U–235; maximum decay heat load of 1.3 kilowatt (kW) per assembly; and maximum heat load of 24 kW per cask, under a general license. No other changes to the Standardized NUHOMS® System were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized NUHOMS® System listing in Section 72.214 by adding Amendment 6 to CoC No. 1004. The amended technical specifications (TS) are identified in the NRC staff's SER for Amendment 6.

The amended Standardized NUHOMS® System, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1004 is revised by adding the effective date of Amendment Number 6 and adding Model Number NUHOMS®–24PHB.

Procedural Background

This rule is limited to the changes contained in Amendment 6 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on December 22, 2003. However, if the NRC receives significant adverse comments by November 6, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment which explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be

ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by November 6, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Standardized NUHOMS® System listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Standardized NUHOMS® System within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license by adding the NUHOMS®–24PHB cask design to the current cask system. The NUHOMS®–24PHB cask design will store high burnup B&W 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days/metric ton of uranium, enrichment equal to 4.5 weight percent uranium-235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask. The environmental assessment (EA) and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the EA and finding of no significant impact are available from Margaret Stambaugh, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5449, e-mail *mxs8@nrc.gov.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On December 22, 1994 (59 FR 65920), the NRC issued an amendment to part 72 that approved the Standardized NUHOMS® System (NUHOMS®–24P and –52B) by adding it to the list of NRC-approved cask designs in § 72.214. Amendments 3 and 5, respectively, added the –61BT and –32PT cask designs to the Standardized NUHOMS® System. On August 31, 2001, and as supplemented June 13, 2002, November 18, 2002, and March 7, 2003, the certificate holder (Transnuclear, Inc.), submitted an application to the NRC to amend CoC No. 1004 to add the NUHOMS®–24PHB cask design to the Standardized NUHOMS® System. The proposed amendment permits a part 72 licensee to use the NUHOMS®–24PHB cask design to store high burnup B&W 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days/metric ton of uranium, enrichment equal to 4.5 weight percent uranium-235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask, under a general license.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to the general license for each utility that decides to use the amended cask system design. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)], the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear, Inc. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED WASTE GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: November 3, 2003.

Amendment Number 6 Effective Date: December 22, 2003.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular.

Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, NUHOMS®–32PT, and NUHOMS®–24PHB.

* * * * *

Dated at Rockville, Maryland, this 11th day of September, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–25366 Filed 10–6–03; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1163]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions to reflect the annual indexing of the low reserve tranche and of the reserve requirement exemption amount for 2004. The Board is also announcing the annual indexing of the deposit cutoff level and the reduced reporting limit that will be effective beginning in September 2004. The Regulation D amendments increase the amount of net transaction accounts at each depository institution that are subject to a three percent reserve requirement in 2004 from $42.1 million to $45.4 million. This amount is known as the low reserve tranche. The Regulation D amendments also increase the amount of total reservable liabilities of each depository institution that are subject to a zero percent reserve requirement in 2004 from $6.0 million to $6.6 million. This amount is known as the reserve requirement exemption amount. The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act. The Board is also announcing increases in two other amounts, the deposit cutoff level and the reduced reporting limit, that are used to determine the frequency with which depository institutions must

submit deposit reports. The deposit cutoff level is being increased from $150.0 million in 2003 to $161.2 million in 2004, and the reduced reporting limit is being increased from $1.0 billion in 2003 to $1.074 billion in 2004. These amounts are indexed annually in order to reduce reporting burden for smaller depository institutions. Thus, beginning in September 2004, depository institutions will be required to file the FR 2900 report each week under the following conditions: if they have net transaction accounts over $6.6 million *and* have total deposits of at least $161.2 million; *or* if they have net transaction accounts of $6.6 million or less but have total deposits of at least $1.074 billion. Depository institutions will be required to file the FR 2900 report each quarter if they have net transaction accounts over $6.6 million but have total deposits of less than $161.2 million. Depository institutions will be required to file the FR 2910a report annually if they have net transaction accounts of $6.6 million or less but have total deposits greater than $6.6 million but less than $1.074 billion. Depository institutions with $6.6 million or less in total deposits are not required to file a deposit report.

DATES: Effective date: November 6, 2003.

Compliance dates: For depository institutions that report weekly, the adjusted low reserve tranche and reserve requirement exemption amount will apply to the fourteen-day reserve computation period that begins Tuesday, November 25, 2003, and the corresponding fourteen-day reserve maintenance period that begins Thursday, December 25, 2003. For depository institutions that report quarterly, the adjusted low reserve tranche and reserve requirement exemption amount will apply to the seven-day reserve computation period that begins Tuesday, December 16, 2003, and the corresponding seven-day reserve maintenance period that begins Thursday, January 15, 2004. For all depository institutions, the deposit cutoff level, the reserve requirement exemption amount, and the reduced reporting limit will be used to screen depository institutions in July of 2004 to determine reporting frequency for the twelve month period that begins in September 2004.

FOR FURTHER INFORMATION CONTACT: Heatherun Allison, Counsel (202/452–3565), Legal Division, or Gretchen Weinbach, Senior Economist (202/452–2841), Division of Monetary Affairs; for user of Telecommunications Device for the Deaf (TDD) only, contact (202/872–4984); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy. Section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)) authorizes the Board to require reports of liabilities and assets from depository institutions to enable the Board to conduct monetary policy. The Board's actions with respect to each of these provisions are discussed in turn below.

1. Reserve Requirements. Pursuant to section 19(b)(2) of the Federal Reserve Act, transaction account balances maintained at each depository institution up to a certain amount, known as the low reserve tranche, are subject to a three percent reserve requirement. Net transaction account balances over the low reserve tranche are subject to a ten percent reserve requirement. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The adjustment in the low reserve tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche is $42.1 million. Net transaction accounts of all depository institutions rose 9.9 percent (from $611.5 billion to $671.9 billion) between June 30, 2002 and June 30, 2003. Accordingly, the Board is amending Regulation D (12 CFR part 204) to increase the low reserve tranche for net transaction accounts by $3.3 million, from $42.1 million in 2003 to $45.4 million in 2004.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve requirement shall apply to total reservable liabilities at each depository institution that do not exceed a certain amount, known as the reserve requirement exemption amount. Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. Unlike the low reserve tranche, which can be adjusted upward or downward, no adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period. The percentage increase in the reserve requirement exemption amount is to be 80 percent of the increase in total reservable liabilities at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total reservable liabilities of all depository institutions increased by 12.9 percent (from $2,472.3 billion to $2,792.2 billion) between June 30, 2002, and June 30, 2003. Accordingly, the Board is amending Regulation D to increase the reserve requirement exemption amount by $0.6 million, from $6.0 million in 2003 to $6.6 million in 2004.[1]

For depository institutions that report weekly, the adjusted low reserve tranche and reserve requirement exemption amount will be effective for the fourteen-day reserve computation period beginning Tuesday, November 25, 2003, and for the corresponding fourteen-day reserve maintenance period beginning Thursday, December 25, 2003. For depository institutions that report quarterly, the adjusted low reserve tranche and reserve requirement exemption amount will be effective for the seven-day computation period beginning Tuesday, December 16, 2003, and for the corresponding seven-day reserve maintenance period beginning Thursday, January 15, 2004.

2. *Deposit Reports.* Section 11(b)(2) of the Federal Reserve Act authorizes the Board to require depository institutions to file reports of their liabilities and assets as the Board may determine to be necessary or desirable to enable it to discharge its responsibility to monitor and control monetary and credit aggregates. The Board screens depository institutions each year to determine whether they must file deposit reports and, if so, how frequently they must file them (weekly, quarterly, or annually). These deposit reporting assignments become effective each September.

The screening of depository institutions for assignment to one of the four deposit reporting categories is based on three amounts: The reserve requirement exemption amount, the deposit cutoff level, and the reduced reporting limit. The annual adjustment to the first amount, the reserve requirement exemption amount, is

[1] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

described in Section 1 above. The other two amounts, the deposit cutoff level and the reduced reporting limit, are also adjusted annually, by an amount equal to 80 percent of the increase, if any, in total deposits at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total deposits at all depository institutions increased by 9.3 percent (from $5,959.5 billion to $6,513.9 billion) between June 30, 2002 and June 30, 2003. Accordingly, the Board is adjusting the deposit cutoff level upward by $11.2 million, from its current level of $150.0 million in 2003 to $161.2 million in 2004. The Board is also adjusting the reduced reporting limit upward by $74 million, from its current level of $1.0 billion in 2003 to $1.074 billion in 2004.[2]

Beginning in September 2004, the boundaries of the four deposit reporting categories will be defined as follows. Those depository institutions with net transaction accounts over $6.6 million (the reserve requirement exemption amount) or total deposits greater than or equal to $1.074 billion (the reduced reporting limit) are subject to detailed reporting, and must file an FR 2900 report either weekly or quarterly. Of this group, those with total deposits greater than or equal to $161.2 million (the deposit cutoff level) are required to file the FR 2900 report each week, while those with total deposits less than $161.2 million are required to file the FR 2900 report each quarter. Those depository institutions with net transaction accounts less than or equal to $6.6 million (the reserve requirement exemption amount) and with total deposits less than $1.074 billion (the reduced reporting limit) are eligible for reduced reporting, and must either file a deposit report annually or not at all. Of this group, those with total deposits greater than $6.6 million (but less than $1.074 billion) are required to file the FR 2910a report annually, while those with total deposits less than or equal to $6.6 million are not required to file a deposit report. A depository institution that manipulates its reporting, however, in an attempt to qualify for less frequent reporting or to reduce its reserve requirement may be required to report the FR 2900 on a weekly basis and maintain appropriate reserve balances with its Reserve Bank, regardless of its most recent panel assignment.

[2]Consistent with Board practice, the deposit cutoff level has been rounded to the nearest $0.1 million, while the reduced reporting limit has been rounded to the nearest $1 million.

Notice and Regulatory Flexibility Act. The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The increases in the reserve requirement exemption amount, the low reserve tranche, the deposit cutoff level, and the reduced reporting limit serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary. Consequently, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to these amendments.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

The following reserve requirement ratios are prescribed for all depository institutions, banking Edge and agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts:	
$0 to $6.6 million ...	0 percent of amount.
Over $6.6 million and up to $45.4 million.	3 percent of amount.
Over $45.4 million	$1,164,000 plus 10 percent of amount over $45.4 million.
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities.	0 percent.

By order of the Board of Governors of the Federal Reserve System, October 1, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–25318 Filed 10–6–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 559, 562, and 563

[No. 2003–50]

RIN 1550–AB55

Savings Associations—Transactions With Affiliates

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: In December 2002, the Board of Governors of the Federal Reserve System (FRB) issued a final rule implementing sections 23A and 23B of the Federal Reserve Act (FRA). FRB's rule (Regulation W) combines statutory restrictions on transactions with affiliates with new and existing interpretations and exemptions. In today's final rule, the Office of Thrift Supervision (OTS) conforms its regulations on transactions with affiliates to Regulation W and implements additional restrictions imposed on savings associations under section 11(a) of the Home Owners' Loan Act (HOLA).

DATES: This final rule is effective November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Karen A. Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, or Donna Deale, Manager, (202) 906–7488, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 11(a)(1) of the HOLA (12 U.S.C. 1468(a)(1)) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c–1) to every savings association ''in the same manner and to the same extent'' as if the savings association were a member bank of the Federal Reserve System.

Section 23A of the FRA imposes three major limitations on a member bank's (and its subsidiaries') transactions with affiliates. First, section 23A limits the amount of ''covered transactions'' with any single affiliate to no more than 10 percent of the member bank's capital stock and surplus. Covered transactions with all affiliates are limited to no more than 20 percent of the member bank's capital stock and surplus. A covered transaction includes a loan or extension of credit to an affiliate, a purchase of or investment in securities issued by an affiliate, a purchase of assets from an

affiliate, the acceptance of securities issued by an affiliate as collateral security for a loan or extension of credit to any person or company, and the issuance of a guarantee, acceptance, or letter of credit on behalf of an affiliate.

Second, section 23A requires that all covered transactions between a member bank and its affiliates be on terms and conditions that are consistent with safe and sound banking practices and prohibits a member bank from purchasing low-quality assets from an affiliate. Finally, section 23A requires that a member bank's extensions of credit to affiliates and guarantees on behalf of affiliates be appropriately secured by a statutorily defined amount of collateral.

Section 23B of the FRA protects member banks by requiring that transactions between the bank (and its subsidiaries) and its affiliates occur on market terms—on terms and under circumstances that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with unaffiliated companies. Section 23B applies to covered transactions under section 23A, as well as other transactions, such as the sale of securities or other assets to an affiliate and the payment of money or the furnishing of services to an affiliate. Section 23B also prohibits certain purchases and acquisitions of securities by a member bank or its subsidiary subject to certain conditions, and prohibits certain advertisements or agreements that state or suggest that the member bank is responsible for the obligations of its affiliates.

In addition to the section 23A and 23B restrictions, section 11(a)(1) of the HOLA imposes two prohibitions on savings associations. First, a savings association may not make a loan or other extension of credit to any affiliate unless that affiliate is engaged only in activities that a bank holding company may conduct. In addition, no savings association may purchase or invest in securities issued by an affiliate, other than with respect to shares of a subsidiary. Section 11(a)(4) of the HOLA authorizes OTS to impose such additional restrictions on any transaction between a savings association and any affiliate as it determines to be necessary to protect the safety and soundness of the association.

OTS issued comprehensive rules implementing section 11(a) of the HOLA in 1991.[1] These rules, which were codified at 12 CFR 563.41 and 563.42 (2002), defined and clarified the application of sections 23A and 23B to savings associations and their subsidiaries, implemented the two prohibitions imposed under section 11(a) of the HOLA, and imposed additional restrictions and safeguards, as authorized by section 11(a)(4) of the HOLA.

FRB has statutory authority to issue regulations to administer and carry out the purposes of sections 23A and 23B of the FRA.[2] Until recently, FRB had not promulgated comprehensive regulations on this subject. Instead, FRB relied on a series of regulatory interpretations and informal staff guidance.[3] On December 12, 2002, FRB issued Regulation W, a comprehensive final rule implementing sections 23A and 23B of the FRA.[4] Regulation W incorporated many existing FRB interpretations, superseded certain outdated interpretations, exempted specific types of transactions, and implemented revisions to sections 23A and 23B contained in the Gramm-Leach-Bliley Act (GLBA).[5]

Regulation W does not, by its terms, apply to savings associations. However, because sections 23A and 23B apply to every savings association in the same manner and to the same extent as if the savings association were a member bank, OTS issued an interim final rule revising its regulations on transactions with affiliates to reflect Regulation W. 67 FR 77909 (Dec. 20, 2002). The OTS interim final rule had three goals:

- To incorporate all applicable provisions and exceptions prescribed by FRB in Regulation W;
- To provide guidance concerning the relationship between the additional prohibitions under section 11(a)(1) of the HOLA and Regulation W; and
- To set out the additional restrictions OTS imposes under section 11(a)(4) of the HOLA.

The interim rule cross referenced the substantive provisions contained in Regulation W; interpreted Regulation W to the extent necessary to apply these restrictions to savings associations; incorporated the prohibitions in section 11(a)(1) of the HOLA; and imposed various additional restrictions on savings associations under section 11(a)(4) of the HOLA.[6] The interim rule became effective April 1, 2003.

The comment period on the interim rule closed on February 18, 2003. OTS received comments from a savings association and from a representative of a savings association. Both commenters generally supported the interim rule.

II. Discussion of Comments

A. Affiliates

Regulation W defines the term ''affiliate'' to include parent companies (any company that controls the member bank); companies under common control with the member bank; companies under other types of common control; companies with interlocking directors, trustees or general partners; companies that are sponsored and advised on a contractual basis by the member bank or an affiliate; investment companies for which a member bank or any affiliate is an investment advisor; depository institution subsidiaries of a member bank; financial subsidiaries; companies held under merchant banking or insurance company investment authority; partnerships for which the member bank or an affiliate serves as general partner; subsidiaries of affiliates, and other companies that FRB deems to be an affiliate of the member bank. 12 CFR 223.2(a). This definition specifically excludes certain companies, including most subsidiaries of member banks. 12 CFR 223.2(b).

Commenters raised various issues regarding the scope of the definition of affiliate. These matters are discussed below.

1. Control

One of the fundamental concepts underlying the definition of affiliate is the concept of control. Regulation W states that control by a company or shareholder over another company means that:

- The company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other company.
- The company or shareholder controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the other company.
- The Board determines, after notice and opportunity for hearing, that the company or shareholder, directly or

[1] 56 FR 34005 (July 25, 1991).

[2] 12 U.S.C. 371c(f), 371c-1(e).

[3] FRB codified some of these interpretations at 12 CFR 250.240 through 250.250 (2002).

[4] 67 FR 76560 (Dec. 12, 2002), codified at 12 CFR part 223 (2003).

[5] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[6] The interim final rule implemented only section 11(a) of the HOLA. It did not contain every statutory or regulatory restriction on transactions between savings associations and their affiliates. For example, the rule did not address additional restrictions on transactions with affiliates that OTS may require as prompt corrective action under section 38(f)(2)(B) of the Federal Deposit Insurance Act (FDIA). 12 U.S.C. 1831o(f)(2)(B).

indirectly, exercises a controlling influence over the management or policies of the other company. 12 CFR 223.3(g)(1).

Regulation W also includes specific provisions addressing ownership or control of shares as a fiduciary, securities by a subsidiary, convertible instruments, and nonvoting equity securities. *See* 12 CFR 223.3(g)(2)–(5).

Until today, OTS's transactions with affiliates regulation included a more expansive concept of control than prescribed by the FRB in final Regulation W. Specifically, OTS's prior rule stated that a company or shareholder has control over another company if the company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other company or if the company or shareholder would be deemed to control another company under § 574.4(a) or presumed to control the company under § 574.4(b). *See* 12 CFR 563.41(b)(3) (2002). OTS also applied its own concepts of control to define a subsidiary of a savings association. 12 CFR 563.41(b)(4)(2002). This definition stated that a subsidiary of a savings association is a company that is controlled by a savings association within the meaning of part 574.

The major substantive difference between the control definitions in the prior OTS rule and final Regulation W involved the application of certain OTS rebuttable presumptions of control from part 574. For example under these control presumptions, a company will control another if it owns between 10 percent and 25 percent of any class of a company's voting stock and one or more control factors is present.[7] Regulation W does not have similar provisions.[8]

The interim final rule continued to incorporate OTS concepts of control, but requested comment on whether the OTS definition of control was appropriate. One commenter addressed this issue and urged OTS to conform its rule more closely to Regulation W.

When OTS originally promulgated its transactions with affiliates rule in 1991, FRB had promulgated no rules interpreting the meaning of control under sections 23A and 23B. In the absence of such guidance, OTS defined control for transactions with affiliates consistently with other OTS rules addressing similar concepts. At the time, part 574 represented OTS's most current and comprehensive analysis of control issues. Most savings associations had some familiarity with the control concepts in part 574.

Now that FRB has issued final rules interpreting the definition of control for sections 23A and 23B it is difficult to articulate any regulatory purpose that would be furthered by continuing to prescribe a different definition. Applying part 574 control concepts to transactions with affiliates restricts savings associations in two ways. First, it broadens the application of the section 23A and 23B restrictions for thrifts in comparison to similarly situated member banks. OTS does not believe that savings association transactions with the additional ''affiliates'' reached by the OTS control definitions raise safety and soundness concerns that necessitate treating them differently from similarly situated member banks. Indeed, the application of the OTS definition of control leads to anomalous results because a company with identical relationships to a bank and a savings association in the same bank holding company structure could have been an affiliate of the savings association under the OTS interim rule, but not an affiliate of the member bank under Regulation W.

Second, the application of the part 574 control concepts also expands the scope of the additional prohibitions imposed under section 11 of the HOLA. These prohibitions apply only to savings associations and were imposed to reflect the fact that affiliates of savings associations engage in a greater range of activities than affiliates of banks, which may expose the savings association to greater risk.[9] There is no indication that Congress was concerned about the risks posed by relationships with companies that do not meet the definition of affiliate in section 23A. Indeed, the statute appears to contemplate that OTS would use the same definitions of ''control'' and ''affiliate'' as set forth in section 23A and Regulation W.[10] Accordingly, to promote consistency and equal treatment of insured depository institutions to the maximum extent possible, OTS has revised the final rule to use Regulation W control concepts.

Certain companies will no longer be considered to be savings association affiliates under the revised definitions in the final rule. OTS may, nonetheless, continue to treat such a company as an affiliate if it has a relationship with a savings association or any affiliate of the savings association such that covered transactions by the savings association with the company may be affected by the relationship to the detriment of the savings association, or where the company presents a risk to the safety and soundness of the savings association.[11]

While certain companies will no longer be subject to the full range of restrictions and prohibitions under section 11 of the HOLA, some restrictions will continue to apply. For example, transactions between a savings association and a non-affiliate are subject to the ''market terms'' standards under section 23B, if an affiliate of the savings association has a financial interest in the non-affiliate. Thus, the market terms requirements will continue to apply to these entities.

As a related matter, OTS has identified an area where the OTS control rules may not have been as rigorous as final Regulation W. The definition of control in final Regulation W includes two provisions, not specifically addressed in section 23A, which discuss the treatment of convertible securities and nonvoting equity securities.[12] While the OTS control rules address similar concepts, the two rules are not identical.[13] As a

[7] 12 CFR 574.4(b)(1)(i). The eight control factors are described at 12 CFR 574.4(c) and include situations where an acquiror would: (1) be one of the two largest holders of any class of voting stock; (2) hold more than 25 percent of the total stockholders' equity; or (3) hold more than 35 percent of the combined debt securities and stockholders' equity.

[8] OTS's rule is more expansive in other ways. For example, under 12 CFR 574.4(b)(1)(ii) an acquiror has rebuttable control of a company if it directly or indirectly owns more than 25 percent of any class of stock and is subject to a control factor listed at 12 CFR 574.4(c). FRB does not have a similar provision.

[9] H.R. Rep. No. 101–122, at 408 (1989).

[10] Section 11(a)(3) states: Any company that would be an affiliate (as defined in sections 23A and 23B of the Federal Reserve Act [12 U.S.C. 371c and 371c-1]) of any savings association if such savings association were a member bank (as such term is defined in such Act) shall be deemed to be an affiliate of such savings association for purposes of [section 11(a)(1) of the HOLA].

[11] Final rule at paragraph (b)(3), which incorporates 12 CFR 223.2(a)(12).

[12] 12 CFR 223.3(g)(4) and (5).

[13] Specifically, Regulation W creates a rebuttable presumption that states ''[a] company or shareholder that owns or controls instruments (including options or warrants) that are convertible or exercisable, at the option of the holder or owner, into securities'' will be deemed to control the securities. 12 CFR 223.3(g)(4). Options or warrants are subject to the rebuttable presumption even though the holder may not exercise the option or warrant immediately. 67 FR 76560, at 76568. OTS's comparable provision at 12 CFR 574.2(u)(3) includes convertible securities as voting stock where the holder has ''the preponderant economic risk in the underlying voting stock.''

In addition, final Regulation W establishes a rebuttable presumption that control includes ownership or control of 25 percent or more of a company's ''equity'' capital. 12 CFR 223.3(g)(5). The comparable references to ownership of equity capital in OTS's rules either: (1) Refer to the contribution of more than 25 percent of the capital

result, certain entities could have been affiliates under Regulation W, but not affiliates under the OTS interim final rules. By adopting the FRB's definition of control, the OTS will conform its rules regarding the treatment of these securities.

Several regulations cross-reference the definition of ''affiliate'' at § 563.41. These rules include: 12 CFR 560.93(a) (loans to one borrower restrictions); 562.4 (regulatory reporting standards); and 563.142 (capital distributions). As a result of changes in this final rule, the coverage of these other rules also will change.[14]

2. Financial Subsidiaries

Regulation W defines affiliate to include a financial subsidiary of a member bank. 12 CFR 223.2(a)(8). A financial subsidiary generally is any subsidiary of a member bank that ''engages, directly or indirectly, in any activity that national banks are not permitted to engage in directly or that is conducted on terms and conditions that differ from those that govern the conduct of such activity by national banks.'' [15]

In the preamble to the interim rule, OTS addressed whether a savings association subsidiary would be considered to be financial subsidiary and, thus, an affiliate under section 23A of the FRA. OTS concluded that there is no statutory or supervisory basis for applying affiliate restrictions to savings association subsidiaries by classifying them as financial subsidiaries. The one commenter who addressed this issue agreed with OTS's conclusion regarding financial subsidiaries.

For the reasons stated in the preamble to the interim rule, the final rule at § 563.41(b) continues to state that savings association subsidiaries do not meet the statutory definition of financial subsidiary. As a result, Regulation W references to financial subsidiaries do not apply.

B. Prohibition of Loans and Extensions of Credit to Affiliates Engaged in Non-Bank Holding Company Activities

As noted above, section 11 of the HOLA applies two prohibitions to a savings association's transactions with its affiliates in addition to the section 23A and 23B limitations. Commenters raised several issues regarding OTS's implementation of section 11(a)(1)(A) of the HOLA, which prohibits a savings association from making a loan or other extension of credit to an affiliate unless the affiliate is engaged only in activities that a bank holding company may conduct.

1. Reverse Repurchase Agreements

The interim rule retained a provision on repurchase agreements that was adopted in a final rule published August 13, 1998 (63 FR 43292). Specifically, the interim rule states that a purchase of assets that is subject to the affiliate's agreement to repurchase (reverse repurchase agreement) [16] is a loan or extension of credit for the purposes of the section 11 loan prohibition. As a result, a savings association may not generally enter into reverse repurchase agreements with an affiliate that engages in non-bank holding company activities. The interim rule exempted certain agreements that involve United States Treasury securities and that meet other specified requirements. OTS specifically requested comment whether it should retain the repurchase agreement provisions.

Both commenters responded to this request. One urged OTS to delete the repurchase agreement prohibition. The commenter asserted that ''loan or extension of credit,'' as used in section 11 of the HOLA, does not encompass reverse repurchase agreements. At a minimum, both commenters urged OTS to retain the current exemption for transactions in United States Treasury securities.

Upon further review, OTS has decided to delete the repurchase agreement prohibition. In the preamble to the 1998 rule, OTS noted that section 11 of the HOLA does not define ''loan or other extension of credit,'' and does not compel a legal conclusion that purchases of assets that are subject to an affiliate's agreement to repurchase are, or are not, prohibited by statute.

While the text of section 11 does not ''compel'' either legal conclusion, upon further review, OTS now believes that other factors strongly suggest that Congress did not intend for such transactions to be included as loans or extensions of credit under this section. OTS has two bases for this conclusion.

First, the definition of ''covered transaction'' in section 23A of the FRA treats repurchase agreements as asset purchases, rather than as loans or extensions of credit. Specifically, section 23A(b)(7)(C) of the FRA defines purchases of assets to include ''assets subject to an agreement to repurchase'' rather than a loan or extension of credit under section 23A(b)(7)(A). Based upon the language of the statute, FRB staff has informally indicated that it considers reverse repurchase agreements to be purchases of assets and not extensions of credit.[17]

Second, the legislative history of the statutes governing thrift transactions with affiliates reinforces the conclusion that reverse repurchase agreements should not be treated as loans or extensions of credit under section 11(a)(1)(A). Before the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73 (FIRREA), a savings association's transactions with affiliates were governed by section 408 of the National Housing Act (NHA). 12 U.S.C. 1730a. Under section 408(p) of the NHA, thrift transactions with affiliates engaged only in bank holding company activities were subject to sections 23A and 23B of the FRA. Section 408(d) of the NHA addressed transactions with affiliates engaged in non-bank holding company activities. This section specifically prohibited six types of transactions and, like current section 23A, listed loans and extensions of credit separately from the ''purchase [of] securities or other assets or obligations under repurchase agreement from any affiliate.'' Compare section 408(d)(3) with (d)(4). The successor statute addressing transactions with affiliates engaged in non-bank holding company activities at section 11(a)(1)(A) of the HOLA, however, specifically prohibits only transactions within one of the original six categories—loans and extensions of credit. This suggests that Congress did not intend to prohibit transactions with affiliates that engage in non-bank holding companies activities to the extent that the transactions fell within one of the other five categories.

The 1998 rule on repurchase agreements treated reverse repurchase

of the company and, thus, address only direct purchases from an issuer rather than secondary market purchases (12 CFR 574.4(a)(2)(vi)); or (2) require the controlling person to also hold at least 10 percent of any class of voting stock or 25 percent any class of stock (12 CFR 574.4(b)(1)(i) and (ii), and 574.4(c)(2)).

[14] The definition of ''subsidiary'' in OTS's loans to insider rule at 12 CFR 563.43(d) includes cross-references to the definitions of ''control'' and ''subsidiary' in 12 CFR 563.41. OTS is examining whether it should revise § 563.43(d) to more closely follow the FRB's loan's to insiders rule at 12 CFR part 215, and may undertake a separate rulemaking proposing changes. To avoid confusion to the industry in the interim, OTS has not revised the substance of this definition.

[15] 12 CFR 223.3(p). FRB has provided several exceptions to this definition.

[16] A sale of assets subject to an agreement to repurchase is known as a ''reverse repurchase agreement'' when a bank or thrift is the purchaser of the assets. *See* M. Stigum, The Repo and Reverse Markets 4 (1989).

[17] As a general rule, the interim rule applies all Regulation W definitions to the additional section 11 prohibitions. The treatment of repurchase agreements was an exception to this general rule.

agreements as loans because these transactions bear some of the economic characteristics of a loan.[18] However, the typical reverse repurchase agreement structured in conformity with general market practices has economic attributes that distinguish it from other loans and extensions of credit. For example, such agreements typically involve an institution's purchase of a security, subject to an agreement by the counterparty to repurchase the same or a similar security at a fixed price at a later date. In these transactions, the ''purchaser'' of the securities takes title to the securities and can trade, sell or pledge the security during the term of the contract. The reverse repurchase agreement merely imposes a contractual obligation to deliver identical securities on the settlement date set by the contract. This unique feature makes it far more flexible than a standard collateralized loan, where the lender cannot obtain access to the collateral in the absence of a default.[19]

OTS may, of course, impose additional restrictions on transactions with affiliates under section 11(a)(4) of the HOLA if it determines that the restriction is necessary to protect the safety and soundness of savings associations. OTS believes that the quantitative limits, safety and soundness requirements, and low-quality asset prohibitions contained in section 23A, and the arms-length requirements in section 23B sufficiently address the safety and soundness concerns raised by repurchase agreements. To the extent that a particular savings association may attempt to evade the lending prohibition through artful restructuring of a prohibited loan as a reverse repurchase agreement, § 563.41(c)(1) (discussed below) provides OTS with sufficient authority to address the circumvention. Accordingly, the final rule treats reverse repurchase agreements as purchases of assets, and not as extensions of credit.

2. Attribution of Transactions and Activities

a. Third-party Attribution Rule

Sections 23A(a)(2) and 23B(a)(3) of the FRA require a member bank (and, thus, a savings association) to treat a transaction with any person as a transaction with an affiliate to the extent that the proceeds are used for the benefit of, or transferred to, an affiliate.[20] The text of section 11(a)(1)(A) of the HOLA does not specify a similar third party attribution requirement for the loan prohibition, and OTS has declined to infer such a requirement. To clarify this matter, the interim rule specifically stated that a loan or extension of credit to a third party is not prohibited under section 11(a)(1)(A) of the HOLA ''merely because proceeds of the transaction are used for the benefit of, or transferred to, an affiliate.'' Interim rule at § 563.41(c)(1).

The preamble to the interim rule noted that OTS may, nonetheless, attribute a loan to a third party to an affiliate, for example, where a savings association attempts to circumvent the loan prohibition through sham transactions.[21] OTS requested comment whether it should include this additional guidance in the final rule. One commenter responded asserting that further guidance was not needed.

The final regulation continues to state that a loan or extension of credit to a third party is not prohibited under section 11(a)(1)(A) merely because proceeds of the transaction are used for the benefit of, or transferred to, an affiliate. However, OTS is concerned that savings associations and their affiliates may misinterpret this provision and incorrectly conclude that the third party attribution rule will not apply to the loan prohibition under any circumstances. Accordingly, OTS clarified the final rule to state that OTS may inform the savings association that a particular transaction is prohibited if OTS determines that the transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in non-bank holding company activities, or OTS has other supervisory concerns concerning the transaction. OTS will make such a determination, for example, if a loan is a prearranged step in a series of transactions designed to channel funds to an affiliate engaged in non-bank holding company activities, or is otherwise designed to circumvent the loan prohibition. If OTS determines that a particular transaction is prohibited it may direct the savings association to divest the loan, unwind the transaction, or take other appropriate action.

b. Attribution of Activities Among Affiliates

When OTS originally issued its transactions with affiliates rule in 1991, it considered whether a savings association would be barred from extending credit to an affiliate that directly engaged only in activities permissible for a bank holding company, but the affiliate owned or controlled subsidiaries engaged in impermissible activities. OTS determined that activities must be attributed from a subsidiary to a parent affiliate in a vertical ownership chain up to, but not including, a controlling holding company in the corporate structure.[22] The preamble to the 1991 rule suggests that this attribution determination was intended to prevent savings associations from evading the section 11 loan prohibition by structuring transactions through ''strawmen'' affiliates.[23]

OTS specifically requested comment whether this interpretation should be included in the final rule. One commenter urged OTS to withdraw the guidance.

Upon reconsideration, OTS has decided to withdraw its 1991 guidance. Section 11 does not specifically require the attribution of activities from affiliated subsidiaries to their parent companies and, in the absence of information suggesting that this interpretation is necessary to protect the safety and soundness of savings associations, OTS is disinclined to interpret section 11 in a way that imposes additional burdens on savings associations. Rather than unduly restrict all savings associations, OTS believes that it can best address attempts at circumvention on a case-by-case basis. As noted above, the final rule states that OTS may prohibit a transaction if it determines that the transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in non-bank holding company activities or OTS has other supervisory concerns concerning the transaction. Under this provision, OTS will prohibit a loan, for example, if it is a prearranged step in a

[18] The savings association transfers funds to the affiliate, expecting to be repaid when the company repurchases the assets. The purchased assets essentially amount to collateral because the savings association is required to return the assets at the time of repurchase. The savings association earns a pre-determined amount under the agreement. The principal risk to the savings association and the deposit insurance fund is credit risk—the possibility that the affiliate will default on its obligation to make the repurchase. These types of agreements are generally considered to be the functional equivalent of a loan. *See* amendments to Federal Financial Institution Examination Counsel Policy Statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others (FFIEC Policy Statement), 63 FR 6935 (Feb. 11, 1998).

[19] In addition, the bankruptcy code permits the purchaser under the agreement to liquidate securities without being subject to an automatic stay or similar delay. 11 U.S.C. 362(b)(7).

[20] Regulation W addresses the ''third party attribution rule'' at 12 CFR 223.16 and 223.52(b).

[21] 67 FR 77909, at 77914. Op. OTS Chief Counsel (Dec. 22, 1991) and Op. OTS Chief Counsel (Mar. 13, 1992).

[22] 56 FR 34005, at 34009. *See* also, Op. OTS Chief Counsel (Nov. 13, 1990). Activities of a parent were not, however, attributed downward to its subsidiaries.

[23] *See* 56 FR 34005, at 34008. (Discussion of attribution of transactions).

series of transactions designed to channel funds to an affiliate engaged in non-bank holding company activities, or is otherwise designed to circumvent the loan prohibition.

C. Other Matters

OTS also wishes to clarify other guidance contained in its 1991 rulemaking. In the preamble to the 1991 final rule, OTS considered whether, for the purposes of calculating a savings association's aggregate amount of covered transactions with a particular affiliate, the savings association must include covered transactions with subsidiaries of the affiliate. To prevent savings associations from circumventing the 10 percent limit imposed under section 23A, OTS concluded that attribution of transactions was appropriate and necessary. Accordingly, OTS stated that, when computing the aggregate amount of transactions with a particular affiliate, a savings association must aggregate the amount of its covered transactions with all subsidiaries directly or indirectly controlled by the affiliate. OTS did not, however, require a savings association to attribute transactions to any holding company that controls the savings association or to attribute transactions by a parent downward to any subsidiary.[24]

FRB has not issued similar guidance regarding the attribution of transactions. To the contrary, the preamble to final Regulation W states that the 10 percent limit would prohibit a bank from engaging in a covered transaction with an affiliate only when the aggregate amount of covered transactions between the bank and that affiliate would exceed 10 percent of the bank's capital. 67 FR 76560, at 76572. Nothing in section 11 of the HOLA requires the attribution of transactions among affiliates.[25] OTS may impose additional restrictions on savings associations if it determines that a restriction is necessary to protect the safety and soundness of savings associations. However, there is no reason to impose additional burdens on savings associations, particularly in light of other safeguards in sections 23A and 23B, including the overall 20 percent quantitative limits, qualitative restrictions, and other supervisory tools available to OTS.[26]

Finally, in addition to the changes discussed above, OTS has made technical and clarifying changes to the interim rule. For example, the final rule clarifies that a savings association must comply with sections 23A and 23B of the FRA and Regulation W ''as if it were a member bank,'' and indicates that most references to the FRB or appropriate bank federal banking agency in Regulation W should be read to refer only to OTS.[27] The latter change clarifies that OTS, rather than the FRB, has the responsibility for administering and enforcing transaction with affiliates restrictions with respect to savings associations. *See* 12 U.S.C. 1468(c).

The final rule also clarifies Regulation W's definition of ''well capitalized.'' The sole use of this definition is in 12 CFR 223.41(d)(7), which states that a holding company and all of its subsidiary depository institutions must be ''well capitalized'' in order for a member bank to qualify for the internal corporate reorganization transaction exception. Section 223.3(kk) states that well capitalized has the same meaning as in 12 CFR 225.2, which prescribes various capital ratios and other capital-related requirements for bank holding companies, insured depository institutions, and uninsured depository institutions.

This requirement is not meaningful for many savings and loan holding companies. Although the activities of holding companies regulated by the FRB have expanded since GLBA, some savings and loan holding companies currently engage in a much broader range of activities. Because the universe of thrift holding companies is so diverse, the adequacy of holding company capital cannot be determined on the basis of a one-size-fits-all numeric formula or standard. Instead, OTS has found that specified capital ratios can be simultaneously too lax to support the activities of some holding companies and too restrictive for others. To recognize the diversity of the holding company universe, OTS does not impose a single consolidated or unconsolidated numerical capital requirement or ratio applicable to all holding companies. Rather, its analysis of the capital adequacy of savings and loan holding companies is a case-by-case process that reflects the overall risk profile of the organization.

To require savings associations and their holding companies to engage in a burdensome exercise merely to comply with specifications designed to address a more homogenous universe of holding companies, would serve no purpose. Rather, such a requirement would unduly obstruct some savings associations' ability to take advantage of the corporate reorganization exception, contrary to the stated intent of the FRB.[28] In addition, other savings and loan holding companies associations might attempt to claim the exception, even though their capital would be less than the amount OTS believed necessary to support their higher risk. Accordingly, to apply the internal corporate reorganization exception to savings associations in the same manner and to the same extent as to member banks OTS has clarified the ''well capitalized'' definition in light of the purposes of the exemption.

The stated purpose of the well capitalized requirement is to ''prevent banking companies from abusing their banking units in reorganization transactions'' [29] by ensuring that holding companies engaging in such transactions are appropriately capitalized and remain appropriately capitalized following the transaction. In light of the diverse activities engaged in by savings and loan holding companies, OTS believes that its case-by-case capital analysis best serves this goal. Accordingly, the final rule clarifies that for a savings and loan holding company, well-capitalized means that a holding company significantly exceeds OTS expectations for the amount of capital needed to adequately support the holding company's risk profile, as determined by OTS on a case-by-case basis. OTS emphasizes that this clarification does not substitute a relaxed standard for savings associations that avail themselves of the corporate reorganization exception. Rather, the clarification is intended to apply Regulation W meaningfully to savings associations while simultaneously recognizing the differences between bank and savings and loan holding companies and the

[24] 56 FR 34005, at 34008.

[25] For purposes of determining whether an institution has reached the 10 and 20 percent quantitative limits on covered transactions, however, the covered transactions of a depository institution and its non-affiliate subsidiaries are combined.

[26] OTS has received a few inquiries concerning the continuing validity of previously issued opinion letters on transactions with affiliates. The inquirers observed that some of this guidance may be invalid based on the interpretations announced in final Regulation W. OTS will continue to handle these inquiries on a case-by-case basis and will examine whether other appropriate action is necessary. In the interim, savings associations that continue to rely on these prior opinions should carefully review whether the opinions have been affected by Regulation W or this final rule, and should consult with OTS if they have any questions.

[27] The references to the FRB at 12 CFR 223.2(a)(9)(iv), 223.3(h), 223.14(c)(4), 223.43, and 223.55 are unchanged.

[28] 67 FR 76560, at 76562 fn. 13 (''An insured savings association * * * may take advantage of Regulation W's exemptions as if it were a member bank.'')

[29] 67 FR 76560, at 76590.

goals of the corporate reorganization exemption.[30]

III. Executive Order 12866

The Director of OTS has determined that this rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

IV. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 5 U.S.C. 603. In issuing the interim rule, OTS concluded, for good cause, that it was not required to publish a notice of proposed rulemaking. Accordingly, the RFA does not require an initial or final regulatory flexibility analysis.

Nonetheless, OTS considered the likely impact of this final rule on small businesses and believes that the rule will not have a significant impact on a substantial number of small entities. OTS has had comprehensive regulations implementing section 11 of the HOLA since 1991. Today's final rule updates these provisions to incorporate Regulation W, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, clarifies the relationship between section 11(a)(1) of the HOLA and Regulation W, and sets out the additional restrictions imposed under section 11(a)(4) of the HOLA. In light of these preexisting rules, OTS does not believe that the final rule will significantly increase the applicable burdens for small or large savings associations. Accordingly, a regulatory flexibility analysis is not required.

V. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) applies only when an agency is required to issue a notice of proposed rulemaking or issues a final rule for which a notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, OTS determined that a notice of proposed rulemaking was not required for the interim final rule. Accordingly, OTS concluded that the Unfunded Mandates Act does not require an analysis of this final rule.

Nonetheless, OTS has considered the impact of the final rule under the Unfunded Mandates Act and has concluded that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. OTS has had comprehensive regulations implementing section 11 of the HOLA since 1991. Today's final rule merely updates these provisions to incorporate Regulation W, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, clarifies the relationship between section 11(a)(1) of the HOLA and Regulation W, and sets out the additional restrictions imposed under section 11(a)(4) of the HOLA. In light of these preexisting rules, OTS does not believe that the final rule will significantly increase the applicable burdens for savings associations and will not result in increased expenditures by these institutions. Accordingly, OTS did not prepare a budgetary impact statement or specifically address the regulatory alternatives considered.

VI. Effective Date

Under 12 U.S.C. 4802(b), final rules that impose additional reporting, disclosure, or other new requirements on insured depository institutions must take effect on the first day of a calendar quarter that begins on or after the date of publication. The Administrative Procedure Act (5 U.S.C. 553(d)(APA) provides that a final rule cannot be made effective less than 30 days after its publication. Together, these two statutes would require OTS to establish a January 1, 2004 effective date for this final rule.

Both statutes, however, permit the OTS to find good cause for establishing an earlier effective date. Today's rule changes generally relieve burdens or recognize exceptions to requirements imposed under the interim final rule. For example, the final rule revises OTS's definition of control, generally narrowing the definition of affiliate; removes repurchase agreements from the scope of the section 11 loan prohibition; and clarifies previously issued guidance on the attribution of activities and the calculation of quantitative limits. While the final rule applies slightly broader presumptions of control for convertible securities and nonvoting equity securities and, thus, expands the definition of affiliate in these areas, OTS believes that this change should have only a marginal impact on the regulatory burdens imposed on savings associations as a whole. Accordingly, OTS finds good cause not to delay making this rule effective until the calendar quarter beginning January 1, 2004.

On the other hand, institutions will need some time to understand and adapt to the revised final rule. Consistent with the requirements of the APA, OTS believes that it is appropriate to delay the effective date of this rule for at least 30 days from publication. The effective date of this rule will be November 6, 2003.

VII. Paperwork Reduction Act of 1995

The information collection requirements in the OTS rules were previously approved under OMB control number 1550–0078. The final rule incorporates these requirements at § 563.41(c)(3) and (4), and does not make any changes that materially affect the overall burden of compliance.

List of Subjects

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 562

Accounting, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

■ Accordingly, the Office of Thrift Supervision adopts as final the interim rule published on December 20, 2002 at 67 FR 77909, amending parts 559, 562, and 563 in Title 12, Chapter V, Code of Federal Regulations, with the following changes:

PART 559—SUBORDINATE ORGANIZATIONS

■ 1. The authority citation for part 559 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

■ 2. Amend § 559.3 by revising paragraph (l) to read as follows:

§ 559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of Federal savings associations?

* * * * *

[30] OTS is aware that the FRB also defined well capitalized with respect to a ''holding company that is not a bank holding company'' by reference to the capital requirements at § 225.2. By its own terms, Regulation W applies only to member banks. 67 FR 76560, at 76561. A holding company that is not a bank holding company would include, for example, holding companies of OCC-chartered credit card companies or trust companies.

	Operating subsidiary	Service corporation
* * * *	* * *	* * *
(l) How do the transactions with affiliates (TWA) regulations (§ 563.41 of this chapter) apply?	(1) Section 563.41 of this chapter explains how TWA applies. Generally, an operating subsidiary is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. A non-affiliate operating subsidiary is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association.	(2) Section 563.41 of this chapter explains how TWA applies. Generally, a service corporation is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. If a savings association directly or indirectly controls a service corporation and the service corporation is not otherwise an affiliate under § 563.41 of this chapter, the service corporation is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association.
* * * *	* * *	* * *

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 3. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 42 U.S.C. 4106.

■ 4. Revise § 563.41 to read as follows:

§ 563.41 Transactions with affiliates.

(a) *Scope.* (1) This section implements section 11(a) of the Home Owners' Loan Act (12 U.S.C. 1468(a)). Section 11(a) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c1) to every savings association in the same manner and to the same extent as if the association were a member bank; prohibits certain types of transactions with affiliates; and authorizes OTS to impose additional restrictions on a savings association's transactions with affiliates.

(2) For the purposes of this section, ''savings association'' is defined at section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and also includes any savings bank or any cooperative bank that is a savings association under 12 U.S.C. 1467a(l). A non-affiliate subsidiary of a savings association as described in paragraph (b)(11) of this section is treated as part of the savings association.

(b) *Sections 23A and 23B of the FRA/Regulation W.* A savings association must comply with sections 23A and 23B of the Federal Reserve Act and the implementing regulations at 12 CFR part 223 (Regulation W) as if it were a member bank, except as described in the following chart. In addition, a savings association should read all references to ''the Board'' or ''appropriate federal banking agency'' to refer only to ''OTS,'' except for references at 12 CFR 223.2(a)(9)(iv), 223.3(h), 223.14(c)(4), 223.43, and 223.55.

Provision of Regulation W	Application
(1) 12 CFR 223.1—Authority, purpose, and scope	Does not apply. Section 563.41(a) addresses these matters.
(2) 12 CFR 223.2(a)(8)—''Affiliate'' includes a financial subsidiary	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(3) 12 CFR 223.2(a)(12)—Determination that ''affiliate'' includes other types of companies.	Read to include the following statement: ''Affiliate also includes any company that OTS determines, by order or regulation, to present a risk to the safety and soundness of the savings association.''
(4) 12 CFR 223.2(b)(1)(ii)—''Affiliate'' includes a subsidiary that is a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(5) 12 CFR 223.3(d)—Definition of ''capital stock and surplus.''	Does not apply. Capital stock and surplus means ''unimpaired capital and unimpaired surplus,'' as defined in 12 CFR 560.93(b)(11).
(6) 12 CFR 223.3(h)(1)—Section 23A covered transactions include an extension of credit to the affiliate.	Read to incorporate § 563.41(c)(1), which prohibits loans or extensions of credit to an affiliate, unless the affiliate is engaged only in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter.
(7) 12 CFR 223.3(h)(2)—Section 23A covered transactions include a purchase of or investment in securities issued by an affiliate.	Read to incorporate § 563.41(c)(2), which prohibits purchases and investments in securities issued by an affiliate, other than with respect to shares of a subsidiary.
(8) 12 CFR 223.3(k)—Definition of ''depository institution.''	Read to include the following statement: ''For the purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the depository institution.''
(9) 12 CFR 223.3(p)—Definition of ''financial subsidiary.''	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(10) 12 CFR 223.3(w)—Definition of ''member bank.''	Read to include the following statement: ''Member bank also includes a savings association. For purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the savings association.''

Provision of Regulation W	Application
(11) 12 CFR 223.3(aa)—Definition of ''operating subsidiary.''	Does not apply. Other OTS regulations include a conflicting definition of this same term. Instead, OTS uses the phrase ''non-affiliate subsidiary.'' A non-affiliate subsidiary is a subsidiary of a savings association other than a subsidiary described at 12 CFR 223.2(b)(1)(i), (iii) through (v).
(12) 12 CFR 223.3(ii)—Definition of ''subsidiary.''	Read to include the following statement: ''A subsidiary of a savings association means a company that is controlled by the savings association.''
(13) 12 CFR 223.3(kk)—Definition of ''well capitalized.''	Read to include the following statement: ''For a savings and loan holding company, however, well-capitalized means that the holding company significantly exceeds OTS expectations for the amount of capital needed to adequately support the holding company's risk profile, as determined by OTS on a case-by-case basis.''
(14) 12 CFR 223.31—Application of section 23A to an acquisition of an affiliate that becomes an operating subsidiary.	Read to refer to ''a non-affiliate subsidiary'' instead of ''operating subsidiary.''
(15) 12 CFR 223.32—Rules that apply to financial subsidiaries of a bank.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(16) 12 CFR 223.42(f)(2)—Exemption for purchasing certain marketable securities.	Read to refer to ''Thrift Financial Report'' instead of ''Call Report.'' References to ''state member bank'' are unchanged.
(17) 12 CFR 223.42(g)(2)—Exemption for purchasing municipal securities.	Read to refer to ''Thrift Financial Report'' instead of ''Call Report.'' References to ''state member bank'' are unchanged.
(18) 12 CFR 223.61—Application of sections 23A and 23B to U.S. branches and agencies of foreign banks.	Does not apply to savings associations or their subsidiaries.

(c) *Additional prohibitions and restrictions.* A savings association must comply with the additional prohibitions and restrictions in this paragraph. Except as described in paragraph (b) of this section, the definitions in 12 CFR part 223 apply to these additional prohibitions and restrictions.

(1) *Loans and extensions of credit.* (i) A savings association may not make a loan or other extension of credit to an affiliate, unless the affiliate is solely engaged in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter. A loan or extension of credit to a third party is not prohibited merely because proceeds of the transaction are used for the benefit of, or are transferred to, an affiliate.

(ii) If OTS determines that a particular transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in activities other than those described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter, or OTS has other supervisory concerns concerning the transaction, OTS may inform the savings association that the transaction is prohibited under this paragraph (c)(1), and require the savings association to divest the loan, unwind the transaction, or take other appropriate action.

(2) *Purchases or investments in securities.* A savings association may not purchase or invest in securities issued by any affiliate other than with respect to shares of a subsidiary. For the purposes of this paragraph (c)(2), subsidiary includes a bank and a savings association.

(3) *Recordkeeping.* A savings association must make and retain records that reflect, in reasonable detail, all transactions between the savings association and its affiliates and any other person to the extent that the proceeds of a transaction are used for the benefit of, or transferred to, an affiliate. At a minimum, these records must:

(i) Identify the affiliate;

(ii) Specify the dollar amount of the transaction and demonstrate that this amount is within the quantitative limits in 12 CFR 223.11 and 223.12, or that the transaction is not subject to those limits;

(iii) Indicate whether the transaction involves a low-quality asset;

(iv) Identify the type and amount of any collateral involved in the transaction and demonstrate that this collateral meets the requirements in 12 CFR 223.14 or that the transaction is not subject to those requirements;

(v) Demonstrate that the transaction complies with 12 CFR part 223, subpart F or that the transaction is not subject to those requirements;

(vi) Demonstrate that all loans and extensions of credit to affiliates comply with paragraph (c)(1) of this section; and

(vii) Be readily accessible for examination and supervisory purposes.

(4) *Notice requirement.* (i) OTS may require a savings association to notify the agency before the savings association may engage in a transaction with an affiliate or a subsidiary (other than exempt transactions under 12 CFR part 223). OTS may impose this requirement if:

(A) The savings association is in troubled condition as defined at § 563.555 of this part;

(B) The savings association does not meet its regulatory capital requirements;

(C) The savings association commenced *de novo* operations within the past two years;

(D) OTS approved an application or notice under 12 CFR part 574 involving the savings association or its holding company within the past two years;

(E) The savings association entered into a consent to merge or a supervisory agreement within the past two years; or

(F) OTS or another banking agency initiated a formal enforcement proceeding against the savings association and the proceeding is pending.

(ii) OTS must notify the savings association in writing that it has imposed the notice requirement and must identify the circumstance listed in paragraph (c)(4)(i) of this section that supports the imposition of the notice requirement.

(iii) If OTS has imposed the notice requirement under this paragraph, a savings association must provide a written notice to OTS at least 30 days before the savings association may enter into a transaction with an affiliate or a subsidiary. The written notice must include a full description of the transaction. If OTS does not object during the 30-day period, the savings association may proceed with the proposed transaction.

■ 5. Amend § 563.43 by revising paragraphs (d) and (e) to read as follows:

§ 563.43 Loans by savings associations to their executive officers, directors, and principal shareholders.

* * * * *

(d) The term *subsidiary* includes a savings association that is controlled by a company (including for this purpose

an insured depository institution) that is a savings and loan holding company. A company has control over a saving association if it: directly or indirectly, or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities; or would be deemed to control the company under § 574.4(a) of this chapter or presumed to control the company under § 574.4(b) of this chapter, and in the latter case, control has not been rebutted. Notwithstanding any other provision of this section, no company shall be deemed to own or control another by virtue of its ownership or control of shares in a fiduciary capacity. When used to refer to a subsidiary of a savings association, the term *subsidiary* means a ''subsidiary'' that is controlled by the savings association within the meaning of 12 CFR part 574 of this chapter.

(e) References to the Reserve Bank or the Comptroller shall be deemed to include the Director of OTS; and

* * * * *

Dated: September 29, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–25217 Filed 10–6–03; 8:45 am]

BILLING CODE 6720–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Statement of Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions to reflect the transfer of the National Injury Information Clearinghouse from the Directorate for Epidemiology to the Office of the Secretary.

EFFECTIVE DATE: October 7, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Lemberg, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–7630, email *slemberg@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The reference to the Clearinghouse in section 1000.27, Directorate for Epidemiology, is being moved to section 1000.16, Office of the Secretary.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b) notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and functions (government agencies).

■ Accordingly, part 1000 is amended as follows:

PART 1000—[AMENDED]

■ 1. The authority citation for part 1000 continues to read as follows:

Authority: 5 U.S.C. 552(a).

§ 1000.27 [Amended]

■ 2. In § 1000.27, remove the last sentence.

§ 1000.16 [Amended]

■ 3. In § 1000.16, add at the end the sentence ''It administers the National Injury Information Clearinghouse.''

Dated: September 30, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–25297 Filed 10–6–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 1987F–0179]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Olestra; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 5, 2003 (68 FR 46403). The document denied the requests for a hearing and response to objections it has received on the final rule that amended the food additive regulations to provide for the safe use of sucrose esterified with medium and long chain fatty acids (olestra) as a replacement for fats and oils in savory snacks. The document was published with inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Mary Ditto, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3102.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–19509, appearing on page 46403 in the **Federal Register** of Tuesday, August 5, 2003, the following corrections are made:

1. On page 46408, in the second column, under the heading ''*D. Adequacy of Olestra's Label Statement* [33]'' the first sentence is corrected to read ''In its fifth objection and request for a hearing, CSPI challenges the label statement required by the 1996 final rule, claiming that it is not sufficient to protect the public from adverse effects associated with consumption of olestra.''

2. On page 46408, in the third column, under the heading ''*E. Alleged Procedural Problems in the Olestra Proceeding*'' the first sentence is corrected to read ''In its sixth objection and hearing request, CSPI claims that there were a number of problems with the procedures utilized by FDA to reach a decision about the safety of olestra.''

3. On page 46408, in the third column, under heading ''*E. Alleged Procedural Problems in the Olestra Proceeding*'' the second to the last sentence on that page is corrected to read ''As in the case with its fifth objection and hearing request, CSPI specifically identifies no factual issue underlying any of its six procedural complaints.''

Dated: September 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–25198 Filed 10–6–03; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1309, and 1310

[Docket No. DEA–210F]

RIN 1117–AA69

Implementation of the Methamphetamine Anti-Proliferation Act; Thresholds for Retailers and for Distributors Required To Submit Mail Order Reports; Changes to Mail Order Reporting Requirements

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This regulation implements the new threshold requirements and mail order reporting requirements of the Methamphetamine Anti-Proliferation Act of 2000 (MAPA), which was enacted on October 17, 2000. DEA is amending its regulations to reduce the thresholds for pseudoephedrine and phenylpropanolamine for retail distributors and for distributors required to submit mail order reports. Also, DEA is amending its regulations to require mail order reports for certain export transactions. DEA is codifying exemptions from the mail order reporting requirements for certain distributions to nonregulated persons and certain export transactions. This rule is consistent with the intent of MAPA to prevent the diversion of drug products to the clandestine manufacture of methamphetamine and amphetamine, and simultaneously reduce the industry reporting burden.

EFFECTIVE DATE: November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

What Is DEA's Legal Authority for This Rule?

DEA implements the Controlled Substances Act (21 U.S.C. 801–971), as amended by the Chemical Diversion and Trafficking Act, the Domestic Chemical Diversion Control Act, the Comprehensive Methamphetamine Control Act, and the recent Methamphetamine Anti-Proliferation Act (Pub. L. 106–310, 114 Stat. 1101), among others. DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (21 CFR) parts 1300 to end. The regulations are designed to prevent the diversion of controlled substances and listed chemicals to illegal purposes.

MAPA, which is part of the Children's Health Act of 2000, amends the Controlled Substances Act (CSA) to reduce the retail and mail order thresholds for pseudoephedrine and phenylpropanolamine (PPA), to include certain export transactions under the mail order reporting requirement, and to provide certain exemptions from the mail order reporting requirement. This rule implements the Congressional mandate of MAPA.

Why Is DEA Publishing a Final Rule?

An agency may find good cause to exempt a rule from the provisions of the Administrative Procedure Act (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. Most of the requirements of MAPA were set out in such detail as to be self-implementing. Therefore the changes in this rulemaking primarily provide conforming amendments to make the language of the regulations consistent with that of the law. Hence, DEA finds it unnecessary to publish for public notice and comment.

Specifically, Title XXXVI, Methamphetamine Anti-Proliferation Act, Section 3652 of the Children's Health Act, ''Mail Order Requirements,'' amends 21 U.S.C. 830(b)(3)(D) to exempt certain distributions and export transactions of ephedrine, pseudoephedrine, and phenylpropanolamine and drug products containing them from the monthly mail order reporting requirement as follows [emphasis added]:

> (D) Except as provided in subparagraph (E), the following distributions to a nonregulated person, and the following export transactions, **shall not** be subject to the reporting requirement in subparagraph (B):
>
> (i) Distributions of sample packages of drug products when such packages contain not more than 2 solid dosage units or the equivalent of 2 dosage units in liquid form, not to exceed 10 milliliters of liquid per package, and not more than one package is distributed to an individual or residential address in any 30-day period.
>
> (ii) Distributions of drug products by retail distributors that may not include face-to-face transactions to the extent that such distributions are consistent with the activities authorized for a retail distributor as specified in section 102(46). [21 U.S.C. 802(46)]
>
> (iii) Distributions of drug products to a resident of a long term care facility (as the term is defined in regulations prescribed by the Attorney General) or distributions of drug products to a long term care facility for dispensing to or for use by a resident of that facility.
>
> (iv) Distributions of drug products pursuant to a valid prescription.
>
> (v) Exports which have been reported to the Attorney General pursuant to section 1004 [21 U.S.C. 954] or 1018 [21 U.S.C. 971] which are subject to a waiver granted under section 1018(e)(2) [21 U.S.C. 971(e)(2)].
>
> (vi) Any quantity, method, or type of distribution or any quantity, method, or type of distribution of a specific listed chemical (including specific formulations or drug products) or of a group of listed chemicals (including specific formulations or drug products) which the Attorney General has excluded by regulation from such reporting requirement on the basis that such reporting is not necessary for the enforcement of this title * * *

Editor's Note: This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 830(b)(3)(D).

MAPA also specifically reduces the threshold for drug products containing pseudoephedrine and phenylpropanolamine from 24 grams to 9 grams of pseudoephedrine or phenylpropanolamine as base. MAPA further establishes a new factor in determining a regulated transaction—a package size of 3 grams of pseudoephedrine base or phenylpropanolamine base. The language in Title XXXVI, Section 3622 of the Children's Health Act of 2000, ''Reduction in Retail Sales Transaction Threshold for Non-Safe Harbor Products Containing Pseudoephedrine or Phenylpropanolamine,'' clearly establishes without opportunity for discussion the new requirements. It amends 21 U.S.C. 802(39)(a)(iv)(II) to read as follows [emphasis added]:

> (II) the quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General, except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamine by retail distributors or by distributors required to submit reports by section 310(b)(3) of this title [21 U.S.C. 830(b)(3)] **shall be** 9 grams of pseudoephedrine or 9 grams of phenylpropanolamine in a single transaction and sold in package sizes of not more than 3 grams of pseudoephedrine base or 3 grams of phenylpropanolamine base; * * *

Editor's Note: This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 802(39)(a)(iv)(II).

Under the circumstances, there is no discretion for deviation from the changes made by MAPA. Therefore, DEA is implementing these conforming amendments to the regulations through a final rule.

Do the Thresholds Apply to All Retail Distributors and All Distributors Required To Submit Mail Order Reports?

MAPA mandated that effective October 17, 2001, both the reduction of the 24 gram transaction threshold to 9 grams and the addition of the 3 gram package size threshold for pseudoephedrine and phenylpropanolamine drug products apply to all retail distributors and all persons required to submit mail order reports under 21 U.S.C. 830(b)(3).

At the retail level, all drug products containing pseudoephedrine or phenylpropanolamine that do not meet

the definition of ''ordinary over-the-counter pseudoephedrine or phenylpropanolamine product'' (*see* 21 U.S.C. 802(45)) are subject to the threshold requirements of MAPA. This includes the single transaction threshold of 9 grams as base and the single package size of 3 grams or less of pseudoephedrine or 3 grams or less of phenylpropanolamine as base. The requirement of registration is waived for retail distributors whose activities consist solely of below-threshold distributions to an individual for a legitimate medical purpose (21 CFR 1309.24(e)). Retail distributors who engage in single transactions at or above 9 grams of pseudoephedrine or phenylpropanolamine as base or single transactions of package sizes containing more than 3 grams of pseudoephedrine base or 3 grams of phenylpropanolamine base per package will void their waiver of the registration requirement and must register with DEA. Transactions above these thresholds are regulated transactions and subject to all requirements of the Controlled Substances Act. For retail transactions, this would include customer identification, recordkeeping, and reporting.

For those required to submit mail order reports, the 9 gram transaction threshold (as base) for a single transaction and the 3 gram package size (as base) apply to every transaction involving pseudoephedrine, phenylpropanolamine or drug products containing them—regardless of the type of packaging for the products. There are no exemptions for ordinary over-the-counter pseudoephedrine and phenylpropanolamine products. All of the requirements of the CSA apply to threshold and above transactions and to above-threshold package sizes, that is, registration, identification, recordkeeping, and reporting, as well as the monthly mail order reports submitted to DEA.

What Are the Changes to the Mail Order Reporting Requirement?

MAPA provides the following exemptions to the mail order reporting requirement: Transactions involving sample packages of drug products, deliveries of prescriptions to consumers by retail distributors, distributions to long-term care facilities and their residents, mail order prescription deliveries, and exports already reported to DEA on a Form 486 or granted a waiver by the Administrator. These were specifically cited in the section of this rulemaking titled, ''Why is DEA publishing a final rule?''

Congress also granted the Attorney General the authority (delegated to the Administrator of DEA) to develop regulations to expand the Congressional list of exemptions.

What Action Is DEA Taking To Codify the MAPA Amendments in Its Regulations?

To implement the requirements of MAPA, DEA is adding the new definitions of ''drug product'' and ''valid prescription'' at 21 CFR 1300.02, and updating §§ 1310.03 and 1310.05 to reflect the revised reporting requirements for mail order distributions. Specifically, DEA is amending § 1310.05 to explicitly exempt from the reporting requirements the low-risk categories of mail order transactions previously listed.

DEA also reserves the right to exempt, by regulation, from the reporting requirements any other quantity, method, or type of distribution of a specific listed chemical (or drug product containing it) or group of listed chemicals (or drug products containing them) determined by the Administrator to be unnecessary for the effective enforcement of the Controlled Substances Act.

What Is the Effect of MAPA on the Public and on Industry?

MAPA will not adversely impact the public's access to pseudoephedrine and phenylpropanolamine products. The majority of the products purchased by the public are commonly used medications most of which are available without a prescription at pharmacies, grocery stores, discount department stores, and a variety of other retail stores. Although the thresholds are being reduced, these thresholds still permit the public adequate access to these drug products for legitimate medical purposes, which include their use as decongestants for the temporary relief of nasal congestion. Each of the products is available as a single entity or in combination with antihistamines, antitussives, analgesics, and expectorants. Sale of a single package of drug product containing 3 grams or less per package of pseudoephedrine or phenylpropanolamine base is not a regulated transaction. A single transaction of less than 9 grams of pseudoephedrine or phenylpropanolamine as base is not a regulated transaction. The chart below indicates the number of tablets per package and per single transaction that constitute a regulated transaction. One tablet less would be a non-regulated transaction.

NUMBER OF TABLETS THAT CONSTITUTE A REGULATED TRANSACTION FOR DOSAGE UNITS OF MARKETED PRODUCTS *

Product type	Number of tablets over 3-gram package size	Number of tablets per 9-gram transaction
Pseudoephedrine		
120-mg Hydrochloride	31	92
120-mg Sulfate	33	98
60-mg Hydrochloride	62	184
60-mg Sulfate	65	195
30-mg Hydrochloride	123	367
30-mg Sulfate	130	390
Phenylpropanolamine		
75-mg Hydrochloride	50	149
25-mg Hydrochloride	149	447
12.5-mg Hydrochloride	298	894
6.25-mg Hydrochloride	596	1,788

* Calculated as base.

For example, if a member of the public purchased product containing 30-mg pseudoephedrine hydrochloride tablets in a single transaction of 366 tablets, it would not be regulated. However, if that person purchased 367 or more tablets of the same product in a single transaction, it would be a regulated transaction. The member of the public would still be permitted to make such a purchase, but would be required to provide the distributor with certain information. DEA believes that few members of the public make such large purchases for legitimate personal medical use, and thus will not be adversely impacted by this rulemaking.

Due to concerns regarding possible harmful side effects, the Food and Drug Administration initiated action in November 2000 to remove phenylpropanolamine from the market. As a result, many firms voluntarily discontinued marketing products containing it. Because MAPA specifically addresses phenylpropanolamine and there remain legitimate veterinary uses for it that will ensure some level of its continued production and availability, this action continues to apply to phenylpropanolamine.

MAPA will affect persons who sell drug products containing pseudoephedrine or phenylpropanolamine to the public. This includes retail distributors and persons required to submit mail order reports. For retail distributors, single transactions containing 9 grams or more of pseudoephedrine or phenylpropanolamine as base are regulated transactions. Single transactions in which a package contains more than 3 grams of pseudoephedrine base or more than 3 grams of phenylpropanolamine base are also regulated transactions. Above-threshold transactions will still be permitted, but will be subject to all the requirements of a regulated transaction, including registration of the distributor—as selling over-threshold amounts of these products voids the retail distributor exemption (21 CFR 1309.24(e)), identification of customers (21 CFR 1310.07), maintenance of records (21 CFR 1310.04), and the filing of reports with the Administration (21 CFR 1310.05, 1310.06). It is important to note, however, that many retail distributors have already voluntarily limited their sales in a single transaction to amounts equal to or less than those finalized in this rulemaking to help prevent diversion of these products for the illicit manufacture of methamphetamine and amphetamine.

For those required to submit mail order reports, both the 9 gram transaction threshold and the 3 gram package size for pseudoephedrine and phenylpropanolamine drug products apply to every transaction—regardless of whether the transaction is one that must be reported. Single transactions of 9 grams or more of pseudoephedrine or phenylpropanolamine as base are regulated transactions and single transactions of package sizes containing more than 3 grams of pseudoephedrine or phenylpropanolamine as base are regulated transactions. Regulated transactions subject the distributor to the following requirements—identification of the customer (21 CFR 1310.07), recordkeeping (21 CFR 1310.04), and reporting (21 CFR 1310.05 and 1310.06), in addition to the requirement to submit monthly reports of all transactions (21 U.S.C. 830(b)(3)).

MAPA added language requiring monthly mail order reports for export transactions with nonregulated persons involving ephedrine, pseudoephedrine, phenylpropanolamine, and drug products containing them which use or attempt to use the Postal Service, or any private or commercial carrier. Every export transaction for these chemicals and for drug products containing them must be reported on a monthly basis unless the export transaction is exempt. Exempt export transactions include those reported on a DEA Form 486 and those for which the Administrator has waived monthly reporting.

To reduce the burden on those who are subject to the monthly mail order reporting requirement under 21 U.S.C. 830(b)(3), MAPA added exemptions to this requirement. These exemptions include distributions of samples of drug products, deliveries of prescriptions to consumers by retail distributors, distributions of drug products to long term care facilities and their residents, mail order prescription deliveries, exports reported to DEA on a Form 486, and any quantity, method, or type of distribution of a specific listed chemical or group of listed chemicals which the Attorney General has excluded by regulation from this reporting requirement. These exemptions were previously cited in the section of this rulemaking titled, ''Why is DEA publishing a final rule?'' The Administrator of DEA, through the delegation of authority from the Attorney General, may exclude by regulation from the mail order reporting requirement any quantity, method, or type of distribution of listed chemicals (including specific formulations or drug products) for which such reporting is considered not necessary for the enforcement of law. DEA will consider any suggestions submitted regarding additional exemptions to the reporting requirement under 21 U.S.C. 830(b)(3) that may be warranted.

Technical Amendment

The final regulations implementing the provisions of the Comprehensive Methamphetamine Control Act (MCA) amended the waiver of the retail registration activity found in 21 CFR 1309.24(e) to include a statement that the threshold for retail distributions of ephedrine, pseudoephedrine and phenylpropanolamine is 24 grams in a single transaction, regardless of whether the product meets the definition of ''ordinary over-the-counter pseudoephedrine or phenylpropanolamine product.'' As MAPA amends those thresholds, as previously described, a conforming technical amendment to 21 CFR 1309.24(e) is being made to remove the reference to the 24 gram threshold.

Regulatory Certifications

Administrative Procedure Act (5 U.S.C. 553)

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. The requirements of MAPA included in this rulemaking were set out in such detail as to be self-implementing. Therefore the changes in this rulemaking provide conforming amendments to make the language of the regulations consistent with that of the law. Hence, DEA finds it unnecessary to publish for public notice and comment.

Regulatory Flexibility Act

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) , has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will not adversely impact the public's access to drug products containing pseudoephedrine and phenylpropanolamine. At the same time, this regulation will limit the potential for diversion of these products to the clandestine manufacture of methamphetamine and amphetamine.

For mail order reporting, this action exempts from the reporting requirements a number of transactions that currently must be reported, thus reducing the overall reporting burden on many small businesses.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles of Executive Order 12866 Section 1(b). DEA has determined that this is not a significant regulatory action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This rulemaking meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132, and it has been determined that this rule does not have federalism implications and, therefore, does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

For those required to report under 21 U.S.C. 830(b)(3), MAPA adds the requirement of submitting a monthly report for certain export transactions with nonregulated persons involving ephedrine, pseudoephedrine, phenylpropanolamine, and drug products containing them. However, to reduce the burden on those affected, MAPA exempts monthly reporting of exports of the above list I chemicals and drug products containing them when they are reported to DEA pursuant to 21 U.S.C. 954 and 971.

MAPA further reduces the reporting burden on the regulated industry required to submit reports under 21 U.S.C. 830(b)(3) by exempting certain other transactions involving ephedrine, pseudoephedrine, phenylpropanolamine and drug products containing them from the requirement to submit reports as discussed in this rulemaking.

At this time it is not feasible for DEA to determine the extent of the impact of this rulemaking on the regulated industry. Once DEA has determined the impact, it will make the necessary filing with the Office of Management and Budget to adjust the burden of this information collection for the affected industry.

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

List of Subjects

21 CFR Part 1300

Chemicals, Definitions, Drug traffic control.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and List II chemicals, Security measures.

21 CFR Part 1310

Drug traffic control, Exports, Imports, List I and List II chemicals, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR parts 1300, 1309 and 1310 are amended as follows:

PART 1300—DEFINITIONS [AMENDED]

■ 1. The authority citation for Part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f).

■ 2. Section 1300.02 is amended by revising paragraph (b)(28)(i)(D)(*2*) and by adding paragraphs (b)(33) and (b)(34) to read as follows:

§ 1300.02 Definitions relating to listed chemicals.

* * * * *

(b) * * *

(28) * * *

(i) * * *

(D) * * *

(*2*) The quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical, except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamine by retail distributors or by distributors required to submit reports by § 1310.03(c) shall be 9 grams of pseudoephedrine or 9 grams of phenylpropanolamine in a single transaction and sold in package sizes of not more than 3 grams of pseudoephedrine base or 3 grams of phenylpropanolamine base. For combination ephedrine products the threshold for any sale by retail distributors or by distributors required to submit reports by § 1310.03(c) shall be 24 grams of ephedrine in a single transaction.

* * * * *

(33) The term *drug product means* an active ingredient in dosage form that has been approved or otherwise may be lawfully marketed under the Food, Drug, and Cosmetic Act for distribution in the United States.

(34) The term *valid prescription* means a prescription that is issued for a legitimate medical purpose by an individual practitioner licensed by law to administer and prescribe the drugs concerned and acting in the usual course of the practitioner's professional practice.

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS AND EXPORTERS OF LIST I CHEMICALS [AMENDED]

■ 1. The authority citation for Part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

■ 2. Section 1309.24 is amended by revising paragraph (e) to read as follows:

§ 1309.24 Waiver of registration requirement for certain activities.

* * * * *

(e) The requirement of registration is waived for any retail distributor whose activities with respect to List I chemicals are limited to the distribution of below-threshold quantities of a pseudoephedrine, phenylpropanolamine, or combination ephedrine product that is regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter, in a single transaction to an individual for legitimate medical use, irrespective of whether the form of packaging of the product meets the definition of ''ordinary over-the-counter pseudoephedrine or

phenylpropanolamine product'' under § 1300.02(b)(31) of this chapter.

* * * * *

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES [AMENDED]

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

■ 2. Section 1310.03 is amended by revising paragraph (c) to read as follows:

§ 1310.03 Persons required to keep records and file reports.

* * * * *

(c) Each regulated person who engages in a transaction with a nonregulated person or who engages in an export transaction that involves ephedrine, pseudoephedrine, or phenylpropanolamine, including drug products containing these chemicals, and uses or attempts to use the Postal Service or any private or commercial carrier must file monthly reports of each such transaction as specified in § 1310.05 of this part.

■ 3. Section 1310.04 is amended by revising paragraphs (f)(1)(ii), (c)(1) and (c)(2), (d)(2), (e)(1) and (e)(2), and (f)(2) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

Chemical	Threshold by weight
(C) * * *	
(1) Distributions by retail distributors	9 grams, and sold in package sizes of not more than 3 grams of pseudoephedrine base.
(2) Distributions by persons required to report under § 1310.03(c) of this part.	9 grams, and sold in package sizes of not more than 3 grams of pseudoephedrine base.
* * * *	* * *
(D) * * *	
(2) Distributions by persons required to report under § 1310.03(c) of this part.	9 grams, and sold in package sizes of not more than 3 grams of pseudoephedrine base.
* * * *	* * *
(E) * * *	
(1) Distributions by retail distributors	9 grams, and sold in package sizes of not more than 3 grams of phenylpropanolamine base.
(2) Distributions by persons required to report under § 1310.03(c) of this part.	9 grams, and sold in package sizes of not more than 3 grams of phenylpropanolamine base.
* * * *	* * *
(F) * * *	
(2) Distributions by persons required to report under § 1310.03(c) of this part.	9 grams, and sold in package sizes of not more than 3 grams of phenylpropanolamine base.

* * * * *

■ 4. Section 1310.05 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 1310.05 Reports.

* * * * *

(f) Except as provided in paragraph (g) of this section, the following distributions to nonregulated persons, and the following export transactions, are not subject to the reporting requirements in § 1310.03(c):

(1) Distributions of sample packages of drug products when those packages contain not more than two solid dosage units or the equivalent of two dosage units in liquid form, not to exceed 10 milliliters of liquid per package, and not more than one package is distributed to an individual or residential address in any 30-day period.

(2) Distributions of drug products by retail distributors that may not include face-to-face transactions to the extent that such distributions are consistent with the activities authorized for a retail distributor as specified in § 1300.02(b)(29) of this chapter.

(3) Distributions of drug products to a resident of a long term care facility or distributions of drug products to a long term care facility for dispensing to or for use by a resident of that facility.

(4) Distributions of drug products in accordance with a valid prescription.

(5) Exports which have been reported to the Administrator under §§ 1313.31 and 1313.32 of this chapter or which are subject to a waiver granted under § 1313.21 of this chapter.

(g) The Administrator may revoke any or all of the exemptions listed in paragraph (f) of this section for an individual regulated person if the Administrator finds that drug products distributed by the regulated person are being used in violation of the regulations in this chapter or the Controlled Substances Act. The Administrator will notify the regulated person of the revocation, as provided in § 1313.41(a) of this chapter. The revocation will be effective upon receipt of the notice by the person. The regulated person has the right to an expedited hearing regarding the revocation, as provided in § 1313.56(a) of this chapter.

Dated: September 29, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–25100 Filed 10–6–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4759–C–04]

RIN 2577–AC39

Housing Choice Voucher Program Homeownership Option: Eligibility of Units Owned or Controlled by a Public Housing Agency; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; correction.

SUMMARY: On September 17, 2003, HUD published a final rule adopting without change an October 28, 2002, interim rule establishing the eligibility of units owned or substantially controlled by a

public housing agency (PHA) for purchase under the Housing Choice Voucher Program homeownership option. The amendatory instruction in the final rule contained a technical error. The document makes the necessary correction.

DATES: *Effective Date:* The effective date for the September 17, 2003, final rule is unchanged. The final rule will take effect on October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone (202) 708–0477. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

■ The final rule FR Doc. 03–23636, published on September 17, 2003, (68 FR 54335) is corrected as follows:

■ On page 54336, in the second column, correct the amendatory instruction to read as follows:

■ Accordingly, for the reasons stated in the preamble, the interim rule for part 982 of title 24 of the Code of Federal Regulations, published on October 28, 2002, 67 FR 65864, as corrected on November 6, 2002, 67 FR 67522, is promulgated as final, without change.

Dated: October 1, 2003.

Camille Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 03–25325 Filed 10–6–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–144–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: We are removing a required amendment to the Pennsylvania regulatory program (the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee will assure that Pennsylvania's Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the alternative bonding system requirements contained in the Federal regulations. In addition, the amendment required Pennsylvania to clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. In response to the amendment, Pennsylvania submitted information to us describing existing and planned changes and enhancements to its bonding program that we have found satisfactorily address the amendment's requirements.

EFFECTIVE DATE: October 7, 2003.

FOR FURTHER INFORMATION CONTACT: George Rieger, Acting Director, Harrisburg Field Office, Telephone: (717) 782–4036, e-mail: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Proposed Amendment

The required amendment we are removing as a result of this rulemaking is codified at 30 CFR 938.16(h). We required the amendment in a May 31, 1991, final rule (56 FR 24687) (1991 rulemaking). By letter dated June 5, 2003 (Administrative Record No. PA 802.27), Pennsylvania sent us a document entitled, ''Pennsylvania Bonding System Program Enhancements'' (program enhancements document). The letter was sent in response to the October 1, 1991, notice sent to Pennsylvania under 30 CFR 732.17(c) through (e) (1991 notice). In a second letter, also dated June 5, 2003 (Administrative Record No. PA 802.28), Pennsylvania stated that the material submitted with the first letter also addresses the first part of the 1991 rulemaking dealing with its alternative bonding system (ABS). The second letter also clarified that bonding for the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim, are handled by conventional bonds and are not, and have not been, a part of the alternative bonding program at issue in the first part of the 1991 rulemaking. This later information was intended to address the remainder of the 1991 rulemaking. In a letter to Pennsylvania dated June 12, 2003 (Administrative Record No. PA 802.29), we found the actions taken, as described in the attachment to the first letter, were sufficient to resolve our 1991 notice. Therefore, we terminated that notice, which addressed deficiencies in the Pennsylvania ABS. We found the letters were also responsive to the required program amendment at 30 CFR 938.16(h) and proposed removing that provision codified in the 1991 rulemaking.

We announced our proposal to remove the required amendment in the June 26, 2003, **Federal Register** (68 FR 37987). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on removing the required amendment. We did not hold a public hearing because no one requested one. We received a request for a public meeting, but it was withdrawn before the meeting was held. The public comment period ended on July 28, 2003. We received comments from two Federal agencies (the United States Environmental Protection Agency, Region III, and the United States Department of Labor, Mine Safety and Health Administration's (MSHA) New

Stanton and Wilkes-Barre Offices). We also received comments from Citizens for Pennsylvania's Future (PennFuture) and the Pennsylvania Coal Association (PCA).

III. OSM's Findings

Following are the findings we made concerning removing the required amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are removing the required amendment at 30 CFR 938.16(h).

As we noted in our proposed rulemaking concerning removal of 30 CFR 938.16(h), our oversight activities had determined that Pennsylvania's ABS contained unfunded reclamation liabilities for backfilling, grading, and revegetation. In addition, our oversight determined that the ABS was financially incapable of abating or treating pollutional discharges from bond forfeiture sites. In the 1991 notice, we notified Pennsylvania of these deficiencies. In the course of approving a proposed program amendment to the Pennsylvania regulatory program in the 1991 rulemaking, we imposed the required amendment codified at 30 CFR 938.16(h). That amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee will assure that its Surface Mining Conservation and Reclamation Fund (Fund) can be operated in a manner that will meet the ABS requirements contained in the Federal regulations. In addition, the amendment required Pennsylvania to clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. The 1991 notice stated that Pennsylvania's ABS was no longer in conformance with Federal requirements and mandated that Pennsylvania propose amendments or descriptions of amendments to address the identified deficiencies. Thus, the 1991 notice addressed the same issue covered by the 1991 rulemaking.

In the June 5, 2003, letter the Pennsylvania Department of Environmental Protection (PADEP) responded to the deficiencies noted in our 1991 notice by sending us the program enhancements document. This document, jointly prepared by OSM and PADEP, explains steps that Pennsylvania has taken, and plans to take, to assure appropriate bonding for both land reclamation and postmining discharge treatment on existing active/inactive permits and forfeited sites. In our June 12, 2003, letter to PADEP, we indicated that the actions taken by Pennsylvania, as described in its June 5, 2003, letter, were sufficient to resolve the 1991 notice. Because we have completed our administrative decision terminating the 1991 notice as a separate and distinct action not subject to the public notice and review procedures governing this rulemaking, we will not respond to comments on terminating that action in this rulemaking.

The purpose of our June 26, 2003, proposed rule was to seek public comment on whether Pennsylvania's actions taken in response to the 1991 notice were sufficient to remove the required amendment at 30 CFR 938.16(h) imposed in the 1991 rulemaking. In that rulemaking, we required the amendment as a result of our review of changes Pennsylvania made to its program at 25 Pa. Code 86.17 which describes Pennsylvania's permit and reclamation fees. In the 1991 rulemaking, we indicated that the proposed revisions raised questions concerning the ability of Pennsylvania's ABS to meet the requirements of 30 CFR 800.11(e) (56 FR at 24689). We also required information from Pennsylvania that would demonstrate that the revenues generated by the collection of the reclamation fee are sufficient.

The requirement was generated because of our uncertainty that the Fund could be operated in a manner that will meet the ABS requirements of 30 CFR 800.11(e). Our uncertainty resulted from information Pennsylvania reported that an analysis of the solvency of the Fund for 1989 and 1990 showed a deficit in both years. In addition, our review of proposed revisions to 25 Pa. Code 86.17 left questions as to the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. We were uncertain about the relationship of the ABS and fees collected under 25 Pa. Code 86.17 to the reclamation of underground mining permits where bonds were forfeited.

The June 5, 2003, PADEP submission provides a complete description of ongoing and planned activities that address the issues that formed the basis for 30 CFR 938.16(h). Those activities include: (1) The appropriation of $5.5 million for land reclamation, (2) Continued collection of the permit fee at 25 Pa. Code 86.17(e), (3) Requiring new permits to post conventional bonds and requiring existing active/inactive permits to replace ABS coverage with conventional bonds, and (4) The targeting of significant resources through a number of financial, and reclamation mechanisms at discharges on current primacy forfeitures covered by the ABS.

After careful consideration of the comments we received, we have found that the actions taken, as described in the June 5, 2003, submission, including Pennsylvania's shift from an ABS to conventional bonds, adequately address the requirements of 30 CFR 938.16(h). Pennsylvania's conversion from the ABS to full cost bonding, renders moot that portion of the required amendment concerned with the solvency of the Fund. Also, the clarification that bonding for the surface effects of underground mining has not been a part of the Fund and has been (and will continue to be) handled by conventional bonds is sufficient to address the remainder of the required amendment. Therefore, 30 CFR 938.16(h) is being removed.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. PA 802.31), and received responses from PennFuture and PCA. We will first discuss the PennFuture comments and then the comments from PCA.

At the outset, however, we wish to clarify the scope of the subject matter for which we requested comments, particularly as it relates to satisfaction of the first portion of the 1991 rulemaking. In the June 26, 2003, **Federal Register** Notice announcing our intention to consider the removal of the required amendment at 30 CFR 938.16(h), we noted that the 1991 notice ''dealt with the same subject matter, *i.e.*, the solvency of the State's Surface Mining Conservation and Reclamation Fund, as does the first portion of * * * 30 CFR 938.16(h).'' We stated further that:

> Since we are now satisfied that the State's bonding program enhancements adequately address our concerns about the ability of the bonding program to ensure the completion of the reclamation plans for all operations on which the operators default on their obligations to reclaim, we are proposing the removal of the first portion of 30 CFR 938.16(h). 68 FR at 37988.

We then clarified the scope of the opportunity to comment as follows:

> We are seeking your comments on whether OSM should consider the information submitted by Pennsylvania sufficient to satisfy the required amendment at 30 CFR 938.16(h). Because we decided on June 12, 2003, that PADEP's bonding program enhancements satisfy the concerns expressed in our October 1, 1991, Part 732 Notification Letter, we are not seeking comments on the

adequacy of those bonding program enhancements.

As such, we were effectively asking for comment as to the validity of the proposition that the first portion of the required amendment and the 1991 notice were one and the same and that, therefore, there was nothing more needed from Pennsylvania to satisfy 30 CFR 938.16(h). This question, we believe, is markedly different from the question, not open for comment, of whether actions taken as described in the program enhancements document satisfied the 1991 notice on deficiencies in the ABS.

Nevertheless, we recognize that the June 26, 2003, **Federal Register** Notice may not have presented the scope of proposed action upon which comment was invited with optimal clarity and that, as a result, members of the public may have reasonably believed that they were invited to comment not only on whether resolution of the 1991 Notice also resolved the first part of 30 CFR 938.16(h), but also on the sufficiency of actions described in the program enhancements document to address the deficiencies in the ABS, and, further, on the adequacy of Pennsylvania's bonding program as a whole. For this reason, we are addressing their comments on these latter two issues. However, we continue to maintain that they are outside the scope of this rulemaking.

The PennFuture comments dated July 28, 2003 (Administrative Record No. PA 802.36), were made on behalf of the Pennsylvania Federation of Sportsmen's Clubs, Inc., the Pennsylvania Chapter of the Sierra Club, Pennsylvania Trout, Inc., Tri-State Citizens Mining Network, Inc., and Mountain Watershed Association, Inc.

On July 25, 2003 (Administrative Record No. PA 802.35), PennFuture wrote us concerning our termination of the 1991 notice. PennFuture has requested that we incorporate the comments of its July 25 letter into the comments on removal of 30 CFR 938.16(h). We will consider those comments to the extent that they address the removal of 30 CFR 938.16(h). However, comments that pertain to whether the June 5, 2003, submission satisfies the 1991 notice and comments on the 30 CFR 732.17(c) through (e) process are considered as non-responsive to this rulemaking.

PennFuture commented that OSM is refusing to hear from the public on the adequacy of the June 5, 2003, PADEP submission of the program enhancements document and that in doing so, OSM has violated the public's right to a meaningful ''opportunity to participate'' in this proceeding, as required by 5 U.S.C. 553(c). It claims this also violates our obligation to ''consider all relevant information'' in making our decision as required by 30 CFR 732.17(h)(7).

We disagree that we have violated the notice and comment requirements of 5 U.S.C. 553(c) and 30 CFR 732.17(h). We have provided the public a meaningful opportunity to participate in this rulemaking and have considered all relevant information in making our decision on the proposal to remove the required amendment at 30 CFR 938.16(h). Our June 26, 2003, proposed rule specifically identified that the proposal to remove 30 CFR 938.16(h) is based upon the information contained in the June 5, 2003, PADEP submission that was submitted in response to our 1991 notice. In addition, the proposed rule specifically requested comments on whether we should consider the information submitted by Pennsylvania sufficient to satisfy the required amendment at 30 CFR 938.16(h).

The June 12, 2003, administrative decision by OSM with regard to the satisfaction of the 1991 notice was a separate and distinct action not subject to the public notice and review procedures governing this rulemaking. To assist the public in commenting, OSM decided that it was appropriate to clarify in this rulemaking that it will consider comments to the extent that they address the satisfaction of 30 CFR 938.16(h) and that comments that address the 1991 notice will be considered as non-responsive to this rulemaking.

PennFuture commented that our pre-rulemaking commitment to finding that the program enhancements are adequate violate the notice and comment requirements of 5 U.S.C. 553(c) and 30 CFR 732.17(h) and is violating our obligation to serve as a fully informed, impartial decision maker.

We disagree with the comment's presumption that our involvement with the program enhancements document has violated the notice and comment requirements of 5 U.S.C. 553(c) and 30 CFR 732.17(h) or that it compromises our role as a decision maker. Interaction of our staff with State regulatory authorities in the administration of their programs or in the development of State policies and procedures and State program amendments is a routine practice. That interaction does not alter the fact that once material is submitted to us for consideration and a regulatory action is proposed in the **Federal Register**, as was done in this case, any final decision will be based upon the merits after full consideration of the public comments, including any information provided, on that proposal.

PennFuture commented that because OSM's proposed deletion of the actuarial study requirement from 30 CFR 938.16(h) is entirely dependent on this finding that the program enhancements are adequate, it would seem indisputable that comments or data contesting its adequacy constitute relevant information for OSM to consider under 30 CFR 732.17(h)(7). PennFuture further stated that the notice of proposed rulemaking prevents such information and that OSM will not consider comments on the adequacy of the bonding program enhancements document.

PennFuture has mischaracterized the commenting opportunities provided by this rulemaking. As discussed in response to previous comments, the notice initiating this rulemaking activity specifically identified that the proposal to remove 30 CFR 938.16(h) is based upon the information contained in the June 5, 2003, PADEP submission that addressed our 1991 notice. In addition, the notice specifically requested comments on whether we should consider the information submitted by Pennsylvania sufficient to satisfy the required amendment at 30 CFR 938.16(h). While comments addressing the basis for OSM's administrative decision that the 1991 notice has been resolved are not part of this rulemaking, OSM is considering comments to the extent that they address the satisfaction of the requirements at 30 CFR 938.16(h).

PennFuture has suggested that OSM has firmly committed itself to the positions that the program enhancements are adequate and that the actuarial study requirement of 30 CFR 938.16(h) therefore may be terminated. PennFuture stated that agencies engaged in rulemaking or similar decisions that are subject to notice and comment procedures may not foreordain the results by agreement. Additionally PennFuture stated that OSM must treat the adequacy of the ''program enhancements'' as an open issue that it can decide only after inviting public comment on the issue and giving due consideration to the input in receives. Finally, PennFuture stated that OSM therefore should publish a new notice of proposed rulemaking, expressly invite comment on the adequacy of the program enhancements to address the concerns about the ability of the bonding program to ensure the completion of the reclamation plans for all operations on which the operators default on their obligations to reclaim, and then make its decision whether to delete the actuarial study requirement

from 30 CFR 938.16(h) only after it appropriately considers all relevant information it receives.

We disagree with the comments. The results of this rulemaking were not foreordained by agreement. The fact that OSM staff worked with PADEP staff in developing the program enhancements document does not constitute a binding agreement on OSM as it relates to this rulemaking. As provided for under 30 CFR.732.17(c) through (e), OSM has separately exercised its decision-making authority to review actions taken by PADEP to address the issues identified in the 1991 notice and concluded that the 1991 notice has been resolved. There is no requirement for public notice before revising or terminating such notices and the basis for our June 12, 2003, decision terminating the 1991 notice is beyond the scope of this rulemaking. Separately, we published a proposed rulemaking to obtain public input on whether the information submitted by Pennsylvania in the June 5, 2003, PADEP submission provides sufficient basis for the removal of the requirements at 30 CFR 938.16(h). We are now making our final decision after reviewing all responsive comments. Therefore, further public participation in this decision is not warranted.

PennFuture requested that OSM publish a new notice that completely explains why it believes the program enhancements have been adequately addressed.

Again, we have decided not to adopt the suggestion to publish a new notice with revised discussions of how the program enhancements document addresses the requirements at 30 CFR 938.16(h). The notice of proposed rulemaking for this action provides a complete description of the events leading up to the requirements imposed at 30 CFR 938.16(h). The notice also provides a summary of the activities proposed and undertaken by PADEP that potentially satisfy the outstanding issues as well as a listing of the specific documents that form the basis for our proposal. Because it was not reasonable or practical for us to publish the voluminous documents in the **Federal Register**, we made these documents available to the public in both paper and electronic form upon request. In addition, we offered the opportunity for a public hearing where interested persons could seek clarification of any points needed to facilitate their ability to provide meaningful comment. We believe that the **Federal Register** notice, the information we made available to the public, and the opportunity for a public hearing provided sufficient information to persons interested in commenting on the notice of proposed rulemaking. Further, PennFuture's extensive comments on this rulemaking exhibit an extensive review of the basis for proposing removal of 30 CFR 938.16(h).

PennFuture commented that PADEP has failed to provide the hard proof of financial soundness and sufficient reclamation performance required by 30 CFR 938.16(h) and that until PADEP submits an actuarial study or similar analysis showing that its bonding program actually guarantees complete reclamation of all permanent program sites, the first requirement of 30 CFR 938.16(h) will remain unresolved and therefore must remain in place.

We disagree with the comment, which misstates the scope of the required amendment. The scope of 30 CFR 938.16(h) was limited to deficiencies in the ABS. PADEP has terminated reliance upon the ABS for its regulatory program and demonstrated that the ABS did not play a role in bonding for the surface effects of underground mining. As such, the Pennsylvania regulatory program now operates consistent with 30 CFR 800.11(a) through (d) rather than under (e) as was cited in the required amendment. While there are residual issues in the transition from the ABS to conventional bonds, they are adequately addressed in the program enhancements document.

PennFuture commented that the fundamental reason PADEP still is unable to submit an actuarial study or similar information demonstrating the solvency of its bonding program is that the program remains insolvent and unable to guarantee treatment of all the post-mining discharges emanating from permanent program sites. PennFuture also indicated that in order to demonstrate the ''soundness or financial solvency'' of its bonding program, PADEP first would have to make its bonding program fiscally sound.

Again, the comment misstates the scope of the required amendment, which is limited to the ABS. In the case of a State operated ABS, the State's obligation to expend funds to reclaim a forfeited site extends to all assets of the ABS unless the scope of reclamation covered by the ABS is expressly limited. Where it is determined that an ABS lacks sufficient assets to cover the full cost of reclamation for which it is applicable, as was the case with Pennsylvania in the required amendment, the State must take steps to sufficiently increase the assets of the ABS to cover existing and reasonably anticipated obligations. Efforts to fix an ABS are evaluated on their ability to make the ABS solvent. However, a State always has the option to terminate use of its ABS and require conventional bonds to replace ABS coverage. In doing so, a State does not have an obligation to make its ABS solvent before converting to a conventional bonding system (CBS) and requiring applicants to post conventional bonds and existing permittees to replace ABS coverage with conventional bonds. Such a requirement would be well beyond what is required of a CBS under 30 CFR part 800 where posted bonds are deficient or insolvent, as well as beyond anything OSM would be able to require should it withdraw approval of a State program because of an inadequate ABS. In the case of Pennsylvania, which initiated this process in 2001, terminating reliance upon the ABS and requiring all applicants and permittees to shift to conventional bonds did not require a program amendment because the program already included a CBS, which was being applied to underground mines.

PennFuture commented that the ABS Bond Forfeiture Discharge Workplan (Workplan) and the program enhancements document attempt to balance the books not by expanding the assets of the ABS to match the long-term treatment costs it must cover, but by attempting to write off many of those liabilities, and perhaps all of them.

We disagree with the comment. We can find no provisions in the Workplan where PADEP proposes to ''write-off'' primacy discharges forfeited under the Pennsylvania ABS. To the contrary, the Workplan provides for continued revenue to the Fund; precludes the addition of any more potential liabilities to the Fund by halting its use for new permits; reduces potential obligations to the Fund by requiring the replacement of ABS coverage with conventional bonds or other financial guarantees at existing permits; and provides a structured approach to achieving reclamation of pollutional discharges by targeting significant resources through a variety of financial and reclamation mechanisms at current primacy forfeitures which fall under the ABS. Any initiative to eliminate the revenue to the fund would be an amendment to the program, which could not be implemented without going through the program amendment process, including opportunity for public comment.

PennFuture commented that until PADEP has actually implemented all of its ''program enhancements'' and actually shown that they achieve the objectives applicable to all SMCRA bonding programs, it cannot satisfy the first requirement of 30 CFR 938.16(h) to ''demonstrate'' the adequacy and

solvency of its bonding program. PennFuture further stated that because the program enhancements document does not (and cannot) provide that proof, OSM must leave the first requirement of 30 CFR 938.16(h) in place, and must institute Part 733 proceedings based on PADEP's failure to satisfy it.

Again, the comment misstates the scope of the required amendment, which is limited to the ABS. In fact, if we were to accept the comment and initiate a Part 733 action and ultimately take over all or a portion of Pennsylvania's approved program or substitute a Federal Program, we couldn't begin to address the problems caused by the deficiencies in the ABS as well as the program enhancements document does. PADEP has provided a credible approach to addressing outstanding bond program reclamation responsibilities and OSM has concluded that the required amendment at 30 CFR 938.16(h) is satisfied. Therefore, OSM has no basis for initiating proceedings under 30 CFR part 733.

PennFuture raised questions on PADEP's June 5, 2003, letter regarding the payment of reclamation fees by underground mine operators.

The 1991 rulemaking at 30 CFR 938.16(h) required Pennsylvania to clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. OSM imposed the requirement to clarify bonding forfeiture funding procedures and the responsibilities of the ABS. Bond program shortfalls have been documented by the 1993 Milliman & Robertson actuarial study and the February 2000 PADEP Assessment Report. Because PADEP has clarified that it has not been relying on the ABS for bond coverage for the surface effects of underground mines that portion of the required amendment has been satisfied.

PennFuture commented that statements that underground mines are bonded under a CBS is erroneous because, lacking a mandatory site-specific bond adjustment provision, Pennsylvania's approved program has never included a conventional SMCRA bonding system.

We do not agree with this comment. The fact that Pennsylvania did not have a mandatory adjustment provision does not alter the fact that, under its approved program, it had been accepting conventional bonds as providing full bond coverage, separate from the ABS, for the surface effects of underground mines. We agree that Pennsylvania needs to modify its program to include a mandatory bond adjustment provision. However, imposing such a required amendment is beyond the scope of 30 CFR 938.16(h). In any case, a commitment to propose such an amendment was included in the program enhancement document. In fact, the proposed amendment has now been received by OSM and we have published it for comment in a separate FR notice.

PennFuture commented that because the authorization in 25 Pa. Code 86.17(e) to use reclamation fees on all bond forfeiture sites is part of the OSM-approved State regulatory program, PADEP may not deviate from the terms of that program through an unwritten policy or a mere letter to OSM. PennFuture asserted that the plain terms of the permit fee regulation at 25 Pa. Code 86.17(b), approved at primacy, required payment of the $50 per acre fee by everyone planning to engage in surface mining activities (a term that included surface activities associated with an underground mining operation). That provision was deleted in 1991 and replaced with 25 Pa. Code 86.17(e), which expressly exempts underground operators from the permit fee requirement, but does not expressly prohibit the use of fee moneys to reclaim surface effects of underground mining. PennFuture further stated that if PADEP wants to place such a restriction on the use of the funds, the only way it can do so is through a program amendment. PennFuture believes that the explanation presented in PADEP's June 5, 2003, letter does not resolve, but rather highlights, an inconsistency between the terms of the approved Pennsylvania program and its implementation and that the inconsistency can be ''clarified'' in only one of two ways: (1) PADEP's elimination of the unpromulgated and unapproved restriction on the use of the ABS reclamation fees, or (2) PADEP's submission and our approval of a program amendment incorporating the restriction that PADEP claims to apply in practice.

We do not agree with PennFuture's assertion that 25 Pa. Code 86.17(b) prevented PADEP from establishing and operating within the boundaries of the Pennsylvania ABS. Pennsylvania's regulation at 25 Pa. Code 86.17(b) provided the authority to collect a permit application fee. When Pennsylvania deleted subsection (b) and added subsection (e) in 1990, it stated that ''[s]ection 86.17 is changed to *clarify* that the $50 per acre reclamation fee does not apply to the surface effects of underground mining.'' Volume 18, *Pennsylvania Bulletin,* 3385, June 16, 1990. (Emphasis added) Since the 1990 changes ''clarified,'' rather than ''created,'' the reclamation fee exemption for underground operators, PADEP's June 5, 2003 assertion that ''[b]onding of surface impacts of underground mines has always been under a conventional bonding system'' is consistent with previously approved and currently approved regulations. The discretionary authority under 25 Pa. Code 86.152 and 86.149(b)(7) provided PADEP with the option of adjusting bonds on sites it determined were covered by the ABS. In addition, there were no program restrictions preventing PADEP from allocating the reclamation fees collected to those sites where bonds were adjusted pursuant to the discretionary authority. The required amendment at 30 CFR 938.16(h) requested that Pennsylvania clarify its existing procedures with regard to that process. PADEP has done so, by stating in its June 5, 2003, letter that underground mines are not subject to the reclamation fee, and that the ABS moneys are not used for reclaiming underground mines. We believe these statements are legally supported by the flexible language contained in the State's regulations at 25 Pa. Code 86.17 and 86.152. Moreover, and as stated above, PADEP is now requiring all mine permits to post a full cost reclamation bond and PADEP has proposed a number of enhancements, as well as an amendment making it clear that bond adjustment will be mandatory when adjustment is needed.

PennFuture commented that the PADEP technical guidance document that remains in effect provides that the mine drainage treatment component for an underground anthracite (*see* PADEP Technical Guidance Document No. 563–2504–45 1, ''Bonding: Anthracite Underground Mines'' (February 15, 1997)) is limited to the cost of replacing the treatment system.

We appreciate the commenter pointing out that Pennsylvania's 1997 guidance document is not consistent with our 1997 acid mine drainage (AMD) policy statement issued shortly after their guidance document (while the Pennsylvania guidance document reflects Federal bonding requirements for underground mines promulgated in 1980, those requirements were simplified with that express provision limiting bonding to the cost of removing or replacing the treatment system being removed in 1983). However, that inappropriate limitation in the guidance document is not germane to the requirements of 30 CFR 938.16(h) nor

our basis for proposing to remove it. Therefore, the comment is outside the scope of this action.

PennFuture indicated that the program enhancements document suggests that PADEP will include long term treatment costs in calculating the water treatment component of conventional bonds, but the formula it provides (in Appendix 1) incongruously does not take into account the costs of replacing the treatment system.

First, the approach to calculating costs for conventional bonds is outside the scope of the 1991 rulemaking codified at 30 CFR 938.16(h) and our basis for proposing to remove it. In any case, we have found that PADEP's approach to calculating the annual treatment cost includes a component for recapitalization. Our technical staff has been working with PADEP on refining treatment cost calculations and confirms that the cost of reconstructing the discharge treatment system is included. Please note that PADEP plans to address this issue through a specific guidance document that will be open to public comment. We encourage you to contact PADEP and notify them of your interest to review and comment on new and revised technical guidance documents.

PennFuture commented that the method for calculating the bond for an underground mine can be ''clarified'' once and for all only if it is part of the OSM-approved, OSM-enforceable State regulatory program.

Underground bond calculation procedures are part of the approved program. Consistent with Federal regulatory programs, States may implement bonding calculations and bond rates through agency guidelines. Pennsylvania maintains bond rate guidelines through its Technical Guidance Document system. We have generally not required the submission of those guidance documents as program amendments nor would we expect to unless they seemed to conflict with the approved program. In any case, the method for calculating the bond amount for conventional bonds required to be posted for the surface effects of underground mines is beyond the scope of this rulemaking which, as previously explained, is limited to the ABS.

PennFuture commented that PADEP's June 5, 2003, submission does not satisfy the first requirement of 30 CFR 938.16(h) to demonstrate that Pennsylvania's bonding program guarantees timely and complete reclamation of all bond forfeiture sites. PADEP has not submitted such proof, and the unfolding situation with C&K Coal Company shows that it is unable to do so.

Please review our responses to a number of similar comments above. PADEP's June 5, 2003, submission does satisfy the requirements of 30 CFR 938.16(h). In addition, PADEP has provided a credible approach to addressing residual reclamation obligations covered by the ABS. These include the provision of $5.5 million for land reclamation, the conversion of active mine permits to full cost bonding, and the development of a long-term treatment approach to pollutional discharges on active and forfeited mine sites. Forfeiture situations such as those presented by C&K Coal Company are unfortunate and are representative of the types of challenges that PADEP faces as it addresses those residual obligations. We have committed to a cooperative partnership with PADEP that will target the resources of both agencies towards the implementation of the bond program enhancements put forth by PADEP under the program enhancements document. We are confident that the shift from the ABS to conventional bonds (which brings the Pennsylvania program into conformance with Federal requirements) together with ongoing and planned enhancements to address the residual ABS obligations, constitutes the best approach to resolving residual obligations of the ABS such as the one referenced in the comment.

PennFuture commented that we should allow the required program amendment codified at 30 CFR 938.16(h) to remain in place, and should now institute the Parp 733 proceedings we should have initiated in early 1992 based on PADEP's failure to satisfy the two requirements codified therein.

Please see our response above to similar comments. The required amendment at 30 CFR 938.16(h) has been satisfied and we have no basis for initiating proceedings under 30 CFR part 733.

The following comments from PennFuture are derived from its letter to us dated July 25, 2003, regarding our action in terminating the 1991 notice. As we noted above, we are identifying and responding to these comments only to the extent that they arguably apply to removal of the required amendment at 30 CFR 938.16(h) and have not already been addressed above.

PennFuture stated that OSM has flip-flopped from its previous insistence that all forfeiture discharges receive timely treatment.

We do not agree with this comment. We have consistently required, in Pennsylvania as well as other states, that any ABS must have sufficient assets to complete the reclamation plan of all sites covered by the ABS. We have consistently judged efforts to correct identified deficiencies in an ABS by that same standard. However, this is the first time we have faced a situation in which a State has decided to replace ABS bond coverage for new and existing permits with conventional bonds rather than trying to fix a deficient ABS and continue reliance upon it. Again, when the bond coverage being provided to operations as part of an approved program under 30 CFR 800.11(e) is determined to be insufficient, it is appropriate to require replacement of that bond coverage with a conventional bond posted under 30 CFR 800.11(a) through (d). That is what OSM would do if we were to institute a Federal bonding program in Pennsylvania or any other State with an ABS. However, there is no obligation to make the bond coverage under subsection (e) solvent before doing so. That does not mean that the obligation to treat forfeiture discharges goes away. That obligation remains first with the permittee. Second, it resides with the bond coverage to the extent funds are available. However, Pennsylvania, or any other State, is only obligated to treat forfeiture discharges to the extent bond funds are available.

PennFuture stated that by using a watershed approach to address primacy forfeiture discharges, OSM is attempting to hide the failure of PADEP and OSM to ensure full implementation of the reclamation plan for every primacy forfeiture site.

We do not believe this comment is within the scope of this rulemaking. However, we will respond. We support PADEP's approach to address all mine drainage problems in the Commonwealth, including those from primacy forfeitures, on a watershed basis. Given the range of State and Federal government programs and citizen based mine drainage treatment efforts ongoing in Pennsylvania, PADEP must carefully consider each primacy forfeiture discharge in the context of all pollution in the watershed. Without such an approach, scarce programmatic and technical resources could be wasted. SMCRA and the 30 CFR part 800 bonding regulations do not prohibit the regulatory authority from implementing discharge abatement activities in the context of an entire watershed.

PennFuture stated that it will take years for the agencies to perform all the studies, calculate all the wasteload allocations, create the priority lists, evaluate the available funding and other mechanisms, and confront the hard decisions to formally abandon certain

primacy discharges. PennFuture stated that in the meantime, the primacy forfeiture discharges will continue to flow without treatment, and the list of them will grow longer.

While we do not believe it is within the scope of this rulemaking, we agree with the comment that collecting the appropriate scientific information and developing effective abatement plans may require a considerable amount of time. However, PADEP and we have committed to a joint agency cooperative approach to developing watershed plans that will successfully abate forfeiture discharges. We acknowledge that until such time as a discharge abatement plan becomes effective, certain discharges may go untreated.

PennFuture commented that the program enhancements document fails to show that sufficient financial guarantees have been or will be posted for active and inactive discharge sites to prevent the discharges from going untreated after forfeiture occurs.

Again, while we believe this comment is outside the scope of this rulemaking, we will respond. PADEP has invested a great deal of effort in developing a remedy to the inadequacies of the classic bonding approach to long-term discharges. In the short-term, it has used its enforcement and compliance process to initiate a number of treatment trusts on active mine sites. It has invested staff resources in the development of a workable trust approach. For the long-term, PADEP has committed a process where operators will have to put up a separate bond that will provide for long-term treatment in the event of a forfeiture. If operators refuse or are unable to come up with the bond, PADEP will use its enforcement and compliance process to have the operator commit to building a financial assurance (trust) over a specified period of time. PADEP's approach is within their approved statutory and regulatory requirements and will take some time to be fully implemented. We agree that it is possible that certain sites may forfeit their bonds leaving insufficient funds for the immediate treatment of any pollutional discharges. In such cases, PADEP has committed to addressing the sites as part of their watershed approach under the Workplan.

PennFuture commented that the bond conversion program was a misdirected effort because instead of focusing on the major problem of mine drainage treatment guarantees, PADEP conducted a multi-year effort to revamp parts of its program for guaranteeing land reclamation, which consumed considerable resources of both mine operators and PADEP staff.

We do not agree with the comment. PADEP's plan for converting existing operations from the ABS to conventional bonds was designed to maximize the number of sites obtaining conventional bonds and minimize the number of forfeitures that might be triggered by the conversion process. It also addresses the water treatment component in a manner consistent with OSM's 1997 AMD policy statement as applied under programs with conventional bonds.

PennFuture submitted a list of activities ongoing in the Pennsylvania regulatory program, in support of a contention that Pennsylvania's transition to a CBS is not complete. PennFuture commented that based upon the submitted reasons, Pennsylvania is still operating an ABS.

We acknowledge that the Fund still exists. However, with regard to the comment and its relevance to the removal of the required amendment at 30 CFR 938.16(h), we note that PADEP, rather than continuing efforts to make the ABS solvent, is now requiring all mine permits to post a full cost reclamation bond. We also acknowledge that, through implementation of the workplan described in the enhancements document, PADEP is continuing efforts to further reduce the residual potential obligations to the Fund by obtaining other forms of financial guarantees for those potential obligations where possible. However, that does not alter the fact that the required actions described in 30 CFR 938.16(h) are now moot because Pennsylvania chose a different course to address the issues raised.

PennFuture commented that the Workplan is inconsistent with SMCRA because it allows primacy discharges to be lumped with all other post mining discharges under a prioritized reclamation approach. That process, PennFuture contends, is inconsistent with SMCRA. PennFuture further stated that, under SMCRA, primacy sites are legally distinctive and are not supposed to be thrown in with every other abandoned coal mine in the State and that the Workplan explicitly allows for primacy forfeiture discharges to go without treatment based on the unavailability of funds, and it effectively writes off some primacy discharges permanently because they fall below the treatment threshold on the priority list.

We do not agree that the Workplan is inconsistent with SMCRA. As we have stated in a previous decision on a Pennsylvania bonding amendment, SMCRA does not prevent regulatory authorities from prioritizing reclamation efforts to effectively allocate staff resources or to improve the environmental outcome of program operations. *See* 56 FR 55080, 55084 (October 24, 1991) (''To the extent that [State programs] provide only for a ranking of sites for reclamation without compromising the requirement that all sites for which bonds were posted be properly reclaimed, however, they are not inconsistent with * * * SMCRA * * *'') Likewise, there are no provisions under SMCRA or the 30 CFR part 800 bonding regulations that prevent the regulatory authority implementing discharge abatement activities in the context of an entire watershed. OSM supports PADEP's approach to address all mine drainage problems in the Commonwealth, including those from primacy forfeitures, on a watershed basis. As we noted above, PADEP must carefully consider each primacy forfeiture discharge in the context of all pollution in the watershed. Without such an approach, programmatic and technical resources could be wasted. We disagree that the discharge Workplan would allow PADEP to ''write-off'' sites based upon a treatment threshold established on a priority list. We expect that some discharges will be addressed under abatement plans where treatment may not be at the specific discharge location or may be carried out in combination with non-primacy forfeiture discharges. However, we anticipate that all primacy forfeiture pollutional discharges will be addressed by PADEP.

PennFuture commented that OSM has previously ruled on the prioritization of bond forfeiture reclamation in the October 24, 1991, **Federal Register** (56 FR 55080), when it stated that ''neither SMCRA nor the Federal regulations provide for prioritizing sites for reclamation, since both presume that site-specific bonds, together with necessary supplemental funding from alternative bonding systems, will be immediately available and adequate to cover reclamation costs for each site.'' 56 FR at 55084.

In response, we note that our October 24, 1991, finding, also stated that prioritization would be inconsistent with SMCRA where it ''would allow high priority sites to be reclaimed while neglecting lower priority sites.'' *Id.* The Workplan calls for reclamation, including water treatment, for all permanent program sites, even though some will have to wait longer than others, and some will be treated on a watershed basis. Neither of these approaches equates to a ''write-off'' of permanent program site reclamation costs.

In support of its previous comment that OSM and PADEP cannot ''write-off'' outstanding obligations of an ABS, PennFuture referenced past OSM decisions in Missouri (56 FR at 21281), Kentucky (57 FR at 37090), and West Virginia (60 FR at 51918) (codifying quoted language at 30 CFR 948.16(lll)).

We do not agree that The Workplan will ''write-off'' primacy forfeiture discharges. The Workplan provides for PADEP to develop and maintain a statewide strategy and to dedicate staff resources expeditiously to address primacy forfeiture discharges. The Workplan also provides for periodic reporting on the status of the discharge inventory, reclamation accomplishments, and to provide us with information on program issues encountered during the process. In addition, the Workplan makes information on the statewide strategy, site-specific abatement plans and abatement schedules available to the public. We have concluded that the development of a statewide strategy and site-specific plans with periodic reporting and public involvement provides a process that will address all primacy forfeiture discharges in a manner that will maximize the environmental benefits on a watershed basis. At the same time, we reiterate an earlier response that pointed out that converting from an ABS that is deficient to conventional bonds is quite distinct from efforts to maintain and correct deficiencies in an ABS, as was done by Missouri, Kentucky and West Virginia. Again, Pennsylvania is not obligated to make its ABS solvent before replacing the ABS with conventional bonds.

PennFuture commented that it disagreed with the discussion in the program enhancements document that dealt with bond program ''liability'' versus ''programmatic accountability.'' PennFuture stated that the document makes no effort to explain the distinction between the State not being ''liable'' for treatment costs on bond forfeiture sites and it having ''programmatic accountability'' to ensure there is sufficient funding available for that purpose.

While this comment is outside the scope of this rulemaking we will clarify the point. Again, the operator remains liable for all unfinished reclamation obligations, including water treatment at a forfeited site. The regulatory authority has an obligation to use forfeited and/or ABS funds to complete the reclamation plan to the extent funds are available. The regulatory authority also has programmatic accountability to assure that there are sufficient funds available. However, failure to fulfill its programmatic responsibility to assure that sufficient funds are available in the event of forfeiture does not make the State liable for completing the reclamation plan.

Penn Future commented that the Workplan wrongly classifies Title V primacy bond forfeiture sites as a subset of ''[t]he universe of abandoned mine lands,'' and that PADEP has decided that discharges from primacy forfeiture sites are properly classified as nonpoint source discharges for TMDL purposes. Penn Future takes issue with the letter from the Environmental Protection Agency dated November 7, 2001, that discusses the use of TMDL's when addressing discharges on abandoned mine sites.

While we believe this comment falls outside the scope of this rule making, we will address it. We disagree with the Penn Future's characterization of the letter with regard to the Workplan. The Workplan does not address whether specific discharges are point or non-point sources. Primacy forfeiture discharges will be addressed by PADEP through a variety of financial and reclamation mechanisms consistent with Pennsylvania's approved Environmental Protection Agency (EPA) water quality program. The Workplan includes a commitment by PADEP to make discharge abatement plans available to the public. At that time, the public will have an opportunity to comment on the treatment of discharges on a site-by-site basis.

Penn Future commented that the Workplan fails to mention any discharges addressed by remining or the ''rec-in-lieu'' program.

While we believe this comment falls outside the scope of this rule making, we will address it. The value of remining efforts in Pennsylvania is well known and OSM and PADEP chose to not devote the considerable space needed to establish the value of the activity. Persons interested in the accomplishments of the remining program in Pennsylvania can visit the EPA website and obtain a copy of the document ''Coal Remining—Best Management Practices Guidance Manual'' (EPA 821–B–01–010). Under Section 6 of that document, there is a considerable amount of information on the water quality accomplishments of remining in Pennsylvania. Both reclamation mechanisms, and particularly remining, present opportunities for PADEP to address primacy forfeiture discharges.

PennFuture commented that PADEP is unable to pledge future use or availability of certain resources as part of the discharge abatement Workplan. PennFuture specifically questioned the availability of Growing Greener grants and the 10% Set-Aside under the SMCRA Abandoned Mine Land Program.

While we believe this comment falls outside the scope of this rulemaking, we will address it. We do not agree with the comment. The Workplan provides for PADEP to develop and maintain a statewide strategy using a number of financial and reclamation resources. Growing Greener Grants and the 10% Set-Aside represent potentially significant resources and have been used to achieve meaningful reclamation in the treatment of post-mining pollutional discharges. While the extent of their contribution will have to be determined on an annual basis, past accomplishments demonstrate their value to the overall Workplan approach to pollution abatement.

PennFuture commented that treatment bonds and trust funds will not prevent future primacy forfeitures. PennFuture stated that although the posting of full-cost water treatment bonds or, as an alternative to those bonds, establishment of treatment trusts may curb the rate of growth of the ABS funding shortfall, they will not prevent that shortfall from expanding or the list of untreated primacy forfeiture discharges from lengthening.

While we believe this comment is outside the scope of this rulemaking, we agree that bonds and trusts funds specifically covering the treatment of pollutional may not be a final solution for every discharge. However, we believe these efforts will significantly reduce the potential shortfall of the ABS. PADEP has invested a great deal of effort in developing a remedy to the inadequacies of the classic bonding approach to long-term discharges. In the short-term, it has used its enforcement and compliance process to initiate a number of treatment trusts on active mine sites. It has invested staff resources to the development of a workable trust approach. For the long-term, PADEP has committed to a process whereby operators will have to put up a separate bond that will provide for long-term treatment in the event of a forfeiture. If operators refuse or are unable to come up with the bond, PADEP will use its enforcement and compliance process to force the operator to commit to building a financial assurance (trust) over a specified period of time. This is an approach PennFuture supported in a request for comments on OSM's Advance Notice of Proposed Rulemaking published in the **Federal Register** on May 17, 2002 regarding AMD bonding issues (67 FR 35070). We

believe that treatment bonds and trust funds will lead to successful treatment of many more discharges than could be successfully treated employing the classic approach to conventional bonding, and will also remove potential obligations to the ABS.

PCA submitted comments on July 28, 2003 (Administrative Record No. PA 802.37). PCA commented that it supported the removal of the required amendment at 30 CFR 938.16(h). However, PCA believed that it was important that the final rulemaking clarify the nature of the removal through four points. We will respond to each point in turn.

In its first point, PCA indicated that it believes that Pennsylvania's proposal for financial assurances at sites with post mining discharges is more detailed and advanced than any proposed Federal regulatory requirements. PCA wanted us to state clearly that Pennsylvania may make changes to its proposed submission and that changes will be subject to public participation.

We acknowledge PCA's support of removal of the required amendment. As we noted earlier, in our proposed rule of June 26, 2003, we requested comments on PADEP's submission of the program enhancements document as it related to removal of the required amendment at 30 CFR 938.16(h). We believe that Pennsylvania has the existing statutory and regulatory authority to implement the provisions discussed in the document. As such, there is no need for the document to be submitted to us for processing as a program amendment under 30 CFR part 732. While Pennsylvania is free to make changes to the document, we will be closely monitoring any such changes to insure that they are based on Pennsylvania's approved program. Any changes that are not based on the approved program will be subject to the program amendment standards of 30 CFR part 732, including public participation.

In its second point, PCA is concerned with Pennsylvania's plans to move ahead with implementing a trust fund system that could put operators at a competitive disadvantage because it is more detailed, comprehensive and rigorous than other states require. PCA is also concerned that the trust fund system could put some operators out of business altogether. PCA requests that PADEP implement a treatment trust fund system that is no more stringent than any Federal program.

We disagree with the premise of the comment. We believe that the steps PADEP is taking are consistent with Federal requirements and, as such, will not put Pennsylvania operators at a competitive disadvantage.

In its third point, PCA indicated that there exists a bonding crisis in the mining industry making it difficult for operators to obtain bonds and it believes that surety bonding will not be available to address postmining discharges. PCA wants us and PADEP to acknowledge the need to review options in light of the bonding crisis and to ensure that our efforts to implement the joint workplan are designed to avoid further worsening of bonding difficulties.

We acknowledge the problems operators have in securing bonds. We believe that the trust fund option described as part of the bonding enhancements document is a valid alternative that will assist operators in their meeting reclamation requirements without adding to the burden of securing conventional bonds. The trust fund provisions will also assist in securing the release of conventional bonds, thus assisting operators to secure conventional bonds for other minesites.

In its fourth and final point, PCA indicated that operators have been treating discharges from minesites for years. Often, these treated discharges are entering streams that are severely degraded which means the treatment has little or no benefit to the hydrologic balance of the receiving watershed. In those cases, PCA indicated that it may not be prudent for PADEP to require operators to post a conventional bond or a trust fund for perpetual treatment.

As previously stated, the operator remains liable for completing the reclamation plan, including water treatment, and the regulatory authority has a programmatic accountability to assure that adequate financial resources are available in the event of bond forfeiture. Therefore, we do not agree with this comment.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 802.31). On July 3, 2003 (Administrative Record No. PA 802.32), MSHA's Wilkes-Barre Office wrote to us noting that it had no comments on the proposal.

On July 16, 2003 (Administrative Record No. PA 802.33), MSHA's New Stanton Office wrote to us indicating that before a mine is abandoned, MSHA requires that all underground mine openings are sealed and refuse piles and impoundments are abandoned according to its requirements at 30 CFR 77.215. MSHA observed that there are many impoundments in Pennsylvania attached to bankrupt mines that have not been abandoned. MSHA noted that the conversion of all active and inactive mining permits to a full cost conventional bond should allow Pennsylvania to reclaim these sites. MSHA concluded by noting that it had no objections to removing the required amendment at 30 CFR 938.16(h).

We agree with MSHA's comments.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(i) we requested comments on the amendment from EPA (Administrative Record No. PA 802.31). EPA responded on July 17, 2003 (Administrative Record No. PA 802.34) that it appears that PADEP has provided sufficient information to justify removal of the required amendment at 30 CFR 938.16(h). EPA further indicated that it determined that there are no apparent inconsistencies with the Clean Water Act or other statutes or regulations under its jurisdiction.

V. OSM's Decision

Based on the above findings, we are removing the required amendment at 30 CFR 938.16(h).

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and

its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Pennsylvania does not regulate any Native Tribal lands.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfounded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 938.16 [Amended]

■ 2. Section 938.16 is amended by removing and reserving paragraph (h).

[FR Doc. 03–25300 Filed 10–6–03; 8:45 am]

BILLING CODE 4310–05–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 2001–1 CARP DSTRA2]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule: technical amendment.

SUMMARY: The Copyright Office of the Library of Congress is making a non-substantive technical amendment to its final regulations adjusting the royalty rates and terms under the Copyright Act for the statutory license for the use of sound recordings by preexisting subscription services for the period January 1, 2002, through December 31, 2007.

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

Applicability Date: The regulations apply to the license period January 1, 2002 through December 31, 2007.

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

SUPPLEMENTARY INFORMATION: Section 106(6) of the Copyright Act, title 17 of

the United States Code, gives copyright owners of sound recordings an exclusive right to perform their copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain noninteractive digital audio services to make digital transmissions of a sound recording under a compulsory license, provided that the services pay a reasonable royalty fee and comply with the terms of the statutory license. Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act.

On June 18, 2003, the Copyright Office published final regulations effectuating an agreement on the terms that would govern SoundExchange [1] when it functions as the designated agent for the purpose of receiving royalty payments and statements of account from nonexempt subscription digital transmission services for transmissions of sound recordings made under a statutory license prior to January 1, 2002. 68 FR 36469 (June 18, 2003). Pursuant to the agreement, the Office amended § 260.7 by removing the word ''fees'' and replacing it with the word ''payments.'' 68 FR at 36470.

On July 3, 2003, the Copyright Office published final regulations implementing an agreement to adjust the royalty rates and terms for the section 114 license for the use of sound recordings by preexisting subscription services for the current license period—January 1, 2002, through December 31, 2007. 68 FR 39837 (July 3, 2003). Pursuant to the second agreement, the Office amended § 260.7 once again; however, the amendatory language did not reflect the aforementioned amendment made on June 18. As a result, the intended amendment to the final clause of § 260.7 could not be effectuated. The technical amendment published today rectifies this oversight, correctly identifying the language being amended.

List of Subjects in 37 CFR Part 260

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

Final Regulation

■ In consideration of the foregoing, the Copyright Office amends part 260 of 37 CFR as follows:

[1] SoundExchange is an unincorporated division of the Recording Industry Association of America, Inc. that administers statutory licenses.

PART 260—RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES' DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE MAKING OF EPHEMERAL PHONORECORDS

■ 1. The authority citation for part 260 continues to read as follows:

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

§ 260.7 [Amended]

■ 2. Section 260.7 is amended by removing ''the cost of the administration of the collection and distribution of the royalty payments'' and adding ''any costs deductible under 17 U.S.C. 114(g)(3)'' in its place.

Dated: September 5, 2003.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 03–25381 Filed 10–6–03; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7566–6]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline, Anti-Dumping, and Tier 2 Gasoline Sulfur Control Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final rule allows the use of certain alternative analytical test methods for measuring sulfur in gasoline and butane to be used in the Federal reformulated gasoline (RFG) and anti-dumping program and the Federal gasoline sulfur control program. This direct final rule also establishes that a refinery may use any reasonable test method designed for measuring the sulfur content of butane until January 1, 2004. After that date, either the designated analytical test method or an allowed alternative analytical test method must be used. The purpose of today's rule is to grant temporary flexibility until we issue a comprehensive performance-based analytical test methods rule and to fulfill the terms of a recent settlement agreement related to gasoline sulfur test methods.

DATES: This direct final rule is effective December 8, 2003, unless we receive adverse comments or a request for a public hearing by November 6, 2003. If the Agency receives adverse comments or a request for public hearing, we will withdraw this direct final rule by publishing a timely withdrawal in the **Federal Register**.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 8, 2003.

ADDRESSES: To request a public hearing, please contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., (6406J), Washington, DC 20460 or by e-mail to *pastorkovich.anne-marie@epa.gov.* No confidential business information (CBI) should be submitted by e-mail.

EPA has established a public docket for this direct final rule under Docket ID No. OAR–2003–0050, which is available for public viewing at the Air and Radiation Docket and Information Center (EPA/DC) in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listings 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 the direct final rule should be submitted to EPA within 30 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method) or by mail to EPA Docket Center, Environmental Protection Agency (6102T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

EPA's policy is the public comments, whether submitted electronically or in paper format, will be made available for public viewing in EDOCKET as EPA receives them and without charge, unless the comment contains copyrighted material, CBI, or other information whose public 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.*

FOR FURTHER INFORMATION CONTACT: If you would like further information about this rule or to request a hearing, contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, (202) 564–8987 or by e-mail at *pastorkovich.anne-marie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by the action are those that use analytical test methods to comply with the RFG, anti-dumping, and gasoline sulfur control program. Regulated categories and entities include:

Category	NAICSs Codes [a]	SIC Codes [b]	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners.
Industry	422710 422720	5171 5172	Gasoline Marketers and Distributors.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists all entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in part 80 of Title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

II. Background and Summary of Today's Action

Section 211(k) of the Clean Air Act (CAA) directs EPA to establish standards requiring the greatest reduction in emissions of ozone forming volatile organic compounds (VOCs) and toxic air emissions achievable through the reformulation of conventional gasoline, considering cost, other health and environmental factors and energy requirements. The Act requires that RFG meet certain content standards for oxygen, benzene, and heavy metals. RFG must be used in certain ozone nonattainment areas, called ''covered areas.'' The CAA also requires EPA to establish anti-dumping standards applicable to conventional gasoline used in the rest of the country. The Administrator signed the final RFG and anti-dumping regulations on December 15, 1993[1] and these regulations became effective in January 1995.

In 2000, EPA issued regulations establishing lower sulfur content requirements for all gasoline[2] and establishing stricter tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, vans and pick-up trucks. The gasoline sulfur control program begins phasing-in in 2004, and, in general, refiners must meet a refinery average sulfur standard of 30 ppm beginning in 2005 and a per gallon cap standard of 80 ppm beginning in 2006 (with the exception of challenged refiners, and gasoline sold in certain western states subject to geographic phase-in).

Under the RFG, anti-dumping and gasoline sulfur program, refiners, importers, and oxygenate blenders are required to test RFG and conventional gasoline for certain parameters, including sulfur levels, aromatic content, benzene content, and oxygen content. Test methods for determining these parameters are specified in the regulation. For the sulfur content of gasoline, 40 CFR 80.46(a)(1) specifies American Society for Testing and Materials (ASTM) standard method D–2622–98, entitled, ''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry'' as the designated test method. In addition, the gasoline sulfur rulemaking required a test method for determining the sulfur content of butane blended into gasoline—ASTM standard method D 3246–96, entitled ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry.''

In the gasoline sulfur control rulemaking, we specifically requested comments on the designated test method. We also requested comments on other ASTM methods. After considering comments received from the regulated industry during the gasoline sulfur rulemaking process, including comments supportive of ASTM D 2622–98 as the designated method, we decided to require the use of ASTM D 2622–98 for measuring sulfur content. We did not name any alternative analytical test methods because we anticipated that a comprehensive performance-based analytical test method approach rule would be issued in the near future. A comprehensive performance based test methods approach would allow anyone to qualify additional analytical test methods for use in demonstrating compliance with program requirements. We now know that a comprehensive performance based test methods rulemaking will take more time to complete than originally anticipated. We feel that permitting specific ASTM test methods to be used as alternative analytical test methods now provides a bridge to a more comprehensive performance based test methods approach in the future and grants refiners, importers and blenders significant flexibility and potential cost savings in meeting their testing requirements.

As discussed in a May 16, 2003 **Federal Register** notice,[3] Antek Instruments, which manufactures testing equipment, filed a petition challenging the final gasoline sulfur control rule. EPA and Antek entered into negotiations and reached a proposed settlement agreement. The proposed settlement agreement outlined a proposed rule which would identify ASTM D 5453–00^{e1} as an alternative test method refiners and importers could use to comply with the requirement to test gasoline for sulfur content, provided

[1] ''Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Final Rule,'' 59 FR 7812 (February 16, 1994). See 40 CFR part 80 subparts D, E, and F.

[2] ''Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicles Emissions Standards and Gasoline Sulfur Control Requirements—Final Rule,'' 65 FR 6698 (February 10, 2000). See also 40 CFR part 80 subpart H for regulations applicable to gasoline sulfur.

[3] *See* ''Notice of Proposed Settlement Agreement; Request for Public Comment,'' 68 FR 26604 (May 16, 2003).

the test result is correlated with ASTM D 2622–98. In today's action, EPA is revising its regulations to include such a provision. The proposed settlement agreement was available for comment until June 16, 2003. No adverse comments were received.

For the reasons discussed above, we are revising 40 CFR 80.46(a) to allow the use of ASTM D 5453–00^{e1}, entitled ''Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence,'' ASTM D 6428–99, entitled ''Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection,'' and ASTM D 3120–96 (Reapproved 2002)^{e1}, entitled ''Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry.'' Refiners and importers would be able to choose which of these test methods best fits their needs for compliance measurements. We believe that permitting the use of these test methods is desirable from the standpoint of permitting regulated parties more flexibility. A refiner or importer would be able to determine gasoline sulfur content using ASTM D 5453–00^{e1} or any of the specified alternative analytical test methods named in the rule, provided that the refiner or importer result is correlated to ASTM D 2622–98.

In order to ''correlate'' a test result from an alternative test method to the designated test method, a laboratory would have to develop and apply a ''correlation equation'' to the alternative test method result. Because the ''correlation equation'' is designed to provide a prediction of the designated test method result from the use of an alternative test method, the ''correlation equation'' eliminates bias between the designated test method and the alternative test method, so results may be compared between these methods. After applying the correlation equation, the results obtained from an alternative test method should be equivalent to the result you would obtain if you had used the designated test method. Users of a correlation equation should periodically verify its correlation to the designated test method.

This direct final rule also permits the use of ASTM D 4468–85 (Reapproved 2000), ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry'' as an alternative test method for butane, because it is an ASTM approved method that some refiners may elect to use. If a refiner, importer, or blender chooses to measure butane levels with this alternative analytical test method, the results must be correlated to D 3246–96, ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry,'' which is the test method currently designated in the existing rule.

Some refiners and butane suppliers expressed concern that the designated test method is not currently in wide use. When we issued the final gasoline sulfur control regulations, we did not intend to require the use of this method until January 1, 2004. However, the final regulation inadvertently did not specify that date and we are clarifying the effective date by this action. Until January 1, 2004, any test method may be used to test the sulfur content of butane.

We believe that this direct final rule, and our intent to establish a comprehensive performance based test method approach in the future, will advance the purposes of the ''National Technology Transfer and Advancement Act of 1995,'' (NTTAA) section 12(d) of Public Law 104–113, and Office of Management and Budget (OMB) Circular A–119. Both of these documents are designed to encourage the adoption of standards developed by ''voluntary consensus bodies'' and to reduce reliance on government-unique standards where such consensus standards would suffice. This direct final rule would provide for the use of alternative test methods for the measurement of sulfur in gasoline and butane under the RFG, anti-dumping, and gasoline sulfur control programs. Allowing these test methods, which are widely available and approved by ASTM, a ''voluntary consensus body,'' is directly consistent with the goals of the NTTAA and OMB Circular A–119.

Any environmental effects of today's proposed action would be minimal, as it would merely grant limited flexibility to regulated parties in their choice of test method for determining the sulfur content of gasoline and butane. The economic effects of today's proposed action are expected to be positive, since it permits regulated parties the flexibility to choose the test method they will use to comply with existing regulations.

III. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

This direct final rule is not a significant regulatory action within the meaning of the Executive Order. It will not have an annual effect on the economy of $100 million or more and is not expected to have any adverse economic effects as described in the Order. This direct final rule does not raise issues of consistency with the actions taken or planned by other agencies, will not materially alter the cited budgetary impacts, and does not raise any novel legal or policy issues as defined in the Order.

B. Paperwork Reduction Act

This direct final rule would not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Today's rule would only permit more flexibility to parties in their choice of analytical test methods. OMB has approved the information collection requirements contained in the final reformulated gasoline (RFG) and anti-dumping rulemaking and gasoline sulfur control rulemaking has assigned OMB control number 2060–0277.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We have therefore concluded that today's direct final rule will relieve regulatory burden for all small entities. By permitting alternative analytical test methods for the measurement of sulfur in gasoline and butane, smaller entities will be granted greater flexibility in performing compliance testing.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. The rule imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The direct final rule is limited to permitting flexibility in the choice of test methods. Thus, Executive Order 13132 does not apply to this direct final rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

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

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule would apply to parties required to test gasoline and butane for gasoline and butane and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably

feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This direct final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

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

This direct final rule is not an economically ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule advances the goals of the NTTAA by adopting test methods developed by voluntary consensus standards bodies.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This direct final rule will be effective December 8, 2003.

K. Statutory Provisions and Legal Authority

Statutory authority for today's direct final rule comes from sections 211(c), 211(i) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Section 211(c) and 211(i) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Diesel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 24, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons described in the preamble, part 80 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

* * * * *

■ 2. Section 80.46 is amended by revising paragraphs (a) and (h) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

(a) *Sulfur.* Sulfur content of gasoline and butane must be determined by use of the following methods:

(1) The sulfur content of gasoline must be determined by use of American Society for Testing and Materials (ASTM) standard method D 2622–98, entitled ''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry'' or by one of the alternative methods specified in paragraph (a)(3) of this section.

(2) Beginning January 1, 2004, the sulfur content of butane must be determined by the use of ASTM standard method D 3246–96, entitled ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry'' or by the alternative method specified in paragraph (a)(4) of this section.

(3) Any refiner or importer may use any of the following methods for determining the sulfur content of gasoline; provided the refiner or importer test result is correlated with the method specified in paragraph (a)(1) of this section:

(i) ASTM standard method D 5453–00^{e1}, entitled, ''Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence,'' or

(ii) ASTM standard method D 6428–99, entitled, ''Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection,'' or

(iii) ASTM standard method D 3120–96 (Reapproved 2002)^{e1}, entitled ''Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry.''

(4) Beginning January 1, 2004, any refiner or importer may determine the sulfur content of butane using ASTM standard method D 4468–85 (Reapproved 2000), ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, ''provided that the refiner or importer result is correlated with the method specified in paragraph (a)(2) of this section.

* * * * *

(h) *Incorporations by reference.* ASTM standard methods D 3606–99, entitled ''Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography;'' D 1319–02a, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption;'' D 4815–99, entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C_1 to C_4 Alcohols in Gasoline by Gas Chromatography;'' D 2622–98, entitled ''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry;'' D 3246–96, entitled ''Standard Test

Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry;'' D 5191–01, entitled, ''Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method);'' D 5599–00, entitled, ''Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection;'' D 5769–98, entitled, ''Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry,'' D 86–01, entitled, ''Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure;'' D 5453–00^{e1}, entitled, ''Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence;'' D 6428–99, entitled, ''Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection;'' D 3120–96 (Reapproved 2002)^{e1}, entitled ''Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry;'' and D 4468–85 (Reapproved 2000), ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry ''are incorporated by reference in this section. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket Center, room B–108, U.S. Environmental Protection Agency, Docket Nos. A–97–03, A–2002–15 and OAR–2003–0050, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC.

■ 3. Section 80.330 is amended by revising paragraph (c)(1) to read as follows:

§ 80.330 What are the sampling and testing requirements for refiners and importers?

* * * * *

(c) *Test method for measuring sulfur content of gasoline.* (1) For purposes of paragraph (a) of this section, refiners and importers shall use the method provided in § 80.46(a)(1) or one of the alternative test methods listed in § 80.46(a)(3) to measure the sulfur content of gasoline they produce or import.

* * * * *

■ 4. Section 80.340 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 80.340 What standards and requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?

* * * * *

(b) * * *

(2) * * *

(ii) The testing must be performed by the method specified in § 80.46(a)(2) or by the alternative method specified in § 80.46(a)(4).

* * * * *

■ 5. Section 80.350 is amended by revising paragraph (b)(2) to read as follows:

§ 80.350 What alternative sulfur standards and requirements apply to importers who transport gasoline by truck?

* * * * *

(b) * * *

(2) The sampling and testing shall be performed using the methods specified in § 80.330(b) and § 80.46(a)(1) or one of the alternative test methods listed in § 80.46(a)(3), respectively.

* * * * *

[FR Doc. 03–25133 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA087–DESIG; FRL–7568–3]

Clean Air Act Area Designations; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of minor changes in the boundaries between areas in Southern California established under the Clean Air Act for purposes of addressing the national ambient air quality standards (NAAQS) for 1-hour ozone, particulate matter (PM–10), carbon monoxide (CO), nitrogen dioxide (NO2), and sulfur dioxide (SO2), and the prior NAAQS for total suspended particulate matter (TSP).

We are approving these boundary changes under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on November 6, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. If you wish to schedule a visit, please contact Dave Jesson, as indicated below. You can inspect copies of the submitted materials by appointment at the following locations:

EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

California Air Resources Board, 1001 ''I'' Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, at (415) 972–3957, or *jesson.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

I. Proposed Action

On August 15, 2003 (68 FR 48848), we proposed to approve minor revisions to the boundaries of the Los Angeles-South Coast Air Basin Area (''South Coast Air Basin'') and the Southeast Desert Air Basin.[1] These revisions were requested on November 18, 2002, by the California Air Resources Board (CARB) under CAA section 107(d)(3)(D), which authorizes States to submit revised area designations.

The purposes of CARB's request are to:

(1) enlarge the South Coast Air Basin to include the Banning Pass area, thereby excluding the area from the Southeast Desert;

(2) harmonize the boundaries of the Coachella Valley area[2] by changing them to match the PM–10 area boundaries; and

(3) correct the eastern boundary of the South Coast Air Basin with respect to CO.

We proposed to approve these redesignations and apply the boundary changes to all affected pollutants, because the revisions comply with the relevant provisions of CAA section 107(d)(3)(D) and apply equally to other pollutants for which the areas have existing designations. Our proposed action contains more information about the proposed revisions and our evaluation.

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[1] The Los Angeles-South Coast Air Basin Area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties. The Southeast Desert Air Basin includes portions of Los Angeles, San Bernardino, and Riverside Counties. For a description of the current boundaries of the basins and subareas for each pollutant, see 40 CFR 81.305.

[2] The Coachella Valley area is part of the Southeast Desert nonattainment area for ozone and is its own PM–10 nonattainment area.

II. Public Comments and EPA Responses

Our proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

As authorized in section 107(d)(3)(D), EPA is taking final action to:

(1) revise the boundary of the South Coast Air Basin to incorporate the Banning Pass;

(2) amend the boundary of the Coachella Valley area (Riverside County portion of the Southeast Desert Air Basin for 1-hour ozone) to correspond to the PM–10 boundary for the area; and

(3) approve the State's request to make a typographical correction to the boundary of the South Coast Air Basin with respect to CO.

We are making the first two changes for all pollutants for which the areas are designated in our regulations (40 CFR Part 81). Thus, the boundary changes apply to 1-hour ozone, PM–10, CO, NO_2, SO_2, and TSP. We are amending the descriptions of the areas in 40 CFR 81.305 for TSP, CO, 1-Hour Ozone, and NO_2. No changes are required in the 40 CFR 81.305 designation tables for PM–10 and SO_2, since the tables for these pollutants do not specify boundaries and the area names need not be changed.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 23, 2003.

Deborah Jordan,

Acting Regional Administrator, Region IX.

■ Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.305 is amended as follows:

■ a. In the table for ''California-TSP'' by revising the entry for Riverside County under ''Southeast Desert Air Basin'';

■ b. In the table for ''California—Carbon Monoxide'' by revising the entry for Riverside County (part) under ''Los Angeles-South Coast Air Basin Area''; by revising the entry for San Bernandino County (part) under ''Los Angeles-South Coast Air Basin Area''; and by revising the entry for Riverside County (part) under the ''Southeast Desert Air Basin'';

■ c. In the table for ''California—Ozone (1–Hour Standard)'' by revising the entry for Riverside County (part) under ''Los Angeles-South Coast Air Basin Area''; and by revising the entry for Riverside County (part) under the ''Southeast Desert modified AQMA area'';

■ d. In the table for ''California-NO2'' by revising the entry for ''Riverside County (portion within S.E. Desert AQMA) County''; and by revising the entry for ''Riverside County, non-AQMA portion County.''

The revisions read as follows:

§ 81.305 California.

CALIFORNIA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Southeast Desert Air Basin:				
* * *	*	*	*	*
Riverside County (Coachella Valley planning area)			X	
Riverside County (remainder of County).				
* * *	*	*	*	*

CALIFORNIA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Los Angeles—South Coast Air Basin Area Attainment.				
* * *	*	*	*	*
Riverside County (part) that portion of Riverside County which lies to the west of a line described as follows: 1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; 2. then east along the Township line common to Township 8 South and Township 7 South; 3. then north along the range line common to Range 5 East and Range 4 East; 4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; 5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; 6. Then west along the Township line common to Township 5 South and Township 6 South; 7. Then north along the range line common to Range 4 East and Range 3 East; 8. Then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; 9. then north along the range line common to Range 2 East and Range 3 East to the Riverside-San Bernardino county line.		Nonattainment		Serious
San Bernardino County (part)—that portion of San Bernardino County which lies south and west of a line described as follows: 1. Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; 2. Then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary.		Nonattainment		Serious
* * *	*	*	*	*
Southeast Desert Air Basin				
* * *	*	*	*	*
Riverside County (part) Portion excluding Los Angeles-South Coast Air Basin.		Unclassifiable/Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

CALIFORNIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Los Angeles—South and Coast Air Basin Area				
* * *	*	*	*	*
Riverside County (part) that portion of Riverside County which lies to the west of a line described as follows: 1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; 2. then east along the Township line common to Township 8 South and Township 7 South; 3. then north along the range line common to Range 5 East and Range 4 East; 4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; 5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; 6. then west along the Township line common to Township 5 South and Township 6 South; 7. then north along the range line common to Range 4 East and Range 3 East; 8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; 9. then north along the range line common to Range 2 East and Range 3 East to the Riverside-San Bernardino county line.	11/15/90	Nonattainment	11/15/90	Extreme.
* * *	*	*	*	*
Southeast Desert Modified AQMA Area:				
* * *	*	*	*	*
Riverside County	11/15/90	Nonattainment	11/15/90	Severe-17
Coachella Valley planning area—that portion of Riverside County which lies to the east of a line described as follows: 1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; 2. then east along the Township line common to Township 8 South and Township 7 South; 3. then north along the range line common to Range 5 East and Range 4 East; 4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; 5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; 6. then west along the Township line common to Township 5 South and Township 6 South; 7. then north along the range line common to Range 4 East and Range 3 East; 8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East;				

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
9. then north along the range line common to Range 2 East and Range 3 East to the Riverside-San Bernardino County line and that portion of Riverside County which lies to the west of a line described as follows: That segment of the southwestern boundary line of Hydrologic Unit Number 18100100 within Riverside County, further described as follows:				
10. Beginning at the Riverside-Imperial County boundary and running north along the range line common to Range 17 East and Range 16 East, San Bernardino Base and Meridian;				
11. then northwest along the ridge line of the Chuckwalla Mountains, through Township 8 South, Range 16 East and Township 7 South, Range 16 East, until the Black Butte Mountain, elevation 4504 feet;				
12. then west and northwest along the ridge line to the southwest corner of Township 5 South, Range 14 East;				
13. then north along the range line common to Range 14 East and Range 13 East;				
14. then west and northwest along the ridge line to Monument Mountain, elevation 4834 feet;				
15. then southwest and then northwest along the ridge line of the Little San Bernardino Mountains to Quail Mountain, elevation 5814 feet;				
16. then northwest along the ridge line to the Riverside-San Bernardino County line				
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

CALIFORNIA—NO_2

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Riverside County (Coachella Valley planning area)		
* * *	* * *	*
Riverside County (portion not within South Coast Air Basin or Coachella Valley planning area).	.....	X
* * *	* * *	*

[FR Doc. 03–25136 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[FRL–7569–4]

Virginia: Approval of Financial Assurance Regulations for the Commonwealth's Municipal Solid Waste Landfill Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: In **Federal Register** documents of February 3, 1993 and March 31, 1994, the Commonwealth of Virginia received Federal determinations of partial program adequacy for its Municipal Solid Waste Landfill permit program under section 4005 of the Resource Conservation and Recovery Act (RCRA). This section requires states to develop and implement permit programs that ensure that Municipal Solid Waste Landfills (MSWLF) which may receive hazardous household waste or small quantity generator waste are obligated to comply

with the revised Federal MSWLF Criteria. Initially, Virginia submitted to EPA for approval relevant regulations that corresponded to all sections of 40 CFR part 258 except for Subpart G, Financial Assurance Criteria. On November 21, 2001, the Commonwealth of Virginia adopted financial assurance regulations for MSWLFs and on January 21, 2003 submitted these regulations to EPA for approval. Subject to the opportunity for public review and comment, this notice approves Virginia's financial assurance regulations.

DATES: This approval shall become effective December 8, 2003 unless adverse comments are received on or before November 6, 2003.

ADDRESSES: Written comments should be sent to Mike Giuranna, RCRA State Programs Branch, Waste & Chemicals Management Division (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, telephone: (215) 814–3298. Comments may also be submitted electronically through the Internet to: *giuranna.mike@epamail.epa.gov* or by facsimile at (215) 814–3163. You may examine copies of the materials submitted by Virginia during normal business hours at EPA, Region III or at the offices of the Virginia Department of Environmental Quality (VADEQ) at 629 East Main Street, Richmond, Virginia 23219, Phone Number (804) 698–4238, attn: John Ely.

FOR FURTHER INFORMATION CONTACT: Mike Giuranna, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number: (215) 814–3298, e-mail: *giuranna.mike@epa.gov.*

SUPPLEMENTARY INFORMATION: In **Federal Register** notices of February 3, 1993, (58 FR 6955) and March 31, 1994, (59 FR 15201) EPA determined that all portions of Virginia's Municipal Solid Waste Landfill permitting program, with the exception of the financial assurance portion, were equivalent to EPA's regulations for such programs under 40 CFR part 258. On January 21, 2003, Virginia submitted its financial assurance regulations to EPA for approval. After a thorough review, EPA determined that Virginia's financial assurance regulations, as defined under 9 VAC 20–70, Commonwealth of Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, are adequate to assure compliance with the Federal criteria as defined at 40 CFR part 258, subpart G (§§ 258.70 through 258.74). This determination will give full Federal approval to Virginia's Municipal Solid Waste Landfill permitting program.

Statutory and Executive Order Reviews

This rule only approves State solid waste requirements pursuant to RCRA section 4005 and imposes no requirements other than those imposed by State law (*see* **SUPPLEMENTARY INFORMATION**, above). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted this rule from its review under Executive Order 12866.

2. *Paperwork Reduction Act*—This rule does not impose an information collection burden under the Paperwork Reduction Act.

3. *Regulatory Flexibility Act*—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. *Unfunded Mandates Reform Act*—Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act.

5. *Executive Order 13132: Federalism*—Executive Order 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government).

6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—Executive Order 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes).

7. *Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*—This rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks.

8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866.

9. *National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advance Act does not apply to this rule.

10. *Congressional Review Act*—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U. S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective December 8, 2003.

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

Authority: This document is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–25398 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified

BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
CALIFORNIA	
San Luis Obispo County, (FEMA Docket No. B–7435)	
Los Berros Creek:	
Approximately 750 feet downstream of El Conpo Road	*103
Approximately 4,000 feet downstream of State Route 101	None
Approximately 1,200 feet upstream of State Route 101	None
Maps are available for inspection at the San Luis Obispo County Public Works Department, County Government Center, Room 207, 976 Osos Street, San Luis Obispo, California.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD).	Communities affected
Washington:		
Whatcom County and Incorporated Areas, (FEMA Docket No. B–7310).		
Johnson Creek:		
At the confluence with Sumas River	*38	Whatcom County (Uninc. Areas), City of Bellingham, City of Everson, City of Ferndale, City of Lummi Indian Nation, City of Lynden, City of Nooksack, and City of Sumas
Samish River:		

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD).	Communities affected
Approximately 2,900 feet downstream of Wickersham Road at the County Boundary	*267	
At Burlington Northern Railroad	*311	
Squalicum Creek:		
Approximately 200 feet upstream of Chicago, Milwaukee, St. Paul, and Pacific Railroad	*127	
Approximately 2,000 feet upstream of Dewey Road	*206	
Sumas River:		
Approximately 1,700 feet downstream of Jones Road at the International Boundary	*34	Whatcom County (Uninc. Areas), City of Bellingham, City of Everson, City of Ferndale, City of Lummi Indian Nation, City of Lynden, City of Nooksack, and City of Sumas
Approximately 1,000 feet upstream of Massey Road	*93	
Sumas River Left Overbank Divided Flow:		
Approximately 200 feet downstream of Telegraph Road	*56	
Approximately 6,300 feet upstream of Kadin Road	*69	
Terrell Creek:		
Approximately 500 feet downstream of Alderson Road	*8	
At Helweg Road	*10	

Addresses:

Whatcom County (Unincorporated Areas):

Maps are available for inspection at Whatcom County Public Works Department, Division of Engineering, 311 Grand Avenue, Suite 108, Bellingham, Washington.

City of Bellingham:

Maps are available for inspection at the Community Development Department, 210 Lottie Street, Bellingham, Washington.

City of Everson:

Maps are available for inspection at City Hall, 111 West Main Street, Everson, Washington.

City of Ferndale:

Maps are available for inspection at the Planning Department, 5694 Second Avenue, Ferndale, Washington.

City of Lummi Indian Nation:

Maps are available for inspection at the Planning Department, 2828 Kwina Road, Bellingham, Washington.

City of Lynden:

Maps are available for inspection at the Planning Department, 323 Front Street, Lynden, Washington.

City of Nooksack:

Maps are available for inspection at City Hall, 103 West Madison Street, Nooksack, Washington 98276.

City of Sumas:

Maps are available for inspection at City Hall, 433 Cherry Street, Sumas, Washington.

Washington:		
Whatcom County and Incorporated Areas, (FEMA Docket No. B–7430)	.....	
Strait of Georgia at Point Roberts:	.....	Whatcom County (Uninc. Areas)
At Point Roberts Marina	*8	
South Edwards Drive along Southern Shore	*11	
Birch Bay Northwest Shore:		
At intersection of Seahome Road and Seahome Court	*8	Whatcom County (Uninc. Areas)
At Cottonwood Beach	*9	
Along shoreline near intersection of Halda Road and Nitinat Road	*14	
Strait of Georgia at Sandy Point:		
At marina	*8	Whatcom County (Uninc. Areas) and Lummi Indian Reservation
Along eastern shoreline	*9	
Along western shoreline, west of marina	*14	
Strait of Georgia at Village Point:		
Along West Shore Drive	*9	Whatcom County (Uninc. Areas)
Along southern shoreline	*10	
Lummi Bay:		

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD).	Communities affected
Approximately 600 feet from intersection of East Turtle Lane and Shore Drive	*8	Whatcom County (Uninc. Areas)
Along shoreline near intersection of Lummi Park Road and Lane Split Road	*10	
Bellingham Bay at Hermosa Beach:		
East of Lummi Shore Road	*8	Whatcom County (Uninc. Areas) and Lummi Indian Reservation
Lummi Bay at Gooseberry Point:		
At intersection of Lummi View Drive and Haxton Way	*8	Whatcom County (Uninc. Areas) and Lummi Indian Reservation
Approximately 300 feet west of intersection of Lummi View Drive and Haxton Way	*9	
Bellingham Bay at Eliza Island:		
In the south-facing valley of Eliza Island	*8	Whatcom County (Uninc. Areas)
At the southern shore of Eliza Island	*10	
At the western shore of Eliza Island	*10	

Addresses:

Whatcom County (Unincorporated Areas):

Maps are available for inspection at Whatcom County Public Works Department, Division of Engineering, 311 Grand Avenue, Suite 108, Bellingham, Washington.

Lummi Indian Reservation:

Maps are available for inspection at the Lummi Indian Business Council Planning Department, 2828 Kwina Road, Bellingham, Washington.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 30, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–25345 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–7772]

Rescission of Final Flood Elevation Determination

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) rescinds the final flood elevation determination published for Collier County, Florida and Incorporated Areas (including the City of Everglades, City of Naples, City of Marco Island, and the Unincorporated Areas of Collier County), on June 2, 2003, at 68 FR 32665 and 32666. A final flood elevation determination will be made at a later date.

EFFECTIVE DATE: This rescission is effective as of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA published a notice of final flood elevation determination for Collier County, Florida and Incorporated Areas, on June 2, 2003, at FR 68, 32665 and 32666. Following coordination with Collier County, it was determined that additional time is needed to develop flood hazard data for the Golden Gates Estates area located within the Unincorporated Areas of Collier County and the City of Naples. Therefore, the final flood elevation for Collier County, Florida and Incorporated Areas is hereby rescinded in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104 until further notice.

Dated: September 30, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Direcorate.

[FR Doc. 03–25344 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[WT Docket No. 97–82; FCC 03–98]

Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On July 21, 2003, (68 FR 42984), the Wireless Telecommunications Bureau published final rules in the Order, addressing five petitions for reconsideration filed in response to the Commission's Part 1 *Order on Reconsideration of the Third Report and Order, and Fifth Report and Order.*

DATES: Effective September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Michaels, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The Wireless Telecommunications Bureau published a document revising the general competitive bidding rules for all auctionable services in the **Federal Register** of July 21, 2003 (68 FR 42984). This document corrects the **Federal Register** as it appeared.

In rule FR Doc. 03–18430 published on July 21, 2003 (68 FR 42984) make the following correction:

■ 1. On page 42999, in the third column and on line 19, instruction 29 is corrected to read as follows:

§ 24.720 [Corrected]

■ 29. Amend § 24.720 by removing paragraphs (b)(3), (b)(4), (c), and (d), redesignating paragraphs (e), (f), (g), (h), (i), and (j) as paragraphs (c), (d), (e), (f), (g), and (h), redesignating the Note to Paragraph (j) as the Note to Paragraph (h) and revising paragraph (b) introductory text and newly redesignated paragraph (g) to read as follows:

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 03–25245 Filed 10–6–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2925, MM Docket No. 01–43, RM–10041]

Digital Television Broadcast Service; Jackson, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, by this document, dismisses a petition for rule making filed by Civic License Holding Company, Inc. requesting the substitution of DTV channel 9 for DTV channel 51 at Jackson, Mississippi. *See* 66 FR 12749, February 28, 2001. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–43, adopted September 23, 2003, and released October 1, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., 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

Digital television broadcasting, Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–25333 Filed 10–6–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG41

Endangered and Threatened Wildlife and Plants; Removing Eriastrum hooveri (Hoover's woolly-star) from the Federal List of Endangered and Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have determined that *Eriastrum hooveri* (Hoover's woolly-star) is no longer a threatened species pursuant to the Endangered Species Act of 1973 (Act), as amended. This determination is based on the discovery of new populations and implementation of recovery actions that contributed substantially towards meeting delisting criteria outlined in the ''Recovery Plan For Upland Species of the San Joaquin Valley, California'' (Recovery Plan) (USFWS 1998).

Beginning in 1990, recovery efforts for this species succeeded in locating additional populations, discovering through research that *Eriastrum hooveri* is more resilient and less vulnerable to disturbance activities than previously known, and achieving protection through cooperation with Federal, State, and private entities on more than 114,400 hectares (286,000 acres) of *E. hooveri* habitat. The management practices of, and commitments by, the U.S. Bureau of Land Management (BLM), on whose land a substantial number of the new populations have been found, will afford adequate protection to the species upon delisting. Following delisting, BLM will designate *E. hooveri* as a ''sensitive species'' pursuant to BLM Manual 6840 and California State Manual Supplement H–6840.06, to provide for continued protection and monitoring of the species on BLM lands. The post-delisting monitoring, required under section 4 of the Act, will be facilitated by BLM's implementation of their Caliente Resource Management Plan (RMP) (BLM 1996). Under the RMP and separate agreements, BLM will monitor the species and monitor residual threats at representative sites within four *E. hooveri* metapopulations.

DATES: This rule is effective October 7, 2003.

ADDRESSES: The administrative record for this rule is available for inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office of the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825–1864, (telephone 916/414–6600).

FOR FURTHER INFORMATION CONTACT: Graciela Hinshaw, Sacramento Fish and Wildlife Office, at the above address or telephone 916/414–6600.

SUPPLEMENTARY INFORMATION:

Background

Eriastrum hooveri (Hoover's woolly-star) was first collected in 1935 by Gregory Lyons near Little Panoche Creek, western Fresno County, in the San Joaquin Valley of California. In 1943, Willis Jepson described the plant as *Hugelia hooveri,* citing a 1937 collection by Robert Hoover (the namesake for the scientific and common names). Later, Herbert Mason (1945) transferred the species along with the rest of the woolly-stars to the genus *Eriastrum.*

Eriastrum hooveri, an annual herb of the phlox family (Polemoniaceae), produces many wire-like stems and tiny white to pale blue flowers that are less than 5 millimeters (mm) (0.2 inch (in)) across. The flowers are nearly hidden in tufts of woolly hair. The leaves are thread-like and may have two narrow lobes near the base. Standing 1 to 20 centimeters (cm) (0.4 to 8 in) tall, the species has grayish, fuzzy stems, which are often branched (Munz and Keck 1959; USFWS 1998). The most important characteristics for distinguishing this species from other *Eriastrum* species are the flower size and the ratio between the length of the corolla and the length of the lobes on the petals (petals are highly colored portions of the flower and collectively are called the corolla). Characteristics of the stamen (male reproductive organ)

can also help identify this species (Taylor and Davilla 1986).

The seed of *Eriastrum hooveri* is small and dust-like, and dispersed by the wind. The stems of dead plants often break at the soil surface and the plants are conical-shaped, characteristic of a seed that disperses via the ''tumbleweed'' strategy. Laboratory germination of seeds was achieved by wetting seed on filter paper, and there was rapid and complete germination of new seed (Taylor and Davilla 1986). The small flowers of *E. hooveri* might suggest self-pollination (Taylor and Davilla 1986).

Eriastrum hooveri was originally thought to have a range that was mostly east of the Coastal Range in San Joaquin Valley, California, and distributed in a discontinuous fashion within valley saltbush scrub and valley sink scrub from Fresno County in the north, south to the Temblor Range (Kern and San Luis Obispo Counties), with very limited distribution south of the Temblor Range, in the Cuyama Valley (San Luis Obispo and Santa Barbara Counties) (Taylor and Davilla 1986). The San Joaquin Valley lies between the Coast Ranges and the Sierra Nevada, and on the southern end is bordered by the Transverse Ranges. The climate of the San Joaquin Valley is a product of these surrounding mountain ranges. Precipitation in the San Joaquin Valley is low; it averages less than 25 cm (10 in) per year, with localized areas averaging far less. As a result, the San Joaquin Valley climate can be classified as arid or desertic. The San Joaquin Valley floor is composed of thousands of feet of sediments deposited by runoff from the surrounding mountains. Below these sediments lie important petroleum and natural gas deposits (Schoenherr 1992). The extraction of these resources accounts for some of the native habitat loss and degradation in the San Joaquin Valley and adjacent foothills. Conversion of this arid land to pastures and agricultural farmland also has replaced native habitat and introduced nonnative grasses and shrubs.

Prior to 1986, *Eriastrum hooveri* was known from 19 sites (sites are clusters of plants that may be part of a larger population as documented by BLM) in San Luis Obispo, Kern, Fresno, and Santa Barbara Counties in California. Most of these sites occurred on private property on the San Joaquin and Cuyama valley floors or on public land located in the foothills of the southern part of the San Joaquin Valley (the Naval Petroleum Reserve (NPR–1 and NPR–2) administered by the U.S. Department of Energy, later turned over to a private interest, Occidental Petroleum Corporation).

A status survey of *Eriastrum hooveri* conducted in 1986 identified 10 historical populations as extirpated, 2 others as presumed extirpated, and approximately 40 percent of the historically reported populations as remaining (Taylor and Davilla 1986). At the time of the status survey, the majority of the *E. hooveri* known populations were from alluvial valleys. Hilly terrain was only documented in three instances, from the Temblor Range, and the authors were unable to gain access to this area during the status survey. Taylor and Davilla (1986) reported that most remaining populations were situated on ''islands'' of native habitat in an otherwise ''sea'' of intensively managed agricultural lands, thereby leaving the remaining populations vulnerable to destruction. Our subsequent listing of *E. hooveri* as a threatened species in 1990 relied heavily on the data and the threats assessment presented in the Taylor and Davilla 1986 status report, as well as on additional surveys conducted between 1986 and 1990 (55 FR 29361). The listing noted that 118 populations existed, only 9 of which occurred on public lands or in undeveloped foothills. The remaining 109 populations (92 percent) were considered to be threatened by conversion of valley floor native habitat to agricultural land, oil and gas development, urbanization, reservoir construction, uncontrolled heavy sheep grazing, disposal of nutrient-laden agricultural effluent, and nonnative invasive plants (55 FR 29361). Based on these threats, we listed *E. hooveri* as a threatened species under the Act on July 19, 1990 (55 FR 29361).

In 1990, we initiated recovery planning for 11 listed species, including *Eriastrum hooveri,* and 23 candidates or species of concern that share the same ecosystem (USFWS 1998). While the development of the final Recovery Plan was being accomplished, the recovery needs of listed species were simultaneously being addressed. During the 8 years of planning, Federal and State agencies conducted extensive surveys and research and learned new information about *E. hooveri* biology, including its abundance and distribution and its response to disturbance. The recovery strategy in the final Recovery Plan reflects pre-plan recovery efforts.

The recovery strategy, put forth in the 1998 Recovery Plan, stated that recovery for *Eriastrum hooveri* could be accomplished within four metapopulations (defined as a larger population clusters by BLM), by using existing public lands and other areas already dedicated to conservation. The four metapopulations from largest to smallest are: (1) The Kettleman Hills area in Fresno and Kings Counties; (2) the Carrizo Plain-Elkhorn Plain-Temblor Range-Caliente Mountains-Cuyama Valley-Sierra Madre Mountains area in San Luis Obispo, Santa Barbara, and extreme western Kern Counties; (3) the Lokern-Elk Hills-Buena Vista Hills-Coles Levee-Maricopa-Taft area in Kern County; and (4) the Antelope Plain-Lost Hills-Semitropic area in Kern County. Recovery goals included protecting populations throughout the species' geographic range (at the time thought to be from San Benito and Fresno Counties in the north, south to the Cuyama Valley), representing a variety of topographic positions (valley floor, slopes) and community types (chenopod scrub and grasslands), at elevations ranging from 50 to 915 meters (m) (165 to 3,000 feet (ft)). Because public lands have varying multi-use mandates, and therefore may or may not afford ''protection'' to plants under threat, specific commitments were needed to protect the populations from incompatible uses such as heavy oilfield development, commercial development, flooding or rising groundwater levels, and dense vegetation due to proliferation of nonnative plants or suppression of fires. Low and moderate oilfield development and grazing were not considered incompatible uses. The Recovery Plan recommended a minimum acreage and plant density for *E. hooveri* and continuation of the monitoring of trends at representative sites within each of the four recognized metapopulations. As 33 other species were also covered in this multispecies Recovery Plan, the ecosystem-level strategy recommended a network of large-scale preserves and conservation areas that represented all natural communities in the San Joaquin Valley upland ecosystems. The Recovery Plan stated that, within this network, habitat management would be compatible with traditional and ongoing land uses such as grazing and oil exploration. Prior to the completion of the Recovery Plan, it was discovered that *E. hooveri* could tolerate a certain amount of natural and man-made disturbances.

The listing and subsequent recovery planning efforts resulted in increased inventory activities for *Eriastrum hooveri* throughout its range. Surveys in the Mojave Desert area resulted in the discovery of *E. hooveri* more than 140 kilometers (km) (87 miles mi) southeast of the previously known range. Surveys

into remote areas by the BLM and the Los Padres National Forest, as well as routine surveys at the NPR–1 and NPR–2, resulted in the discovery of many new occurrences (an occurrence is analogous to a population and is defined here as a cluster of plants separated from the nearest cluster by at least 0.25 mile) of *E. hooveri*. Through a section 7 consultation with the Service, the U.S. Department of Energy conducted periodic monitoring of six representative *E. hooveri* sites from the early to mid 1990s (EG&G 1994, 1996). Responses to precipitation patterns on north and south slopes and ridgetops were documented (EG&G 1996), and increased attention was focused on observations of and research into the plants' response to various levels of habitat disturbance. The pertinent recovery planning and implementation efforts, along with their results, are summarized below.

Surveys

Abundance: The results of the 1986 status survey, which led to the *Eriastrum hooveri* listing, reflected its known distribution at the time, but did not reflect the species' larger distribution documented after 1990, probably as a consequence of the drought period and the resulting poor growing *E. hooveri* conditions during the two years preceding the survey (EG&G 1995a). Surveys by Federal agencies following the listing of the species in 1990 coincided with a change in precipitation, particularly in 1993, when abundant spring rainfall created favorable growing conditions for annual plants (EG&G 1994, 1995b). The favorable growing conditions along with the surveys resulted in a dramatic increase in the number of *E. hooveri* known populations, the size of its topographical and elevational range distribution, and a clearer understanding of its habitat associations.

Distribution: In 1992 and 1994, BLM staff surveyed private and public lands and estimated that about 1,000 *Eriastrum hooveri* sites occupied approximately 970 ha (2,426 ac) (BLM 1992, 1994). By 1998, the U.S. Department of Energy had comprehensively surveyed over 60 percent of NPR–1 for *E. hooveri,* and over 400 locations were documented; in addition, the species was also discovered on NPR–2 (Brian Cypher, Enterprise Advisory Services, Inc., pers. comm. 1998; Russ Lewis, BLM, pers. comm. 2002; Jay Hinshaw, Bureau of Indian Affairs, pers. comm. 2003).

Range: Surveys for another plant species at 820 to 910 m (2,700 to 3,000 ft) elevation in the Los Padres National Forest in 1993 led to the discovery of three populations of *Eriastrum hooveri* in Tennison Canyon, Goode Canyon, and Castro Canyon (Danielsen *et al.* 1994). These populations were 800 m (500 ft) higher in elevation than all other known populations, and the first to be located in habitat dominated by juniper. In 1998, Boyd and Porter (1999) found *E. hooveri* in two locations southeast of the Tehachapi Mountains within Antelope Valley, Los Angeles County. These occurrences in the Mojave Desert represent an extension of the range of the species by approximately 140 km (87 mi) to the southeast from the nearest population in the San Joaquin Valley. Additional surveys in the Antelope Valley, conducted through 2002, documented numerous occurrences of *E. hooveri* from near Rosamond, in Kern County, and south to Lancaster, in Los Angeles County. In 2003, 7 to 12 million plants, roughly distributed over a 100-square-mi area, were also found near Edwards Air Force Base (Ray Bransfield, USFWS, pers. comm. 2003; Patrick Buorsier, H.T. Harvey and Associates, pers. comm. 2003).

In summary, surveys have resulted in the discovery of many more valley floor sites as well as foothill sites, and have shown that *Eriastrum hooveri* populations discontinuously range in the north from the Ciervo/Panoche area of the San Joaquin Valley in Fresno and San Benito Counties, southward to Antelope Valley in Los Angeles County, a distance of approximately 314 km (196 mi). A total of 1,128 new sites have been found on BLM land. Along with the increase in the number of sites, the distribution and range of *E. hooveri* has increased. *E. hooveri* has been confirmed at elevations of 3,000 ft and has been found to occur in two additional habitat types: Juniper woodland and Mojave Desert. The species has a greater abundance, distribution, and range than previously thought.

Research

At the time of listing, *Eriastrum hooveri* was identified as preferring areas with lower annual plant densities and stable, silty to sandy soils that often exhibit cryptogamic crusting (a thin microbiotic layer at the soil surface generally composed of a complex of mosses, algae, bacteria, fungi, and lichens, or a combination of these) (55 FR 29361). Since listing, *E. hooveri* has also been found on stable soils that do not exhibit crusting (BLM 1994), and on sandy loam and loamy soils (EG&G 1995a). Research results in 1994 documented that vascular plant cover at sites with *E. hooveri* ranged from a low of 5% to a high of 93%; the amount of bare ground varied between 5% and 90%, and the amount of cryptogamic crusting varied between 0% and 80% (EGG 1995b). The wide-ranging values in plant cover and bare ground for sites with *E. hooveri* indicate that, although this species does better in sparsely vegetated areas, it is found in areas of dense vegetation (E. Cypher, pers. comm. 2003). A 1995 report by EG&G documented *E. hooveri* responses to varying rainfall and found that this species, like most annual species, appears to be sensitive to changes in precipitation compared to the shrub and grass components of the community (EG&G 1996). Soils with cryptogamic crusts are naturally open surface areas where nonnative grasses do not seem to encroach (Lewis pers. comm. 1995). The association that *E. hooveri* has with cryptogamic crusting may be more related to lower annual plant densities (especially lower numbers of nonnative grasses) than to an affinity with some aspect of the crusting. Areas of crusting are found throughout the species' range (R. Lewis pers. comm. 1995), and although ground disturbance will eliminate the crusting, the complex of mosses, algae, and other cryptogamic organisms that compose the crust have been observed to come back two years after ground disturbance (Holmstead and Anderson 1998) in areas where *E. hooveri* is found.

During above-average annual rainfall periods, *Eriastrum hooveri* responds quickly and well (successful seed germination, larger plants, and a higher probability of being detected during surveys), whereas during years of below-average annual rainfall, plants that germinate reach a height of only 1 in and are less likely to be detected during surveys (Ellen Cypher, Endangered Species Recovery Program, pers. comm. 2003; Jay Hinshaw, Bureau of Indian Affairs, pers. comm. 2003).

In 1995, EG&G reported that ground disturbance did not significantly affect *Eriastrum hooveri* and that the species was found as abundantly on disturbed sites as on undisturbed sites (EG&G 1995a). The average *E. hooveri* density was higher on sites where mechanical ground disturbance (typical of oilfield development) was observed, and lower on sites where other types of disturbance (by grazing, alluvial deposit, fire, unknown) were observed (EG&G 1995a). Furthermore, a study on the effects of simulated oilfield disturbance and top soil salvage showed that, although surface disturbance negatively affected *E. hooveri* density for at least two years, this species

recolonized disturbed plots within two growing seasons from seed naturally dispersed from adjacent habitat (Hinshaw *et al.* 1998).

In summary, research efforts, as part of the recovery process, have shown that *Eriastrum hooveri* is more resilient and less vulnerable than previously thought.

Observations

The Recovery Plan was developed for arid-land species in a part of California that receives 10 in (25 cm) or less of annual precipitation. Both below-average (drought) and above-average precipitation can cause severe population variations for *Eriastrum hooveri,* and other species covered in the Recovery Plan, if such extreme conditions extend for more than 1 year (USFWS 1998). The status survey that preceded listing of *E. hooveri* followed a 2-year drought, and during the early 1990s the southern San Joaquin valley experienced above-average rainfalls (E. Cypher pers. comm. 2003b). This above-average rainfall period coincided with initial research into disturbance responses, and it was observed by Holmstead and Anderson (1998) that *E. hooveri* responded extremely well to the increased rainfall levels. Timing of precipitation may have also played a significant role in the response of *E. hooveri* to above-average rainfall, since heavy rainfall in the study area occurred during January and March, later than during normal precipitation years (Holmstead and Anderson 1998).

Eriastrum hooveri's adaptability to disturbance was evident based on observations of the reestablishment of *E. hooveri* following two disturbances on NPR–1 during 1990, and on NPR–1 fire breaks that had been tilled the previous year (Holmstead and Anderson 1998). *Eriastrum hooveri* is more resilient and less vulnerable to certain activities than previously thought.

Recovery Plan Criteria

Section 4(f) of the Act directs us to develop recovery plans for listed species. Recovery plans are written to guide recovery efforts and establish criteria for measuring recovery progress. The criteria are not intended to be absolute prerequisites for delisting and should not preclude a delisting action if such action is otherwise warranted. This section discusses the four delisting criteria identified for *Eriastrum hooveri* in the Recovery Plan (USFWS 1998).

(1) 75% of Occupied Habitat (as of 1998) on Public Lands in Each of the Four Metapopulations Should Be Secured and Protected From Incompatible Uses

Although difficult to quantify due to annual variability in size of populations, we believe that the intent of this criterion has been met because a substantial amount of land, approximately 114,400 ha (286,000 ac), containing substantial portions of the four metapopulations or potential habitat is in a ''protected status'' (as defined in the Recovery Plan) (G. Warrick, Center for Natural Lands Management, pers. comm., 2002; Mary Ann McCrary, California Department of Fish and Game (CDFG), *in litt.* 2002; USFWS 1998, Ann Knox, BLM, *in litt.* 1997). Two BLM Areas of Critical Environmental Concern (ACEC), a National Monument, four CDFG Ecological Reserves, four privately owned mitigation sites, and NPR–2 (soon to be managed by BLM) are the protected areas that contain portions of the four metapopulations; these areas, listed by metapopulation are:

(a.) The Kettleman Hills area in Fresno and Kings Counties (includes the BLM ownership with ACEC designation of 2,692 ha (6,730 ac));

(b.) The Carrizo Plain-Elkhorn Plain-Temblor Range-Caliente Mountains-Cuyama Valley-Sierra Madre Mountains area in San Luis Obispo, Santa Barbara, and extreme western Kern Counties (includes the BLM Carrizo Plain National Monument and the CDFG Elkhorn Ecological Reserve, 101,170 ha (250,000 ac));

(c.) The Lokern-Elk Hills-Buena Vista Hills-Coles Levee-Maricopa-Taft area in Kern County (includes the BLM's Lokern ACEC, 1,244 ha (3,110 ac); the CDFG's Lokern Ecological Reserve, 330 ha (825 ac), and Buttonwillow Ecological Reserve, 540 ha (1,350 ac); and private conservation areas such as the Center for Natural Lands Management's Lokern Preserve, 1,200 ha (3000 ac), the Elk Hills Conservation Area, 2,830 ha (7,075 ac), and the Coles Levee Ecosystem Preserve, 2,424 ha (6,060 ac)); and

(d.) The Antelope Plain-Lost Hills-Semitropic area in Kern County (includes the CDFG's Semitropic Ecological Reserve, 1,912 ha (4,780 ac); and private conservation areas, such as the Center for Natural Lands Management's Semitropic Ridge Preserve, 1,200 ha (3,000 ac)).

(2) 260 Hectares (640 Acres) or More of Occupied Habitat on the San Joaquin Valley Floor Is Secured and Protected (This Need Not Be in Addition to the Above, But May Be Within the Above)

The second delisting criterion has been met. Because patches of *Eriastrum hooveri* may vary in size annually due to rainfall, we considered all *E. hooveri* habitat in protected areas where the species is known to occur as occupied habitat. There are protected occurrences of *E. hooveri* found within the southern San Joaquin Valley floor, in BLM's Lokern ACEC, 1,244 ha (3,110 ac), and the Elk Hills Conservation Area, 1,408 ha (3,520 ac). Other protected areas on the San Joaquin Valley floor containing *E. hooveri* occurrences are the CDFG's Alkali Sink Ecological Reserve, 372 ha (930 ac), Lokern Ecological Reserve, 330 ha (825 ac) (USFWS 1998), and the private conservation area of Coles Levee Ecosystem Reserve, 2,424 ha (6,060 ac). The total acreage for these five protected valley floor areas that contain *E. hooveri* is approximately 5,778 ha (14,445 ac).

(3) Management Plans Approved and Implemented for Recovery Areas That Include Survival of Species as an Objective. Range-wide Population Monitoring Should Be Provided for in All Management Plans

The third recovery criterion, approve and implement management plans for the recovery areas that include survival of *Eriastrum hooveri* as an objective, has also been met. A significant number of new sites (1,128) are found on BLM land, and BLM has holdings in all 4 metapopulations of this species, including the San Joaquin Valley floor metapopulation. The wider range in combination with the commitment of BLM to designate *E. hooveri* as a sensitive species is sufficient to meet the recovery criterion (E. Cypher, pers. comm. 2003a and 2003c). The BLM will ensure that actions they authorize, fund, or carry out do not contribute to the need to re-list the species. As a sensitive species, *E. hooveri* will be addressed in the National Environmental Policy Act (NEPA) documents for BLM actions requiring NEPA review. In addition, BLM will conduct on-the-ground monitoring of *E. hooveri* for a minimum of 5 years from the date of the publication of this final rule to delist the species. This monitoring will be conducted in all four metapopulations (Burke, in litt. 2002), including the San Joaquin Valley floor. We believe that BLM's Resource Management Plan (RMP) meets the criteria for specific commitments to protect *E. hooveri* from incompatible uses and that the BLM

sensitive species designation will directly enhance the survival of this species. Other existing management plans (including six HCPs and private conservation areas such as the Occidental Management Plan for the Elk Hills Conservation Area and the Center for Natural Lands Management-Management Plan) will either directly cover *E. hooveri* even after delisting, or will indirectly protect this species through actions directed coexisting protected species. In addition, a provision of the West Mojave Plan, being developed by several local, State, and Federal agencies in the Mojave Desert area, would direct the establishment of a reserve for sensitive plant species in areas that may support *E. hooveri*; if established, the reserve would include prescriptions for management and monitoring of the area (Ray Bransfield, USFWS, pers. comm. 2003).

Because BLM manages land in four metapopulations, including the San Joaquin Valley floor metapopulation, they are in the best position to take on the responsibility of post-delisting monitoring *Eriastrum hooveri* after delisting. The determination that the Recovery Plan's monitoring criterion had been met was made before the disjunct Mojave population was described. The Service and the BLM will jointly produce a post-delisting monitoring (PDM) plan for *E. hooveri* over the four metapopulations. It is assumed that any population trends and information gained through the PDM period will be representative of the species range-wide including the Mojave population (see the Post-Delisting Monitoring section of this rule for specifics on BLM's proposed monitoring).

(4) Stable or Increasing in the Four Metapopulations, Including the San Joaquin Valley Floor Metapopulation, Through One Precipitation Cycle

The fourth recovery criterion requires demonstration of stable or increasing trends in four metapopulations, including the San Joaquin Valley floor metapopulation, through one precipitation cycle. This criterion has been met since *Eriastrum hooveri* has persisted through both drought and above-average rainfall in 5 years of monitoring. The purpose of this criterion was to show progress in achieving population goals through the most critical time for arid upland plants (either above or below average precipitation). Stability means the statistically same population size during a precipitation cycle that includes both drought and wet phases (a cycle was anticipated to be about 20 years in the Recovery Plan) (USFWS 1998). Although the monitoring has not been completed for 20 years (the anticipated precipitation cycle), baseline data exists on BLM lands and NPR–1 that, along with precipitation data, can be used to assess this species' stability. The Recovery Plan offers some flexibility in this regard; it states that if a species' population is monitored through 1 or more years through a drought cycle this data will suffice for necessary precipitation cycle data (USFWS 1998).

At the start of monitoring (in 1997) an above-average rainfall was recorded and later (2000 to 2002) monitoring data indicated below-normal rainfall. Through both extremes *Eriastrum hooveri* remained robust (E. Cypher, pers. comm. 2003a and 2003c).

In summary, this recovery criteria for *Eriastrum hooveri* is satisfied because the species is protected on approximately 114,400 ha (286,000 ac) of habitat and remains stable through a precipitation cycle.

Previous Federal Action

On September 27, 1985, we published a revised notice of review for native plants in the **Federal Register** (50 FR 39526). This revised notice added *Eriastrum hooveri* as a category 2 candidate species. Category 2 species were those species for which information in our possession indicated that listing was possibly appropriate, but for which additional information on biological vulnerability and threats was needed to support a proposed rule. On July 27, 1989, we published a proposal to list *E. hooveri* as threatened (54 FR 31201). The final rule listing *E. hooveri* as a threatened species was published July 19, 1990 (55 FR 29361). On March 6, 2001, we published a proposed rule to remove *E. hooveri* from the Federal List of Endangered and Threatened Wildlife based on information indicating this species was more widespread and abundant than was documented at the time of listing, was more resilient and less vulnerable to certain activities than previously thought, and was sufficiently protected on Federal, State, and private land (66 FR 13474).

Summary of Comments and Recommendations

In the March 6, 2001, proposed delisting rule (66 FR 13474) and associated notifications, we invited all interested parties to submit comments or information that might contribute to the final delisting determination for this species. The public comment period ended May 7, 2001. We contacted and sent announcements of the proposed rule to appropriate Federal and State agencies, county governments, scientific organizations, recovery team members, and other interested parties. We established an Internet web site for electronic submittal of comments and hearing requests by any party. In addition, we solicited formal scientific peer review of the proposal in accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270). We requested four individuals, who possess expertise in *Eriastrum hooveri* biology, to review the proposed rule by the close of the comment period. We received one response to our request for peer review, and her comments are discussed below. We also received one response from the public supporting the delisting. No responses were received opposing the delisting. No requests for a public hearing were received.

Comment 1: Recovery of *Eriastrum hooveri* should have been the rationale for delisting, rather than the wider distribution of the species and tolerance of disturbance. The threatened status of *E. hooveri* prompted the surveys and research projects that now provide partial justification for delisting. More importantly, the listing led to actions by Federal agencies to protect the species and its habitat. Delisting *E. hooveri* is appropriate because of (1) the proportion of *E. hooveri* on public lands and in conserved areas, (2) the additional lands likely to be protected during recovery efforts for other listed species, (3) the BLM's willingness to consider treating it as a sensitive species, and (4) its tolerance of disturbance.

Our Response: We agree and have clarified that the delisting is due in large part to recovery.

Comment 2: The only recovery element that has not yet been met is to demonstrate that the populations are stable.

Our Response: We acknowledge that this recovery criterion has not been completed, however, the Recovery Plan states that for those species with existing data on population status spanning one or more years, these data can be included in measuring population recovery goals if it is deemed scientifically valid and representative. According to the flexible approach recommended in the Recovery Plan (USFWS 1998), *Eriastrum hooveri* data from the early 1990s was used to justify that the population goal for this species was not numerical, but rather ''stability'' shown through monitoring during above and below-average rainfall

years. See the ''Recovery Plan Criteria'' section in this rule for additional information.

Comment 3: The peer reviewer disagreed with the use of number of plants and number of ''sites'' in the proposed delisting rule since a very small patch can contain a large number of plants, and the number of *Eriastrum hooveri* individuals in a specified area can vary by several orders of magnitude from one year to the next. ''Sites'' is an arbitrary term used to describe clusters of plants that does not indicate separate populations and does not have any relationship to the ecology or reproductive biology of the species.

Our Response: We agree and have based this delisting action on the amount of occupied and suitable habitat that has been protected for *Eriastrum hooveri*, along with its distribution, abundance, and resilience, rather than the number of plants and sites.

Comment 4: Protection for *Eriastrum hooveri* will result from efforts for other listed species. Nine of the core areas identified for recovery of multiple species support *E. hooveri.* Portions of each of the core areas are already conserved by Federal and State agencies and nongovernmental conservation organizations, and additional lands are likely to be protected through ongoing recovery efforts for other listed species.

Our Response: We agree that *Eriastrum hooveri* has benefited from conservation efforts for other listed species, and is likely to continue to do so. We have included specific information about collateral benefits in this final rule (see ''Background'' and ''The inadequacy of existing regulatory mechanisms'' under ''Summary of Factors Affecting the Species'').

Comment 5: Residual mulch restrictions cited in the proposed rule are incorrect.

Our Response: We have made these corrections (see ''The inadequacy of existing regulatory mechanisms'' under ''Summary of Factors Affecting the Species''). The BLM grazing restrictions include requirements for residual mulch (dry plant material) of 568 kilograms (kg) per ha (500 pounds (lb) per ac), and 5 cm (2 in) of green growth, or 795 kg per ha (700 lb per ac). The proposed rule to delist *Eriastrum hooveri* incorrectly stated that the required amount of residual dry mulch was 50 kg per ha (49 lb per ac) and required green growth was 318 kg per ha (238 lb per ac).

In addition, we considered and incorporated, as appropriate, into this final rule all biological information provided by the peer reviewer.

Summary of Factors Affecting the Species

Section 4 of the Act and our regulations (50 CFR part 424) implementing the listing provisions of the Act set forth the procedures for listing, reclassifying, and delisting species. A species may be listed if one or more of the five factors described in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, and/or (3) error in the original data for classification of the species.

After a thorough review of all available information, it is evident that substantial recovery of *Eriastrum hooveri* has occurred. We have determined that none of the five factors addressed in section 4(a)(1) of the Act, and discussed below, is currently affecting the species to the extent that *E. hooveri* remains threatened with endangerment in the foreseeable future throughout all or a significant portion of its range. The five listing factors, their application to the recovery of *E. hooveri,* and the identification of which threats are considered to be residual and will be the subject of monitoring after delisting are discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Oil and Gas Leasing

One of the predominant threats facing *Eriastrum hooveri* at the time it was listed as a threatened species was oil and gas development, especially in the Elk Hills area (55 FR 29361). Russ Lewis of the BLM has conducted several surveys for *E. hooveri* on public and private lands since the time of listing (BLM 1992, 1994). Of the approximately 1,000 new sites found by Lewis during 1992 and 1994, oil and gas development threats were present for only about 21 percent of the sites. Threats at many of these sites are no longer significant because several oil fields are at or near their peak of development, new drilling occurs on existing wellpads, or they have already been abandoned (R. Lewis, pers. comm. 2003). Additionally, there are other listed species in these areas; HCPs and section 7 consultations coordinated for the listed species will also protect *E. hooveri*. For these reasons and the reasons discussed below, we believe that the likelihood of additional habitat loss from new activity is low.

In the Elk Hills area, oil production areas are established on the upper elevation of the hills on the former NPR–1. Exploration activities generally have failed to establish oil production in the lower elevations (BLM 1994). The majority (73 percent) of the *Eriastrum hooveri* sites occur at lower elevations (EG&G 1995a); therefore, the majority of *E. hooveri* populations in NPR–1 are in areas not likely to be developed for petroleum production (B. Cypher, pers. comm. 1998).

Mobil Oil Corporation enacted measures to protect *Eriastrum hooveri* by placing protective exclosures around all known sites on a Lost Hills leased property (BLM 1994). Lewis also noted that above-surface pipeline corridors appear to be unintentionally restricting access of off-highway vehicles to remaining undisturbed habitat and, consequently, are protecting many other sites in the area (BLM 1994). The *Eriastrum hooveri* Field Inventory Report (BLM 1994) documents the presence of *E. hooveri* in large numbers throughout fully developed oilfields, such as Lost Hills, that have been in existence for several decades.

Because *Eriastrum hooveri* establishes on disturbed substrates such as well pads and pipeline rights-of-way after a period of non-use, the species likely will continue to exist both on federally and privately owned, fully developed oilfields (BLM 1994). EG&G Energy Measurements (under sponsorship by the Department of Energy and Chevron) monitored the reestablishment of *E. hooveri* following two disturbances that occurred on NPR–1 in 1990. At both study sites, *E. hooveri* occupied all disturbed plots after one growing season and the plants increased in density from the first to second growing season (Holmstead and Anderson 1998). Holmstead and Anderson also noted that *E. hooveri* populations were observed in fire breaks on NPR–1 that had been tilled the previous year. Further, a study on the effects of simulated oilfield disturbance and top soil salvage showed that, although surface disturbance negatively affected *E. hooveri* density for at least two years, *E. hooveri* recolonized disturbed plots within two growing seasons from seed naturally dispersed from adjacent habitat (Hinshaw *et al.* 1998).

Agricultural and Urban Development

Agricultural and urban development was also cited as a threat at the time of listing. Much of the San Joaquin Valley floor has been agriculturally developed, virtually to its fullest extent. Future agricultural development is uncertain and would require encroachment into

hilly and agriculturally less desirable geographic areas. Limited water availability for additional agricultural and urban development is a severely limiting factor in the southern San Joaquin Valley. Although sites that occur within the San Joaquin Valley are experiencing threats from development, particularly urban or industrial development along the Interstate 5 corridor (R. Lewis, pers. comm. March 7, 1995), the majority of the plants are found along the hilly margins of the San Joaquin Valley, usually between 90 and 910 m (300 to 3,000 ft) in elevation (BLM 1994).

One of the largest populations of *Eriastrum hooveri* occurs along the western edge of the Interstate 5 corridor near Kettleman City. This population is within the ACEC managed by BLM, where urban or industrial development is unlikely to occur (BLM 1996a; R. Lewis, pers. comm. 2003). In addition, conservation efforts for other listed species found along the Interstate 5 corridor are likely to provide continued collateral benefits for *E. hooveri.*

Other potential threats identified for *Eriastrum hooveri* at the time it was listed as a threatened species were impacts from groundwater recharge basins, a proposed reservoir (the Arroyo Pasajero Project), and disposal of nutrient-laden agricultural effluent (55 FR 29361). The only groundwater recharge basin developed in the range of *E. hooveri* is the Kern Water Bank, which helps to conserve *E. hooveri* through HCP measures that protect habitat in perpetuity. We are not aware of impacts to *E. hooveri* from disposal of nutrient-laden agricultural effluent. Land application of manure or dairy waste seepage is typically not conducted on natural habitat and is not likely to impact *E. hooveri* (Gary Burton, Service, pers. comm. 2002). The Arroyo Pasajero Project remains a potential location for water storage for the environmental water account. However, it is anticipated that the Arroyo Pasajero Project, if it goes forward, will have an insignificant effect on E. *hooveri.*

Off-Highway Vehicles

Off-highway vehicles were identified as a threat for *Eriastrum hooveri* at the time it was listed. In 1994 the *Eriastrum hooveri* Field Inventory Report (BLM 1994) considered 15 percent of sites evaluated to have potential threats from off-highway vehicles. However, observations of the plants subsequent to listing suggest that the species appears to persist in the absence of renewed disturbance. The low number of documented impacts and the recolonizing ability of *E. hooveri* indicate that off-highway vehicles are no longer considered a threat to the long-term survival of the species (BLM 1994).

Off-highway vehicle impacts are rare occurrences and typically consist of tire tracks across occupied habitat, in many cases as a one-time occurrence by a single vehicle. On some roads located in the Caliente Mountains and Cuyama Valley, the species was found growing in tire tracks. The species has been found growing on several inactive motorcycle paths located in the Kettleman Hills, some of which were approximately 46 cm (18 in) deep. Plants also grow on the margins of dirt roads and in the strip of vegetation between tire tracks on unimproved roads in the Lokern, Elk Hills, and Lost Hills areas (E. Cypher, *in litt.* 2001).

The majority of the six *Eriastrum hooveri* populations in Los Padres National Forest are located on lightly used or abandoned roads that receive an estimated one to ten vehicle passes per year. This light road use appears to help maintain the presence of the species, although the plants do not grow in the actual tire tracks. The populations do not extend into areas, which apparently have suitable habitat, that surround the roads (Mike Foster, Forest Service, pers. comm. 1998).

Habitat disturbance will still occur in areas of potential *Eriastrum hooveri* habitat, and may occasionally occur on occupied habitat. However, the Service has determined that the level of disturbance will be such that pressures from present or threatened destruction, modification, or curtailment of *E. hooveri* habitat or range, even when taken collectively with other residual threats, are sufficiently reduced and contained that the species is no longer threatened or endangered. The Service will monitor, as part of the required post-delisting monitoring, the management commitments by BLM to limit habitat disturbance.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not a factor known to affect *Eriastrum hooveri.*

C. Disease or Predation

Eriastrum hooveri tends to occupy soil surface that does not support a large amount of vegetation. Grazing by wild herbivores is not known to occur. Although cattle may trail through areas occupied by *E. hooveri* en route to areas of desirable forage, they do not appear to be grazing within the sparsely vegetated *E. hooveri* occupied habitat (BLM 1994). Furthermore, observations subsequent to the listing have shown that the wiry and low-growing *E. hooveri* plants are not desirable forage for livestock, and that monitored areas in both grazed and ungrazed areas showed no significant differences in survival, size, or reproduction (BLM 1994). Survival was higher in grazed areas possibly due to the reduced vegetation cover, and *E. hooveri* plants were taller in ungrazed areas. Therefore, predation through grazing, including trespass grazing, is no longer considered a serious threat to *E. hooveri* (with regards to management of grazing refer to Factor E ''Other natural or manmade factors affecting its continued existence'').

No known diseases affect *Eriastrum hooveri.*

D. The Inadequacy of Existing Regulatory Mechanisms

Eriastrum hooveri will continue to benefit from the many recovery and conservation activities that are being undertaken for the 33 other species in the Recovery Plan (collateral species benefits). Nine of the core areas identified for recovery of these collateral species support *E. hooveri* populations, and portions of these core areas are already protected (*E. Cypher,* in litt. 2001). Efforts to maintain linkages around the San Joaquin Valley edge (from the Ciervo/Panoche area in Fresno County, south to Maricopa in Kern County) focus on protection of both valley floor and hilly topography areas for San Joaquin kit fox, an endangered species present in *E. hooveri* areas, and include grassland and chenopod scrub habitat types (USFWS 1998). Protection is also afforded through habitat conservation plans for the collateral, federally listed species, including the wide-ranging San Joaquin kit fox, blunt-nosed leopard lizard, the California jewelflower, and kern mallow. All these species are protected under the Act and share the same habitat types and climatic requirements with *E. hooveri* (Taylor and Davilla 1986).

The principal mechanism that will continue to afford *Eriastrum hooveri* protection will be designation by BLM of *E. hooveri* as a sensitive species after the species is delisted (E. Hastey, BLM, *in litt.* 1995, T. Burke, BLM, *in litt.* 2002). BLM policy will minimize impacts to the species at all known sites that are under their jurisdiction. Coordination and annual reviews by the Service will ensure that appropriate minimization actions will occur. To aid in this review, *E. hooveri* population locations have been, and will continue to be, placed onto BLM's geographic information system (GIS) to help in the

management of future activities that may arise within the range of the species (S. Carter, pers. comm. 2002). Part of BLM's commitment to the delisting of *E. hooveri* will be the establishment of key monitoring locations on public land in the four metapopulations (see ''Background'' under **SUPPLEMENTARY INFORMATION**). Additionally, BLM will evaluate the effects of any proposed management changes on *E. hooveri* and will periodically evaluate whether the objective of maintaining sufficient numbers and distribution to preclude listing is being met. Management strategies will be adapted to meet this objective if necessary (Tim Burke, Acting BLM State Director, *in litt.* 2002).

Eriastrum hooveri is not a State-listed species under the California Endangered Species Act.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Although *Eriastrum hooveri* is not a desirable forage plant for livestock, damage can occur by trampling as animals travel across the plants getting to areas they desire. Only five percent of the sites recorded by Lewis on BLM lands were affected by cattle and sheep grazing activities (BLM 1994). Occasionally sheep trespass in *E. hooveri* habitat, but sheep usually remain in one area for only a few days. Livestock trampling does not appear to constitute a serious threat to *E. hooveri*.

At the time of listing, competition with nonnative grasses was cited as a threat. Recent research and surveys have shown that *Eriastrum hooveri* prefers low densities of competing plants, whether nonnative or native. Although *E. hooveri* may initially colonize areas having low plant cover because of disturbance, it subsequently may be out-competed by nonnative plants in areas with sufficient moisture (*E. Cypher,* pers. comm. 1995). Taking into consideration the discovery of the wide distribution of this species and the abundance and extent of preferred (sparse) habitat areas, competition with nonnative grasses is no longer considered a threat to the long-term survival of *E. hooveri*.

The Service has determined that grazing and competition from nonnative plants is currently not a threat to the species at a level for which protection of the Act is necessary, but acknowledges that the potential for poorly managed grazing and the pervasive problem of nonnative invasive plants remains to some degree. We believe, however, that management commitments by BLM will protect *Eriastrum hooveri* from these situations far into the future. These residual threats, even when taken collectively with other residual threats, are sufficiently reduced and contained so that the species is no longer threatened or endangered. Because this delisting is based partly on commitments by BLM for best management practices to be utilized by all grazing lessees and other such practices that will limit encroachment by nonnative plants, the Service will monitor, as part of the required post-delisting monitoring, the commitments by BLM.

In summary, *Eriastrum hooveri* is more widespread and abundant than was documented at the time of listing and is more resilient and less vulnerable to certain activities, particularly impacts from grazing and oil and gas development, than previously thought. Consequently, *E. hooveri* is no longer likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. This action removes *E. hooveri* from the Federal List of Endangered and Threatened Species.

Effective Dates

In accordance with 5 U.S.C. 553(d), we have determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies conducting formal section 7 consultation on actions that may affect species no longer in need of the protections under the Act. Relieving the existing restrictions associated with this listed species will enable Federal agencies to focus their attention on other species in need of protection.

Effects of the Rule

This action removes *Eriastrum hooveri* from the List of Endangered and Threatened Plants and removes the protections afforded *E. hooveri* under the Act. However, protection provided to *E. hooveri* through incidental take permits for co-occurring listed animal species associated with HCPs issued under section 10(a)(1)(B) of the Act will continue by virtue of *E. hooveri* remaining as a covered species in HCPs developed for multiple species that remain listed under the Act. Currently, *E. hooveri* is a covered species in at least six HCPs in the San Joaquin Valley for which incidental take permits have been issued for various listed animal species. After delisting, *E. hooveri* will no longer be a covered listed species under these existing multi-species HCPs; instead *E. hooveri* becomes a covered non-listed species under the same HCP as of the effective date of this final rule. In order to receive No Surprises assurances, the permit holder must continue to abide by the original conditions of the permit (50 CFR 17.22(b)(5) and 17.32(b)(95)). If the permittee's actions violate the terms of the permit, then the permittee is outside the safety net of No Surprises should the species be relisted under the Act in the future.

After the effective date of this rule, Federal agencies will no longer be required to consult with us under section 7 of the Act to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of *Eriastrum hooveri.* However, BLM intends to designate *E. hooveri* as a sensitive species and will continue to minimize impacts to the species at all known sites that are under its jurisdiction. The use of *E. hooveri* must comply with State regulations. There is no designated critical habitat for this species. There are no specific preservation or management programs for the species that are terminated.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Service, implement a monitoring program for not less than five years for all species that have been recovered and delisted. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from risk of extinction after it has been removed from the protections of the Act. The primary goal of PDM is to confirm that the species does not require relisting as threatened or endangered during the period following removal of the Act's protection. Therefore, we anticipate that data collection for PDM will be but a subset of that which was collected in support of the delisting rule. In general, PDM plans will monitor demographic data over a set period of time, and may monitor residual threats (see ''Definitions'') or the effect on the species of the removal of the protections afforded by the Act, or be designed to detect new threats. If at any time during the PDM data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. A PDM plan is being drafted in a cooperative effort between the Service and BLM to guide the collection and evaluation of pertinent information over the monitoring period.

Post-Delisting Monitoring Plan Overview

The management practices of, and commitments by, the BLM, on whose

land a substantial number of the new populations have been found, will afford adequate protection to the species upon delisting, when *Eriastrum hooveri* will be designated by BLM as a sensitive species pursuant to BLM Manual 6840 and California State Manual Supplement H–6840.06. The post-delisting monitoring, required under section 4 of the Act, will be facilitated by BLM's implementation of their Caliente Resource Management Plan (RMP) (BLM 1996). Under the RMP and separate agreements, BLM will conduct species-specific monitoring as well as monitoring of residual threats at representative sites within the 4 metapopulations. Threats considered ''residual'' for *E. hooveri* are habitat disturbance, removal of protections afforded by the Act, and poorly managed grazing and encroachment by nonnative plants.

The Service will monitor the implementation of these commitments for the first 5 years following delisting. During this time the RMP and other BLM commitments will be reviewed annually by the Service. The Service will monitor BLM's commitment to declare *Eriastrum hooveri* a sensitive species, and BLM's implementation of the RMP with regard to residual threats. The Service will monitor the management commitments by BLM to limit habitat disturbance; the collective commitments by BLM, particularly the sensitive species designation, which provide protections similar to those afforded by the Act; and the use of best management practices by all grazing lessees and BLM's implementation of other such practices to limit encroachment by nonnative plants. Additionally, we will review the data on residual threats and *E. hooveri* collected by BLM under their monitoring plan. At the close of 5 years we will evaluate whether BLM's RMP affords the conditions necessary to maintain the species in sufficient numbers and distribution such that the status of *E. hooveri* is secure.

The BLM monitoring plan is being designed to detect changes in the status of *Eriastrum hooveri* primarily by monitoring residual threats and habitat conditions. The BLM will monitor residual threats coupled with species-specific monitoring, in a representative fashion within all four metapopulations, including the San Joaquin Valley floor metapopulation. The BLM's monitoring plan will be agreed upon by the Service.

Thresholds that would trigger an extension of monitoring or a status review will be presented in the Service's draft post-delisting monitoring plan. At the end of the 5-year period, we may end post-delisting monitoring if information indicates that the overall status of *Eriastrum hooveri* is secure (*i.e.*, BLM's RMP affords the conditions necessary to maintain the species in sufficient numbers and distribution such that the status of *E. hooveri* is secure).

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that Federal agencies obtain approval from OMB before collecting information from the public. 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. Implementation of this rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Author

The primary author of this final rule is Graciela Hinshaw, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Regulation Promulgation

■ For the reasons set out in the preamble, we hereby amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.12 [Amended]

■ 2. Section 17.12(h) is amended by removing the entry for ''*Eriastrum hooveri,* Hoover's woolly star'' under ''Flowering Plants'' from the List of Endangered and Threatened Plants.

Dated: September 29, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–25364 Filed 10–6–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 100103B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Western Aleutian District

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 Atka mackerel total allowable catch (TAC) in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Atka mackerel in the Western Aleutian District of the BSAI was established by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003) as 18,491 metric tons (mt). Regulations that are the basis for specifying this TAC are found at § 679.20(c)(3)(iii) and (c)(6).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 Atka mackerel TAC in the Western Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 18,441 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 be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such 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 Atka mackerel TAC in the Western Aleutian District, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–25354 Filed 10–02–03; 2:05 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 194

Tuesday, October 7, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH27

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –32PT, and –24PHB Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear, Inc., Standardized NUHOMS® Horizontal Modular Storage System (Standardized NUHOMS® System) listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 6 in Certificate of Compliance Number 1004. Amendment No. 6 would add the NUHOMS®–24PHB cask design to the Standardized NUHOMS® System. The NUHOMS®–24PHB cask design would permit a Part 72 licensee to store high burnup Babcock & Wilcox 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days/metric ton of uranium, enrichment equal to 4.5 weight percent uranium-235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask, under a general license.

DATES: Comments on the proposed rule must be received on or before November 6, 2003.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH27) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on public computers located at the NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. 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*. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report (SER) can be found under ADAMS Accession Nos. ML031980369 and ML031980374.

FOR FURTHER INFORMATION CONTACT: Margaret Stambaugh, telephone (301) 415–5449, e-mail, *mxs8@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 6 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on December 22, 2003. However, if the NRC receives significant adverse comments by November 6, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED WASTE GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: November 3, 2003.

Amendment Number 6 Effective Date: December 22, 2003.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, NUHOMS®–32PT, and NUHOMS®–24PHB.

* * * * *

Dated at Rockville, Maryland, this 11th day of September, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–25367 Filed 10–6–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 18]

RIN: 1513–AA57

Proposed Chehalem Mountains Viticultural Area (2002R–214P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the Chehalem Mountains viticultural area located in Yamhill, Washington, and Clackamas Counties, Oregon. This proposed viticultural area is entirely within the approved Willamette Valley viticultural area. We designate viticultural areas to allow bottlers to better describe the origin of wines and allow consumers to better identify the wines they may purchase. We invite comments on this proposed addition to our regulations, particularly from bottlers who use brand names similar to Chehalem Mountains.

DATES: We must receive written comments on or before December 8, 2003.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 18).
- 202–927–8525 (facsimile).
- nprm@ttb.gov (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.

You may view copies of this notice, the petition, the appropriate maps, and any comments received about this notice by appointment in our library, 1310 G Street, NW., Washington, DC 20005; phone 202–927–8210 for an appointment. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Specialist, Regulations and Procedures Division (Oregon), Alcohol and Tobacco Tax and Trade Bureau, 946 Northwest Circle Blvd., #286, Corvallis, OR 97330; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

TTB Background

Background on Viticultural Areas

TTB Authority

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions, and the Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural

Areas, contains the list of approved viticultural areas.

Definition

Title 27 CFR 4.25(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9. These designations allow consumers and vintners to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographic origin.

Requirements

Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition TTB to establish a grape-growing region as a viticultural area. The petition must include:

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence of growing conditions, such as climate, soils, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the specific boundaries of the proposed viticultural area, based on features shown on United States Geological Survey (USGS) or USGS-approved maps; and
- Copies of the appropriate map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

As appellations of origin, viticultural area names have geographic significance. Our 27 CFR part 4 label regulations prohibit the use of a brand name with geographic significance on a wine unless the wine meets the appellation of origin requirements for the named area. Our regulations also prohibit any other label references that suggest an origin other than the true place of origin of the wine.

If we establish this proposed viticultural area, bottlers who use brand names, including trademarks, like Chehalem Mountains must ensure that their existing products are eligible to use the viticultural area's name as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area, and the wine must meet the other requirements of 27 CFR 4.25(e)(3).

If a wine is not eligible for the appellation, the bottler must change the brand name or other label reference and obtain approval of a new label. Different rules apply if a wine in this category bearing a brand name traceable to a label approved prior to July 7, 1986. See 27 CFR 4.39(i) for details.

Chehalem Mountains Petition

We have received a petition from Alex Sokol-Blosser, secretary of the North Willamette Valley AVA Group proposing establishment of a new viticultural area to be called ''Chehalem Mountains.'' David Adelsheim, Paul Hart, and Richard Ponzi authored the petition. The proposed viticultural area is wholly within Oregon's Willamette Valley approved viticultural area. It is located toward the northern end of the valley and begins approximately 19 miles southwest of Portland, Oregon and 45 miles inland from the Pacific Ocean. It includes 106 square miles (67,840 acres) and straddles the boundary between Yamhill and Washington Counties and extends well into Clackamas County. As of 2002 at least 80 vineyards, totaling over 1,100 acres, plus 12 commercial wineries exist within the proposed boundaries of the Chehalem Mountains viticultural area, with more added each year.

The proposed Chehalem Mountains viticultural area constitutes a single, continuous landmass (measuring over 20 miles in length and 5 miles in width) uplifted above the floor of the Willamette Valley. The 200-foot elevation line generally defines the perimeter of the area, which consists of a series of ridges and highpoints, including two highly delineated spurs, Ribbon Ridge and Parrett Mountain. The petitioners decided to use physical features and elevation as the primary factors in defining the boundaries of the proposed area.

Name Evidence

The petitioners indicate the area is locally known as the Chehalem Mountains. They cite references that state the modern word ''Chehalem'' comes from the Indian name ''Chahelim,'' which is listed under the heading Atfalati (Tualatin) in the ''Handbook of American Indians.'' This name was given to the more than 20 bands of Indians living in the general vicinity of the Chehalem Mountains in the early 1800s.

Further, the petitioners state the word ''Chehalem'' appears to have entered the vocabulary of the early European settlers in the north Willamette Valley prior to 1840. A lumber mill was installed on Chehalem Creek in 1834, and in 1848 Joseph B. Rogers had the town of ''Chehalem'' platted on property he owned where Newberg, Oregon, stands today. The town had one of the earliest post offices in Yamhill County (established March 14, 1851), but the office closed within a year.

The petition supplies evidence that Chehalem has been used since that time to name a Parks and Recreation District, businesses (27 examples), housing developments, and public roads. The two public middle schools in the Newberg school district are named Chehalem Valley and Mountain View. Additionally, Chehalem has long been used in geographic names, such as Chehalem Creek, which runs through Chehalem Valley, which, in turn, forms the south side of the Chehalem Mountains. The entry for Chehalem Mountains in ''Oregon Geographic Names'' by Lewis L. McArthur reads, ''These are the highest mountains in the Willamette Valley * * *. The Chehalem Mountains and some independent spurs extend from the Willamette River east of Newberg to the foothills of the Coast range south of Forest Grove, Oregon.''

The term ''Chehalem Mountains'' figures prominently on four of the six USGS quadrangle maps (Newberg, Oregon; Dundee, Oregon; Laurelwood, Oregon; and Scholls, Oregon) submitted with this petition. The petitioners state that the Chehalem Mountains (including the Parrett Mountain spur, the Ribbon Ridge spur, and multiple other named hills, peaks, and ridges, such as Laurel Ridge, Bald Peak, Iowa Hill, Spring Hill, and Fern Hill) constitute a single uplifted landmass easily distinguished from the surrounding valley floor areas. Further, they contend that the historical name ''Chehalem Mountains'' (plural) is meant to include hilltops, ridges, and spurs, even one as large as Parrett Mountain.

Boundary Evidence

The petitioners state they know of no previous attempts to define the exact boundaries of the Chehalem Mountains. However, the evidence submitted uses physical features and elevation as the primary factors in defining the boundaries of the proposed area, as well as historical information relating to viticultural activity.

The petition includes maps that show the Chehalem Mountains constitute a single, continuous landmass, uplifted above the floor of the Willamette Valley, which is delineated for much of the west side and all of the north side by the valley formed by the Tualatin River and its tributaries. On the east side, it is separated from the high ground around Tonquin by wetlands of Rock Creek and

Seely Ditch. The southern boundaries are formed by the flood plain of the Willamette River in the east and by the Chehalem Valley in the west. The lowlands are all below the 200-foot level.

The petitioners used elevation, slope, and soil criteria in delineating the line between what constitutes ''mountains'' and what is ''valley floor.'' They state the foot of the Chehalem Mountains generally lies between 200 and 250 feet above sea level. Therefore, the petition includes all land in the area above the 200-foot level, with the exception of two highly urbanized areas located east and north of Newberg, Oregon, and west and south of Sherwood, Oregon. The proposed area excludes flat or barely sloping lands and includes hillsides. All hillside soils, whether marine, sediment, basaltic, loess, or, in some cases, alluvial (where it is found in hillside locations) are included in the proposed boundaries of the petitioned Chehalem Mountains viticultural area.

The petitioners also assert the Chehalem Mountains are made up of a series of ridges and highpoints that include two highly delineated spurs, Ribbon Ridge and Parrett Mountain, which are both heavily planted to vineyards. When drawn around the landmass of what is historically called the Chehalem Mountains, the 200-foot contour line encloses both the Ribbon Ridge and Parrett Mountain spurs.

Regarding historical evidence, the first modern vineyard on the Chehalem Mountains dates to 1968, when Dick Erath purchased 49 acres on Dopp Road in Yamhill County. He called the property Chehalem Mountain Vineyards and planted it the following spring.

Growing Conditions

The petitioners state that the proposed Chehalem Mountains viticultural area's boundaries are based primarily on a combination of terrain, elevation, and climate factors that contrast with the surrounding Willamette Valley, Coast Range, and Columbia Gorge.

Physical Features

The physical appearance of the Chehalem Mountains is the most significant geographical feature to distinguish them from surrounding areas. Due to their height and length (over 20 miles), the Chehalem Mountains are a significant landform in northern Willamette Valley. They can be seen from Portland's West Hills and from much of the northern Willamette Valley floor. They are the major separation between the basin of the Tualatin River and the Chehalem Valley.

The sometimes steep, sometimes gentle slopes of the Chehalem Mountains are highly differentiated from the almost flat Willamette Valley floor. In some areas (the west side of Ribbon Ridge and the southeast side of Parrett Mountain), the slope of the Mountains descends steeply, then suddenly becomes almost level, making the transition from Mountains to valley floor instantaneous and incontrovertible. However, for the majority of its perimeter, the slopes of the Chehalem Mountains shift more gradually to gentle slopes, then finally to the valley floor. The petitioners used the elevation/slope/soil criteria to determine the boundary lines in areas where the distinction is not as obvious.

Elevation

The Chehalem Mountains are the highest mountains within the Willamette Valley. Their tallest point is Bald Peak, which lies 7 miles northwest of Newberg and rises to 1,633 feet above sea level. The valley floors, surrounding the Mountains on all sides, drop below 200 feet. The 200-foot contour line completely encircles the Chehalem Mountains and clearly differentiates the Mountains from the valley. The petitioners state that these elevation differences are significant in distinguishing the Chehalem Mountains from the surrounding areas. Most of the existing vineyards in the proposed viticultural area are located between the 200- to 1,000-foot elevation lines. The petitioners assert that the areas below the 200-foot level have alluvial soils with greater depth, fertility, and water-holding capacity, which extend the growing period of the vine and delay the ripening of vineyards reds, as well as result in greater exposure to frost. Therefore, the alluvial soils on the valley floor are not included in the proposed boundaries.

Climate

The petitioners state that the element of climate that best distinguishes the Chehalem Mountains is annual precipitation. Since they are the highest mountains in the Willamette Valley, they provide the largest obstacle to eastward moving storms. As the moist air is forced over the Chehalem Mountains, the water vapor in the cooling air condenses and falls to earth as terrain-induced rain. According to data obtained from the ''Atlas of Oregon,'' second edition (University of Oregon Press, 2001), annual rainfall within the boundaries of the proposed viticultural area ranges from 37 inches at the lowest point to almost 60 inches at the highest elevations on Bald Peak. This is in contrast to Hillsboro and Beaverton just north of the Chehalem Mountains and French Prairie just south of the Mountains with the lowest annual precipitation in the Willamette Valley—under 36 inches. The annual average rainfall for the Portland International Airport, located east of the proposed area, is 36 inches while the Coast Range, located west of the Chehalem Mountains, has an average of over 100 inches of rain per year.

The other uplifted hills in the Willamette Valley have somewhat higher rainfall levels than the surrounding valley floor (for example, Eola Hills has 40 to 48 inches and Red Hills has 40 to 44 inches), but none so dramatic as the Chehalem Mountains.

The petitioners also state that the Chehalem Mountains have the greatest variation in temperature within the Willamette Valley due to the range in elevation (200 to 1,633 feet). According to data obtained from the Oregon Climate Service, heat summation during the growing season varies from over 2,200 degree-days at the base of the south side of the Mountains to less than 1,800 degree-days on the north side of the top of the Mountains. These variations can result in three-week differences in the ripening of Pinot Noir grapes. Evapotranspiration (the loss of water from soil and plants by a combination of evaporation and transpiration) is about 3 inches less on the higher parts of the Chehalem Mountains compared to the surrounding valleys, mostly due to temperature differences.

Soil

The petitioners state that, in general, the proposed area contains a combination of loess, sedimentary, basaltic, and alluvial soils. These were deposited over a 17-million-year period through a series of events that included uplifting of the mountains from the shallow waters of the Pacific Ocean, huge eruptions of basaltic lava from the Columbia River Basalt Group, wind blowing silt from Eastern Oregon and Washington, and alluvial deposition from the Missoula Flood.

The diverse soils contained in the proposed Chehalem Mountains viticulture area have yielded successful vineyards since 1968. Much of the Ribbon Ridge spur is covered by sedimentary soil (Willakenzie Series) and is heavily planted to red wine grapes. The central and southern Chehalem Mountains also contain large deposits of basaltic soils (mainly Jory Series) that contain many vineyards of

white grapes, as well as extensive plantings of Pinot Noir. The Laurelwood Series of the loess soils also covers much of the central Chehalem Mountains.

However, the petitioners assert that soil does not distinguish the Chehalem Mountains from the surrounding hill formations. The sedimentary western flank of the Mountains has soils that are much like those further to the west in the hills surrounding the Yamhill River Basin. The basaltic-origin soils along much of the southern slope and the Parrett Mountains spur are similar to the soils further south on the Red Hills and the east side of the Eola Hills. The eolian soils on most of the north side of the Mountains are much like those on the hills further north and east in the Tualatin basin (*e.g.*, Cooper and Bull Mountains). All the alluvial soils at the base of the Chehalem Mountains are much like those of the surrounding valley flood plains. The petitioners contend that the soils contained in the proposed viticultural area are not what make it unique. Rather, geographic features other than soil are what strongly differentiate the Chehalem Mountains from the surrounding valley floors and from the surrounding hill formations.

Boundary Description

See the narrative boundary description of the petitioned viticultural area in the proposed regulation published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them in the proposed regulations.

Public Participation

Comments Sought

We request comments from anyone interested. Please support your comments with specific information about the proposed area's name, growing conditions, or boundaries. All comments must include this notice number and your name and mailing address. They must be legible and written in language acceptable for public disclosure.

Because of the potential impact of a Chehalem Mountains viticultural area on current brand names that include ''Chehalem,'' we are particularly interested in comments regarding the proposed area's name. Are there other names for this area that would not conflict with current brand names? We are also interested in suggestions for preventing conflicts between viticultural area names and brand names of geographic significance, as discussed above under ''Impact on Current Wine Labels.''

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

Confidentiality

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for public disclosure.

Submitting Comments

You may submit comments in any of four ways:

- By mail: You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *By e-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper.

- *By online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via e-mail'' link under this notice number.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments received by appointment in our library at 1310 G Street, NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact us at the above address or telephone 202–927–8210 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in our library. To access the online copy of this notice, visit at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Analyses and Notices

Paperwork Reduction Act

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Regulatory Flexibility Act

We certify that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses. The proposal imposes no new reporting, recordkeeping, or other administrative requirements.

The establishment of viticultural areas represents neither our endorsement nor approval of the quality of wine made from grapes grown in the designated areas. Rather, this system allows us to identify areas distinct from one another. In turn, identifying viticultural areas lets wineries describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from using a viticultural area name results from a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a ''significant regulatory action'' as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

Drafting Information

B. J. Kipp of the Regulations and Procedures Division (Portland, Oregon) drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding Section 9._ to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.__ Chehalem Mountains

(a) *Name.* The name of the viticultural area described in this section is ''Chehalem Mountains''.

(b) *Approved Maps.* The six, 1:24,000 scale, USGS, topographic maps used to determine the boundaries of the Chehalem Mountains viticultural area are titled:

(1) Newberg Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1985);

(2) Dundee Quadrangle, Oregon, 7.5 Minute Series, 1956 (revised 1993);

(3) Laurelwood Quadrangle, Oregon, 7.5 Minutes Series 1956 (revised 1992);

(4) Scholls Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1985);

(5) Beaverton Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1984); and

(6) Sherwood Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1985).

(c) *Boundary.* The Chehalem Mountains viticultural area is located in Yamhill, Washington, and Clackamas Counties, Oregon. The area's boundaries are defined as follows:

(1) The point of beginning (Newberg Quadrangle) is in Yamhill County, section 15, R2W, T3S, and 3 miles east of the city of Newberg where the 250-foot contour line crosses Oregon highway 99W, as that highway ascends the Chehalem Mountains;

(2) Proceed northwest 0.7 miles along the 250-foot contour line until that line crosses Benjamin Road (shown but unnamed on Newberg Quadrangle);

(3) Proceed west 0.5 miles along Benjamin Road across the railroad tracks until it intersects with Spring Brook Road (also unnamed);

(4) Proceed southwest 0.3 miles along Spring Brook Road (parallel to railroad tracks) to its intersection with Mountainview Drive (unnamed);

(5) Proceed west 0.35 miles on Mountainview Drive to its intersection with the unnamed Aspen Way;

(6) Proceed north and west on Aspen Way 1.2 miles to its intersection with Bell Road;

(7) Proceed west 0.3 miles to the end of Bell Road at intersection with Oregon highway 219;

(8) Proceed west across highway 219 on North Valley Road (which was Bell Road) 0.45 miles to the intersection with the 250-foot contour line;

(9) Proceed northwest 1.2 miles along the 250-foot contour line to the western edge of the Newberg Quadrangle;

(10) Proceed south 0.05 miles along the western edge of the Newberg Quadrangle, section 42, R3W, T3S, to the intersection with the 240-foot contour line;

(11) Continue onto the Dundee Quadrangle map, section 42, R3W, T3S and proceed west 2.15 miles along the 240-foot contour line to where the line crosses the unnamed Sullivan Lane (that lane is east of and parallel to Calkins Lane);

(12) Proceed south along Sullivan Lane 0.25 miles to the intersection with North Valley Road;

(13) Proceed west along North Valley Road 0.1 miles to the intersection with the 200-foot contour line;

(14) Proceed northwest along the 200-foot contour 0.9 miles to a point where the contour line crosses an unnamed creek that parallels Dopp Road;

(15) Proceed north along the creek 0.03 miles to the intersection with Dopp Road;

(16) Proceed north along Dopp Road to the intersection with the 240-foot contour line;

(17) Proceed along the 240-foot contour line, first north, then south, then west, then north to a point 2.9 miles northwest, where the contour line hits the north edge of the map. (This section coincides with the southeast, southwest, and north boundaries of the concurrently proposed Ribbon Ridge American viticultural area.);

(18) Continue onto the Laurelwood Quadrangle, section 58, R3W, T2S and proceed generally north along the 240-foot contour line 7.5 miles to where the contour line crosses Sandstrom Road;

(19) Proceed west 0.15 miles on Sandstrom Road to its third intersection with the 200-foot contour line, just prior to Spring Hill Road;

(20) Proceed northwest, then northeast, and southeast 2.7 miles along the 200-foot contour line around Fern Hill and Blooming Hill Roads to where it crosses La Follette Road;

(21) Proceed south 0.2 miles on La Follette Road to its intersection with the 240-foot contour line;

(22) Proceed generally south, then east 4 miles along the 240-foot contour line to the eastern edge of the Laurelwood Quadrangle;

(23) Continue on the western edge of the Scholls Quadrangle, section 25, R3W, T1S, (0.45 miles south of Simpson Road) and proceed south 0.5 miles along the 240-foot contour line, through a crescent shape to the western edge of the Scholls Quadrant;

(24) Continue on the Laurelwood Quadrangle in the southeast corner of section 25, R3W, T1S and proceed along the 240-foot contour line west and then south 2.3 miles to where it crosses Laurel Road West;

(25) Proceed east along Laurel Road West 0.1 miles to its intersection with the 200-foot contour line;

(26) Proceed southwest and then east along the 200-foot contour line around the Burris Creek Valley to the eastern edge of the Laurelwood Quadrangle in the northeast corner of section 12, R3W, T2S;

(27) Continue on the western edge of Scholls Quadrangle, section 12, R3W, T2S, 0.13 miles south of Laurel Road West and proceed along the 200-foot contour line generally southeast, skirting the valley of McFee Creek for 4.2 miles to the valley of Heaton Creek, to the southern edge of the Scholls map;

(28) Continue on the northern edge of the Newberg Quadrangle, section 28, R2W, T2S and proceed along the 200-foot contour line south in a brief U-shaped formation for 0.1 miles, then north back to the northern edge of the Newberg Quadrangle;

(29) Continue on Scholls Quadrangle, section 21, R2W, T2S and proceed along the 200-foot contour line generally northeast for 3.25 miles around Laurel Ridge to the southeastern edge of the Scholls Quadrangle;

(30) Continue on the Beaverton Quadrangle, section 24 R2W, T2S, 0.8 miles north of Lebeau Road and proceed along the 200-foot contour line southeast for 1 mile to the southern edge of the map, section 19, R1W, T2S.

(31) Continue onto the Sherwood Quadrangle, section 30, R1W, T2S, 0.1 miles east of Elwert Road, proceed west 0.55 miles to the northwestern edge of the Sherwood Quadrangle, and then proceed 0.05 miles across the most southwestern edge of the Beaverton Quadrangle;

(32) Continue onto Scholls Quadrangle in the southeast corner of section 24, R2W, TS2 and proceed west then southeast along the 200-foot contour line around the north fork of Chicken Creek to the southeast corner of the map;

(33) Continue onto the Newberg Quadrangle, section 25, R2W, TS2 (0.2 miles from the northeast corner of the map) and proceed along the 200-foot contour line until it exits the eastern edge of the map, 0.25 miles south of the northeast corner;

(34) Continue onto the Sherwood Quadrangle, section 25, R2W, T2S and proceed along the 200-foot contour line (0.25 miles south of the map's northwest corner) around the south fork of Chicken Creek to the western edge of the map, 0.3 miles south;

(35) Continue on the Newberg Quadrangle, section 25, R2W, T2S (0.55 miles south of the map's northeast corner and proceed along the 200-foot contour line around the Chicken Creek lowlands to the eastern edge of the map, 0.25 miles south of where it entered;

(36) Continue on the Sherwood Quadrangle, section 25, R2W, T2S (0.8 miles south of the map's northwest corner and proceed generally east 0.4 miles to Elwert Road;

(37) Proceed south on Elwert Road 0.85 miles to its intersection with Oregon highway 99W;

(38) Proceed south by southwest along highway 99W 0.45 miles across the north fork of Cedar Creek to the intersection of highway 99W and the 250-foot contour line;

(39) Proceed generally south along the 250-foot contour line 0.6 miles to its intersection with Middleton Road;

(40) Proceed southwest on Middleton Road 0.3 miles to the point where it becomes Rein Road;

(41) Proceed south on Rein Road 0.15 miles across Cedar Creek to the intersection of Rein Road and the 200-foot contour line;

(42) Proceed generally east along the 200-foot contour line 1.2 miles to its intersection with Brookman Road (shown but unnamed on map);

(43) Proceed on Brookman Road 0.35 miles east, then north 0.25 miles, then east 0.15 miles (paralleling the Clackamas/Washington County lines);

(44) Proceed east 0.85 miles across Ladd Hill Road and continue along the Clackamas/Washington County lines to the intersection with Baker Road (shown as Brown Road on the map);

(45) Now in Clackamas County, proceed along Baker Road south by southeast 1 mile to the second intersection with the 250-foot contour line;

(46) Proceed along the 250-foot contour line in a semicircle, first east, then southeast, then southwest and return to Baker Road;

(47) Proceed south along Baker Road 0.15 miles to its intersection with the 200-foot contour line;

(48) Proceed along the 200-foot contour line in a generally southwest direction 4.45 miles along the southwestern flank of the Parrett Mountain spur of the Chehalem Mountains to the western edge of the map;

(49) Continue on the Newberg Quadrangle, section 76, R2W, T4S, 0.3 miles north of the north bank of the Willamette River and proceed along the 200-foot contour line west by northwest 1.1 miles to the intersection with Wilsonville Road;

(50) Proceed northwest, then north 1.9 miles across an unnamed tributary creek of Spring Brook;

(51) Proceed along the unnamed tributary 0.25 miles in a south by southwest direction to the intersection with the 200-foot contour line;

(52) Proceed along the base of Grouse Butte, following the 200-foot contour line to a point 0.45 miles northwest to the intersection of the contour line and Wilsonville Road;

(53) Proceed east along Wilsonville Road 0.45 miles back to the intersection of the road with an unnamed tributary creek of Spring Brook;

(54) Proceed northeast along the unnamed tributary creek of Spring Brook 0.05 miles to the intersection with the 250-foot contour line;

(55) Proceed generally north along the 250-foot contour line 1.4 miles to its intersection with Corral Creek Road (misnamed Ladd Hill Road on the Newberg Quadrangle); and

(56) Proceed north along Corral Creek Road 0.6 miles to the intersection with Oregon highway 99W, which is the point of beginning.

Signed: September 17, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–25372 Filed 10–6–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 19]

RIN: 1513–AA59

Proposed Establishment of the Yamhill-Carlton District Viticultural Area (2002R–216P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the ''Yamhill-Carlton District'' viticultural area in northwest Oregon. The proposed area is located within the approved Willamette Valley viticultural area. We designate viticultural areas to allow bottlers to better describe the origin of wines and allow consumers to better identify the wines they may purchase. We invite comments on this proposed addition to our regulations, particularly from bottlers who use brand names similar to ''Yamhill-Carlton District.''

DATES: We must receive written comments on or before December 8, 2003.

ADDRESSES: You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 19);
- 202–927–8525 (facsimile);
- *nprm@ttb.gov* (e-mail);
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.

You may view copies of this notice, the petition, the appropriate maps, and any comments received about this notice by appointment at our library, 1310 G Street NW., Washington, DC 20202; telephone 202–927–8210 for an appointment. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Specialist, Regulations and Procedures Division (Oregon), Alcohol and Tobacco Tax and Trade Bureau, 946 Northwest Circle Blvd., #286, Corvallis, OR 97330; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Homeland Security Act Impact on Rulemaking

Effective January 24, 2003, the Homeland Security Act of 2003 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. Regulation of alcohol beverage labels, including viticultural area designations, is the responsibility of the new TTB. References to ATF in this document relate to events that occurred prior to January 24, 2003, or to functions that the Bureau of Alcohol, Tobacco, Firearms and Explosives continues to perform.

Background on Viticultural Areas

TTB Authority

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out the Act's provisions, and the Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural Areas, contains the list of approved viticultural areas.

Definition

Title 27 CFR 4.25(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9. These designations allow consumers and vintners to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographic origin.

Requirements

Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence that the proposed viticultural area is locally or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence of growing conditions, such as climate, soils, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the specific boundaries of the proposed viticultural area, based on features shown on United States Geological Survey (USGS) maps or USGS-approved maps; and
- Copies of the appropriate map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

As appellations of origin, viticultural area names have geographic significance. Our 27 CFR part 4 label regulations prohibit the use of a brand name with geographic significance on a wine unless the wine meets the appellation of origin requirements for the named area. Our regulations also prohibit any other label references that suggest an origin other than the true place of origin of the wine.

If we establish this proposed viticultural area, bottlers who use brand names, including trademarks like Yamhill-Carlton District, must ensure that their existing products are eligible to use the viticultural area's name as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area, and the wine must meet the other requirements of 27 CFR 4.25(e)(3). If a wine is not eligible for the appellation, the bottler must change the brand name or other label reference and obtain approval of a new label.

Different rules apply to wines in this category that have brand names traceable to labels approved prior to July 7, 1986. See 27 CFR 4.39(i) for details. In addition, if you use the viticultural area name on a wine label in a context other than an appellation of origin, the general prohibitions against misleading representation in 27 CFR part 4 apply.

Yamhill-Carlton District Petition

General Background

We have received a petition from Alex Sokol-Blosser, Secretary of the North Willamette Valley AVA Group, and Ken Wright, on behalf of the winegrowers of the proposed Yamhill-Carlton District, proposing a new viticultural area to be called the ''Yamhill-Carlton District.'' The proposed viticultural area, which is limited to lands at or above 200 feet in elevation and below 1,000 feet in elevation, is wholly within Yamhill and Washington Counties and also falls within the approved boundaries of the Willamette Valley viticultural area in northwest Oregon. It is located approximately 35 miles southwest of Portland, Oregon, and 25 miles inland from the Pacific Ocean. It includes a total of 20,900 acres. However, when the acreage below 200 feet in elevation and above 1,000 feet in elevation is subtracted, the total acreage included in the proposed American viticultural area is 8,500 acres. The petitioner decided to use soil and elevation and, to a lesser extent, climate, as the primary factors in defining the boundaries of the proposed area. At the time of this proposal, 26 known vineyards exist in the proposed American viticultural area, with approximately 650 acres planted to grapes, with more added each year.

The petitioner's proposal is unusual in that the proposed boundaries encompass land that will not be part of the proposed viticultural area. Land below 200 feet and above 1,000 feet will be excluded due to soil and climate differences with land between those elevations. A precedent does exist for such a viticultural area. Within the boundaries of the Mendocino Ridge viticultural area, only land at or above the 1200-foot elevation is included in the viticultural area (See 27 CFR 9.158 and T.D. ATF–392 at 62 FR 55512, October 27,1997). However, because of the unusual nature of such boundaries, TTB is particularly interested in public comments on the proposed Yamhill-Carlton District boundaries. Specifically, does the evidence regarding elevation support the exclusion of some of the land lying within the proposed area's outer boundaries?

Name Evidence

The petitioner indicates the area is locally known as the Yamhill-Carlton District. The cities of Yamhill and Carlton, Oregon, are 3 miles apart, lie at the center of the proposed viticultural area, and have had strong ties throughout their histories. Both were incorporated over 100 years ago and have existed as separate cities since that time. The hyphenated expression of the cities' names has been used since 1853 with the establishment of the Yamhill-Carlton Pioneer Cemetery. Also, the Yamhill-Carlton Union High School has existed since the two high schools merged in 1955 and currently operates under supervision of the Yamhill-Carlton School District, which was formed in 1996. Further evidence of the ties between the two communities was a shared newspaper, the ''Carlton-Yamhill Review.'' The cities of Yamhill and Carlton, as well as the Yamhill-Carlton Pioneer Cemetery, are found within the boundaries of the USGS Carlton Quadrangle, 7.5 minute series, topographic map.

Boundary Evidence

The petitioner submitted evidence that is based primarily on soil and elevation, and to a lesser extent, climate, as factors in defining the boundaries of the proposed area, as well as historical information relating to viticultural activity. The petitioner describes the proposed Yamhill-Carlton District as a south-facing bowl containing a series of horseshoe-shaped, eroded hills,

comprised of sedimentary parent material.

The western boundary of the proposed area is based on the change of the sedimentary soils from the volcanic soils of the coastal range of hills. The higher elevations of the coastal hills to the west, generally ranging from 1,000–2,000 feet, are much cooler than the proposed area and have proven unsuitable for the production of vinifera varietals. At the southwestern boundary, the almost purely sedimentary parent material of the proposed Yamhill-Carlton District changes to a mix of basalt, slate, and sedimentary material. The southern boundary transitions to valley floor that contains deep soil comprised of Willamette silts. The frost-prone nature of this lower elevation area, combined with its high permeability and fertility, make it unsuitable for production of quality vinifera grape varieties. Abbey and Kuehne Roads serve as the eastern border of the proposed area and mark the change of sedimentary parent material to volcanic soil of the Red Hills of Dundee, as well as highlight a natural drainage between the two areas.

Millican Creek drains along this boundary, flowing from north to south and eventually joining the Yamhill River near the town of Lafayette. The Chehalem Creek estuary is a vast drainage area that separates the proposed Yamhill-Carlton District from the Ribbon Ridge area (a spur of the Chehalem Mountains) to the east. While the two areas are both based on sedimentary material, the proposed Yamhill-Carlton District sedimentary soil is generally coarser in texture and subject to more faulting, uplifts, and erosion than the soils of Ribbon Ridge.

The Wapato Lake Bed serves as a large, low drainage area on the northeastern boundary of the proposed Yamhill-Carlton District, separating it from the Chehalem Mountains. The soils of these two areas are vastly different in that the proposed Yamhill-Carlton District is highly eroded sedimentary parent material while the Chehalem Mountains, which lie across the Wapato Lake Bed, are formed from wind-blown mixed material and overlying basalt. Finally, the northern border of the proposed area coincides with the vast low areas of Patton Valley with predominately wind-blown soil.

Regarding historical evidence, two vineyards can lay claim to being first planted in the proposed Yamhill-Carlton viticultural area. In 1974, Roy and Betty Wahle planted 8 acres of vinifera grapes comprised of Pinot Noir, Chardonnay, Riesling, and Gewurztraminer. That same year, Pat and Joe Campbell planted Elk Cove Vineyards, an 8-acre plot comprised of Pinot Noir and Chardonnay. The next significant era of planting occurred between 1989 and 1992. Doe Ridge Vineyard, McCrone Vineyard, Shea Vineyard, Stag Hollow Vineyard, and Willakenzie Estate combined to plant a total of 183 acres during this period.

The first commercial wine from the proposed Yamhill-Carlton area was the 1977 Elk Cove Estate Pinot Noir. As of the date of this petition, 10 commercial wineries operate within the boundaries of the proposed area.

Growing Conditions

Distinctive Geographic Features

The petitioner describes the proposed Yamhill-Carlton District viticultural area as a south-facing bowl consisting of a horseshoe-shaped series of highly eroded hills comprised of sedimentary parent material bordered by a high-elevation coastal range to the west, a cooler maritime-influenced area to the south, and natural lowland drainage areas to the east and north. The soils contained in the proposed Yamhill-Carlton District differ from those in surrounding areas either by basic rock or age of the parent material.

Soil

The petitioner states that the most significant feature that separates the proposed Yamhill-Carlton District from nearby grape-growing regions is the predominance of ancient sedimentary soils. He believes these soils impart distinct and unique characteristics to the fruit they grow. Wines made from grapes grown in these sedimentary soils often contain distinct aromatic flavors (coffee, cocoa, anis, cedar, tobacco) not found in wines made from the same variety of fruit grown in different soils. Also the wines made from grapes grown in these sedimentary soils are consistently lower in acidity than wines made from grapes grown in basaltic or wind-blown soils.

According to ''The Roadside Geology of Oregon'' (David Alt and Donald W. Hyndman), the soils of the proposed Yamhill-Carlton District, formed in the Eocene era, were derived from marine sediments and ocean floor volcanic basalt that have a high water-holding capacity with moderate to high erosion levels. A map prepared by Alan Campbell of NW Vineyards on the vineyard soils of Yamhill County shows that the western hills of the proposed Yamhill-Carlton District are comprised of two soils groups, Willakenzie on the lower elevation slopes and Peavine on the upper slopes. Peavine soils dominate the northern section of the proposed viticultural area, while the eastern slopes are comprised of Wellsdale and Willakenzie soil series. The petitioner states that the sedimentary soils of the proposed Yamhill-Carlton District are millions of years older than the soils in the surrounding areas.

By contrast, the petitioner states that the Eola Hills (south of the proposed Yamhill-Carlton District), Chehalem Mountains (north and east of the proposed Yamhill-Carlton District), and Red Hills (southeast of the proposed Yamhill-Carlton District) are dominated by volcanic-based soils formed in the Miocene Era. The Eola Hills area has predominately basalt soil series (Neika, Gelderman, Ritner) that are characterized by their low water capacity, slow permeability, and moderate erosion level. The Chehalem Mountains have a combination of Columbia River basalt, ocean sedimentation, and wind-blown loess derivation soil types. The Red Hills contain soil mainly derived from Columbia River basalt lavas (largely based on the Jory series), which are moderately fertile and well drained, with slight to moderate erosion levels.

The petition documentation also states the Ribbon Ridge area, which is immediately east of the proposed district, also contains primarily sedimentary soils. However, these were formed in the Oligocene Era and are younger, finer, and more uniform than the sedimentary soils of the proposed Yamhill-Carlton District.

Elevation

The petitioner defines the proposed Yamhill-Carlton District viticultural area as lands, within the proposed boundaries, that are at or above 200 feet in elevation and at or below 1,000 feet in elevation. The petitioner justifies the bracketed elevation with the following information. The floor of the proposed region is comprised of fine-grained soils deposited as a result of the Missoula floods, which occurred 12,000 years ago. These soils, identified as Willamette silts, occur at elevations below 200 feet and have greater depth, fertility, and water-holding capacity than soils of the proposed viticultural area. The fertility and water-holding capacity of these low soils extends the vegetative period of the vine and delays the ripening of vines planted in this area. Further, low elevation areas are also prone to frost. Conversely, areas within the proposed area with elevations greater than 1,000 feet are significantly cooler and lack necessary heat units required to properly ripen

wine grapes. For these reasons, the proposed Yamhill-Carlton District viticultural area is limited to lands at or above 200 feet in elevation and below 1,000 feet in elevation.

Climate

The climate of the proposed Yamhill-Carlton District viticultural area is distinct from the surrounding areas in a number of ways. The area is bordered on the west by the Coast Mountains, which have far fewer degree-days (at 50° F) and are unsuitable for production of vinifera varietals. According to data obtained from the Oregon Climate Service, average rainfall for the proposed Yamhill-Carlton District is 42 inches, while the Coast Range receives between 80 and 110 inches per year. Further, the proposed Yamhill-Carlton District averages 18.3 days with temperatures above 90° F, while the Coast Range has 2 days.

The petitioner also submitted evidence that the areas immediately south of the proposed Yamhill-Carlton area are influenced by the cooling effect of weather systems flowing east from the Pacific Ocean through the Van Duzer Corridor, a mountain gap in the Coast Range. The corridor funnels cooling, marine, summer breezes inland toward Salem, which substantially lowers the average temperature achieved during the growing season.

However, the petitioner contends this effect quickly moderates as you move north through the proposed Yamhill-Carlton District from the Van Duzer Corridor entry into the Willamette Valley near Dallas, Oregon. For example, the petitioner submitted evidence from the Oregon Climate Service which demonstrated that the 30 year average rainfall for Dallas, Oregon (south of the proposed Yamhill-Carlton District) was 49.1 inches compared to 42 inches for the proposed viticultural area. Further, the Oregon Climate Service data on average temperatures shows that Dallas, Oregon has 51 fewer degree-days than McMinnville, Oregon (which is at the southern border of the proposed Yamhill-Carlton District) and 186 fewer degree-days than Forest Grove, Oregon (which lies 6 miles north of the proposed viticultural area).

The Patton Valley, a vast low area just north of the proposed Yamhill-Carlton District, has an annual rainfall average difference of slightly more than 2 inches when compared with the proposed viticultural area. However, the 30-year average temperature data from the Oregon Climate Service shows the area north of Patton Valley to have 135 more degree-days than the proposed Yamhill-Carlton District.

Boundary Description

See the narrative boundary description of the petitioned viticultural area in the proposed regulation published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them in the proposed regulation.

Public Participation

Comments Sought

We request comments from anyone interested. Please support your comments with specific information about the proposed area's name, growing conditions, or boundaries. All comments must include this notice number and your name and mailing address. They must be legible and written in language acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

Confidentiality

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for public disclosure.

Submitting Comments

You may submit comments in any of four ways.

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—
  (1) Be on 8.5- by 11-inch paper;
  (2) Contain a legible, written signature; and
  (3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *By e-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—
  (1) Contain your e-mail address;
  (2) Reference this notice number on the subject line; and
  (3) Be legible when printed on 8.5-by 11-inch paper.
- *By online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via email'' link under this notice number.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments received by appointment in our library at 1310 G Street NW., Washington, DC 20202. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our librarian at the above address or telephone 202–927–8210 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in our library. To access the online copy of this notice, visit *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Analyses and Notices

Paperwork Reduction Act

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Regulatory Flexibility Act

We certify that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses. The proposal imposes no new reporting, recordkeeping, or other administrative requirements.

The establishment of viticultural areas represents neither our endorsement nor approval of the quality of wine made from grapes grown in the designated areas. Rather, this system allows us to identify areas distinct from one another. In turn, identifying viticultural areas lets wineries describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from using a viticultural area name results from a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a ''significant regulatory action'' as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

Drafting Information

Bernard J. Kipp of the Regulations and Procedures Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Amend subpart C by adding § 9._ to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.__ Yamhill-Carlton District

(a) *Name.* The name of the viticultural area described in this section is ''Yamhill-Carlton District'.

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Yamhill-Carlton District viticultural area are eight 1:24,000 scale, United States Geological Survey, 7.5 Minute Series, topographic maps. They are titled:

(1) Gaston Quadrangle, Oregon, 1956, revised 1993;
(2) Turner Creek Quadrangle, Oregon, 1979;
(3) Fairdale Quadrangle, Oregon—Yamhill Co., 1979;
(4) Muddy Valley Quadrangle, Oregon—Yamhill Co., 1979, revised 1992;
(5) McMinnville Quadrangle, Oregon—Yamhill Co, 1957, revised 1992;
(6) Carlton Quadrangle, Oregon—Yamhill Co., 1957, revised 1992;
(7) Dundee Quadrangle, Oregon, 1956, revised 1993; and
(8) Laurelwood Quadrangle, Oregon, 1956, revised 1992.

(c) *Boundary.* The Yamhill-Carlton District viticultural area, which is limited to lands at or above 200 feet in elevation and below 1,000 feet in elevation, is located entirely in Yamhill and Washington Counties, Oregon, and also falls within the approved boundaries of the Willamette Valley viticultural area in northwest Oregon.

(1) The point of beginning is the intersection of State highway 47 and Gaston Road, which lies within the Gaston Quadrangle. From the point of beginning:

(2) Follow Gaston Road in a westerly direction approximately 0.10 mile to the intersection with the 200-foot elevation line;

(3) Follow the 200-foot elevation line in a westerly direction approximately 1.86 miles to a point at which the 200-foot elevation line crosses South Road for the fourth and final time;

(4) Follow South Road in a generally westerly direction approximately 1.90 miles to its second intersection with the Washington County/Yamhill County line. This point is 250 feet southeast of the first intersection of South and Mt. Richmond Roads;

(5) Follow the Washington County/Yamhill County line in a westerly direction approximately 2.12 miles to the western boundary of the Gaston Quadrangle/eastern boundary of the Turner Creek Quadrangle;

(6) From the eastern boundary of the Turner Creek Quadrangle, follow the Washington County/Yamhill County line in a westerly direction approximately 1.6 miles to the intersection of the County line and the 1,000-foot elevation line;

(7) Follow the 1,000-foot elevation line in a generally southeasterly, then generally westerly direction approximately 4.25 miles to the intersection of the 1,000-foot line and the Universal Transverse Mercator (UTM) line 4–77–000mE,

(8) Follow the UTM line 4–77–000mE due south approximately 2.98 miles to the intersection of the UTM line 4–77–000mE and the southern boundary of the Turner Creek Quadrangle/northern boundary of the Fairdale Quadrangle;

(9) Follow UTM line 4–77–000mE due south from the northern boundary of the Fairdale Quadrangle approximately 8.62 miles to the southern boundary of the Fairdale Quadrangle/northern boundary of the Muddy Valley Quadrangle;

(10) Follow UTM line 4–77–000mE due south from the northern boundary of the Muddy Valley Quadrangle approximately 1.51 miles to the intersection of UTM line 4–77–000mE and Baker Creek Road;

(11) Follow Baker Creek Road in a generally easterly direction approximately 0.76 miles to the intersection of Baker Creek Road and the 200-foot elevation line;

(12) Follow the 200-foot elevation line until it intersects the eastern boundary of the Muddy Valley Quadrangle/western boundary of the McMinnville Quadrangle;

(13) From the western boundary of the McMinnville Quadrangle continue to follow the same 200-foot elevation line in an easterly/northeasterly direction approximately 3.03 miles to the intersection of the 200-foot elevation line and northern boundary of the McMinnville Quadrangle/southern boundary of the Carlton Quadrangle;

(14) From the southern boundary of the Carlton Quadrangle, continue to follow the same 200-foot line in a generally northwesterly direction approximately 6.2 miles to the intersection of the 200-foot elevation line and the western boundary of the Carlton Quadrangle/eastern boundary of the Fairdale Quadrangle;

(15) From the eastern boundary of the Fairdale Quadrangle, continue to follow the same 200-foot elevation line in a generally westerly direction approximately 3.3 miles to the intersection of the 200-foot elevation line and the UTM line 4–77–000mE;

(16) Follow UTM line 44–77–000mE due north approximately 0.13 miles to the intersection of the UTM line 4–77–000mE and the same 200-foot elevation line;

(17) Follow the same 200-foot elevation line in a generally easterly direction on the north side of Panther Creek drainage approximately 5.04 miles to the intersection of the 200-foot line and the eastern boundary of the Fairdale Quadrangle/western boundary of the Carlton Quadrangle;

(18) Follow the same 200-foot elevation line in a generally easterly, then generally northerly direction approximately 21.61 miles to the upper northwest corner of the Carlton Quadrangle where the 200-foot elevation line intersects the western boundary of the Carlton Quadrangle/eastern boundary of the Fairdale Quadrangle;

(19) From the eastern boundary of the Fairdale Quadrangle, continue to follow the same 200-foot elevation line in a generally northwesterly, then easterly direction for approximately 0.23 miles to the intersection of the 200-foot elevation line and the eastern boundary of the Fairdale Quadrangle/western boundary of the Carlton Quadrangle;

(20) From the western boundary of the Carlton Quadrangle, continue to follow the same 200-foot elevation line in a generally easterly, then circular path approximately 0.45 miles back to the western boundary of the Carlton Quadrangle/eastern boundary of the Fairdale Quadrangle;

(21) From the eastern boundary of the Fairdale Quadrangle, continue to follow

the same 200-foot elevation line in a generally westerly direction south of the North Yamhill River and then in a generally easterly direction north of the North Yamhill River approximately 1.04 miles to the intersection of the 200-foot elevation line and the eastern boundary of the Fairdale Quadrangle/western boundary of the Carlton Quadrangle;

(22) From the western boundary of the Carlton Quadrangle, continue to follow the same 200-foot elevation line in a generally southeasterly direction approximately 39.26 miles to the intersection of the 200-foot elevation line and the eastern boundary of the Carlton Quadrangle/western boundary of the Dundee Quadrangle;

(23) From the western boundary of the Dundee Quadrangle, continue to follow the same 200-foot elevation line in a generally southeasterly, then southwesterly direction approximately 1.1 miles to the intersection of the 200-foot elevation line and the western boundary of the Dundee Quadrangle/eastern boundary of the Carlton Quadrangle;

(24) From the eastern boundary of the Carlton Quadrangle, continue to follow the same 200-foot line in a generally southerly direction approximately 2.55 miles to the intersection of the 200-foot line and the eastern boundary of the Carlton Quadrangle/western boundary of the Dundee Quadrangle;

(25) From the western boundary of the Dundee Quadrangle, continue to follow the same 200-foot elevation line in a generally northeasterly direction approximately 2.65 miles to the intersection of the 200-foot elevation line and Abbey Road;

(26) Follow Abbey Road in a generally northerly direction approximately 1.7 miles to the intersection of Abbey and Kuehne Roads;

(27) Follow Kuehne Road in a generally northeasterly, then northerly direction approximately 1.85 miles to the intersection of Kuehne Road and State highway 240;

(28) Follow State highway 240 in an easterly direction approximately 0.19 miles to the intersection of State highway 240 and the 200-foot elevation line;

(29) Follow the 200-foot elevation line in a generally northerly direction along the west side of the Chehalem Creek approximately 4.52 miles to the intersection of the 200-foot elevation line and the northern boundary of the Dundee Quadrangle/southern boundary of the Laurelwood Quadrangle;

(30) From the southern boundary of the Laurelwood Quadrangle, continue to follow the same 200-foot elevation line in a short loop, approximately 0.42 miles, back to the southern boundary of the Laurelwood Quadrangle/northern boundary of the Dundee Quadrangle;

(31) From the northern boundary of the Dundee Quadrangle, continue to follow the same 200-foot elevation line in a generally southerly, then northerly direction approximately 0.57 miles to the intersection of the 200-foot elevation line and the northern boundary of the Dundee Quadrangle/southern boundary of the Laurelwood Quadrangle;

(32) From the southern boundary of the Laurelwood Quadrangle, continue to follow the same 200-foot elevation line in a generally northwesterly direction approximately 3.5 miles to the intersection of the 200-foot elevation line and the western boundary of the Laurelwood Quadrangle/eastern boundary of the Gaston Quadrangle;

(33) From the eastern boundary of the Gaston Quadrangle, continue to follow the same 200-foot elevation line in a generally westerly, then northeasterly direction approximately 0.52 miles to the intersection of the 200-foot elevation line and the eastern boundary of the Gaston Quadrangle/western boundary of the Laurelwood Quadrangle;

(34) From the western boundary of the Laurelwood Quadrangle, continue to follow the same 200-foot elevation line in a generally northerly direction approximately 0.96 miles to the intersection of the 200-foot elevation line and the western boundary of the Laurelwood Quadrangle/eastern boundary of the Gaston Quadrangle; and

(35) From the eastern boundary of the Gaston Quadrangle, continue to follow the same 200-foot elevation line in a generally northwesterly direction approximately 4.55 miles to the intersection of the 200-foot elevation line and the point of beginning.

Signed: September 17, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–25373 Filed 10–6–03; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30, 31, 33, 35 and 40

[Docket ID No. OA–2002–0001; FRL–7569–7]

RIN 2020–AA39

Public Hearings on Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency Financial Assistance Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; public hearings.

SUMMARY: This document announces the dates and locations of Tribal public hearings wherein EPA will take comments on its proposed rule for ''Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency Financial Assistance Agreements,'' published on July 24, 2003 at 68 FR 43824. These Tribal public hearings will be held during the 180-day public comment period for the proposed rule, which ends on January 20, 2004. EPA will publish information concerning additional public hearings and Tribal public hearings during the comment period when that information becomes available.

DATES: See **SUPPLEMENTARY INFORMATION** for hearing dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for addresses.

FOR FURTHER INFORMATION CONTACT: Mark Gordon, Attorney Advisor, at (202) 564–5951, Kimberly Patrick, Attorney Advisor, at (202) 564–5386, or David Sutton, Deputy Director at (202) 564–4444, Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, Mail Code 1230A, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA published its proposed rule for Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements on July 24, 2003 at 68 FR 43824. EPA has established an official public docket for this action under Docket ID No. OA–2002–0001. The proposed rule and supporting materials are available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is

open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information is (202) 566–1752. An electronic version of the public docket is available through EPA's electronic public docket and comment systems, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' and then key in docket identification number OA–2002–0001. You may access this Federal Register document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr*.

Dates: The Tribal public hearings addressed by this Federal Register Proposal are scheduled as follows:

1. October 8, 2003, 10:30 a.m. to 3 p.m., Worley, Idaho.
2. October 16, 2003, 3 p.m. to 5 p.m., Albuquerque, New Mexico.
3. November 18, 2003, 9 a.m. to 12 p.m., East Syracuse, New York.
4. December 9, 2003, 9 a.m. to 5 p.m., Atlanta, Georgia.
5. January 14, 2004, 9 a.m. to 5 p.m., Chicago, Illinois.

Addresses: The Tribal public hearings will be held at the following locations:

1. EPA Region X Tribal Leader's Summit, Coeur d'Alene Casino Resort Hotel, 27068 South Highway 95, Worley, Idaho 83876.
2. EPA Region VI Tribal Environmental Summit, Albuquerque Marriott Hotel, 2101 Louisiana Boulevard, NE., Albuquerque, New Mexico 87110.
3. EPA Region II Indian Nation Leaders Meeting, Embassy Suites Hotel Syracuse, 6646 Old Collamer Road, East Syracuse, New York 13057.
4. Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303.
5. Metcalfe Federal Building, Room 331, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Dated: October 2, 2003.

Thomas J. Gibson,

Chief of Staff.

[FR Doc. 03–25400 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7566–7]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline, Anti-Dumping, and Tier 2 Gasoline Sulfur Control Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to allow the use of certain alternative analytical test methods for measuring sulfur in gasoline and butane under the Federal reformulated gasoline (RFG) and anti-dumping program and the Federal gasoline sulfur control program. We also propose to allow refineries to use any reasonable test method designed for measuring the sulfur content of butane until January 1, 2004. After that date, either the designated analytical test method or an allowed alternative analytical test method would have to be used. The purpose of today's proposal is to grant temporary flexibility until we issue a comprehensive performance-based analytical test methods rule and to fulfill the terms of a recent settlement agreement related to gasoline sulfur test methods.

DATES: Comments or a request for a public hearing must be received by November 6, 2003.

ADDRESSES: For more information or to request a public hearing, please contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460, or by e-mail to *pastorkovich.anne-marie@epa.gov*. No confidential business information (CBI) should be submitted by e-mail.

EPA has established a public docket for this proposed rule under Docket ID No. OAR–2003–0050, which is available for public viewing at the Air and Radiation Docket and Information Center (EPA/DC) in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listings 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 the proposed rule should be submitted to EPA within 30 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method) or by mail to EPA Docket Center, Environmental Protection Agency (6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

EPA's policy is the public comments, whether submitted electronically or in paper format, 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 otherwise restricted by statue, 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*.

FOR FURTHER INFORMATION CONTACT: If you would like further information about this proposed rule or to request a hearing, contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, (202) 564–8987 or by e-mail at *pastorkovich.anne-marie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by the action are those that use analytical test methods to comply with the RFG, anti-dumping, and gasoline sulfur control program. Regulated categories and entities include:

Category	NAICSs codes [a]	SIC codes [b]	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners.

Category	NAICSs codes [a]	SIC codes [b]	Examples of potentially regulated parties
Industry	422710 422720	5171 5172	Gasoline Marketers and Distributors.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists all entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in part 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

II. Background and Summary of Today's Proposed Rule

Section 211(k) of the Clean Air Act (CAA) directs EPA to establish standards requiring the greatest reduction in emissions of ozone forming volatile organic compounds (VOCs) and toxic air emissions achievable through the reformulation of conventional gasoline, considering cost, other health and environmental factors and energy requirements. The Act requires that RFG meet certain content standards for oxygen, benzene, and heavy metals. RFG must be used in certain ozone nonattainment areas, called ''covered areas.'' The CAA also requires EPA to establish anti-dumping standards applicable to conventional gasoline used in the rest of the country. The Administrator signed the final RFG and anti-dumping regulations on December 15, 1993,[1] and these regulations became effective in January 1995.

In 2000, EPA issued regulations establishing lower sulfur content requirements for all gasoline [2] and establishing stricter tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, vans and pick-up trucks. The gasoline sulfur control program begins phasing-in in 2004, and, in general, refiners must meet a refinery average sulfur standard of 30 ppm beginning in 2005 and a per gallon cap standard of 80 ppm beginning in 2006 (with the exception of challenged refiners, and gasoline sold in certain western states subject to geographic phase-in).

Under the RFG, anti-dumping and gasoline sulfur program, refiners, importers, and oxygenate blenders are required to test RFG and conventional gasoline for certain parameters, including sulfur levels, aromatic content, benzene content, and oxygen content. Test methods for determining these parameters are specified in the regulation. For the sulfur content of gasoline, 40 CFR 80.46(a)(1) specifies American Society for Testing and Materials (ASTM) standard method D–2622–98, entitled, ''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry'' as the designated test method. In addition, the gasoline sulfur rulemaking required a test method for determining the sulfur content of butane blended into gasoline—ASTM standard method D 3246–96, entitled ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry.''

In the gasoline sulfur control rulemaking, we specifically requested comments on the designated test method. We also requested comments on other ASTM methods. After considering comments received from the regulated industry during the gasoline sulfur rulemaking process, including many comments supportive of ASTM D 2622–98 as the designated method, we decided to require the use of ASTM D 2622–98 for measuring sulfur content. We did not name any alternative analytical test methods because we anticipated that a comprehensive performance-based analytical test method approach rule would be issued in the near future. A comprehensive performance based test methods approach would allow anyone to qualify additional analytical test methods for use in demonstrating compliance with program requirements. We now know that a comprehensive performance based test methods rulemaking will take more time to complete than originally anticipated. We feel that permitting specific ASTM test methods to be used as alternative analytical test methods now provides a bridge to a more comprehensive performance based test methods approach in the future and grants refiners, importers and blenders significant flexibility and potential cost savings in meeting their testing requirements.

As discussed in a May 16, 2003, Federal Register notice,[3] Antek Instruments, which manufactures testing equipment, filed a petition challenging the final gasoline sulfur control rule. EPA and Antek entered into negotiations and reached a proposed settlement agreement. The proposed settlement agreement outlined a proposed rule which would identify ASTM D 5453–00 ^{e1} as an alternative test method refiners and importers could use to comply with the requirement to test gasoline for sulfur content, provided the test result is correlated with ASTM D 2622–98. In today's action, EPA is proposing to revise its regulations to include such a provision. The proposed settlement agreement was available for comment until June 16, 2003. No adverse comments were received.

For the reasons discussed above, we are proposing to revise 40 CFR 80.46(a) to allow the use of ASTM D 5453–00 ^{e1}, entitled ''Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence,'' ASTM D 6428–99, entitled ''Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection,'' and ASTM D 3120–96 (Reapproved 2002)^{e1}, entitled ''Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry.'' Refiners and importers would be able to choose which of these test methods best fits their needs for compliance measurements. We believe that

[1] ''Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Final Rule,'' 59 FR 7812 (February 16, 1994). *See* 40 CFR part 80 subparts D, E, and F.

[2] ''Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicles Emissions Standards and Gasoline Sulfur Control Requirements—Final Rule,'' 65 FR 6698 (February 10, 2000). *See also* 40 CFR part 80 subpart H for regulations applicable to gasoline sulfur.

[3] *See* ''Notice of Proposed Settlement Agreement; Request for Public Comment,'' 68 FR 26604 (May 16, 2003).

permitting the use of these test methods is desirable from the standpoint of permitting regulated parties more flexibility. A refiner or importer would be able to determine gasoline sulfur content using ASTM D 5453–00 ^{e1} or any of the specified alternative analytical test methods named in the rule, provided that the refiner or importer result is correlated to ASTM D 2622–98.

In order to ''correlate'' a test result from an alternative test method to the designated test method, a laboratory would have to develop and apply a ''correlation equation'' to the alternative test method result. Because the ''correlation equation'' is designed to provide a prediction of the designated test method result from the use of an alternative test method, the ''correlation equation'' eliminates bias between the designated test method and the alternative test method, so results may be compared between these methods. After applying the correlation equation, the results obtained from an alternative test method should be equivalent to the result you would obtain if you had used the designated test method. Users of a correlation equation should periodically verify its correlation to the designated test method.

This notice of proposed rulemaking also proposes to permit the use of ASTM D 4468–85 (Reapproved 2000), ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry'' as an alternative test method for butane, because it is an ASTM approved method that some refiners may elect to use. If a refiner, importer, or blender chooses to measure butane levels with this alternative analytical test method, the results would have to be correlated to D 3246–96, ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry,'' which is the test method currently designated in the existing rule.

Some refiners and butane suppliers expressed concern that the designated test method is not currently in wide use. When we issued the final gasoline sulfur control regulations, we did not intend to require the use of this method until January 1, 2004. However, the final regulation inadvertently did not specify that date and we are clarifying the effective date by this action. Until January 1, 2004, any test method may be used to determine the sulfur content of butane.

We believe that this proposed rule, and our intent to establish a comprehensive performance based test method approach in the future, will advance the purposes of the ''National Technology Transfer and Advancement Act of 1995,'' (NTTAA) section 12(d) of Public Law 104–113, and Office of Management and Budget (OMB) Circular A–119. Both of these documents are designed to encourage the adoption of standards developed by ''voluntary consensus bodies'' and to reduce reliance on government-unique standards where such consensus standards would suffice. This proposed rule would provide for the use of alternative test methods for the measurement of sulfur in gasoline and butane under the RFG, anti-dumping, and gasoline sulfur control programs. Allowing these test methods, which are widely available and approved by ASTM, a ''voluntary consensus body,'' is directly consistent with the goals of the NTTAA and OMB Circular A–119.

Any environmental effects of today's proposed action would be minimal, as it would merely grant limited flexibility to regulated parties in their choice of test method for determining the sulfur content of gasoline and butane. The economic effects of today's proposed action are expected to be positive, since it permits regulated parties the flexibility to choose the test method they will use to comply with existing regulations.

III. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

This proposed rule is not a significant regulatory action within the meaning of the Executive Order. It would not have an annual effect on the economy of $100 million or more and is not expected to have any adverse economic effects as described in the Order. This proposed rule does not raise issues of consistency with the actions taken or planned by other agencies, would not materially alter the cited budgetary impacts, and does not raise any novel legal or policy issues as defined in the Order.

B. Paperwork Reduction Act

This proposed rule would not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Today's proposed rule would only permit more flexibility to parties in their choice of analytical test methods. OMB has approved the information collection requirements contained in the final reformulated gasoline (RFG) and anti-dumping rulemaking and gasoline sulfur control rulemaking has assigned OMB control number 2060–0277.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small

entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. By permitting alternative analytical test methods for the measurement of sulfur in gasoline and butane, smaller entities would be granted greater flexibility in performing compliance testing. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. The proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule is limited to permitting flexibility in the choice of test methods. Thus, Executive Order 13132 does not apply to this proposed rule.

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

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

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule would apply to parties required to test gasoline and butane for gasoline and butane and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045, entitled ''Protection of Children from

Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

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

This proposed rule is not an economically ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

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

This proposed rule advances the goals of the NTTAA by adopting test methods developed by voluntary consensus standards bodies.

J. Statutory Provisions and Legal Authority

Statutory authority for today's proposed rule comes from sections 211(c), 211(i) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Section 211(c) and 211(i) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today's proposed rule comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Diesel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 24, 2003.

Marianne Lamont Horinko,

Acting Administrator.

[FR Doc. 03–25134 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[FRL–7570–1]

Virginia: Approval of Financial Assurance Regulations for the Commonwealth's Municipal Solid Waste Landfill Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Virginia has applied to EPA for final approval of its financial assurance regulations for Municipal Solid Waste landfills under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final approval to Virginia. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the changes by an Immediate Final Rule. EPA did not make a proposal prior to the Immediate Final Rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this approval in the preamble to the Immediate Final Rule. Unless we receive written comments which oppose this approval during the comment period, the Immediate Final Rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the Immediate Final Rule, and it will not take effect. We will then respond to public comments in a later Final Rule based on this proposal. You will not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by November 6, 2003.

ADDRESSES: Written comments should be sent to Mike Giuranna, RCRA State Programs Branch, Waste & Chemicals Management Division (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, telephone: (215) 814–3298. Comments may also be submitted electronically through the Internet to: *giuranna.mike@epa.gov* or by facsimile at (215) 814–3163. You may examine copies of the materials submitted by Virginia during normal business hours at EPA, Region III or at the offices of the Virginia Department of Environmental Quality at 629 East Main Street, Richmond, Virginia 23219–0009, Phone Number (804) 698–4238, attn: Melissa Porterfield.

FOR FURTHER INFORMATION CONTACT: Mike Giuranna, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number: (215) 814–3298, e-mail: *giuranna.mike@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, please see the Immediate Final Rule published in the ''Rules and Regulations'' section of today's **Federal Register**.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–25399 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7565–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List; second extension of public comment periods.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announced its intent to delete the Selected Perimeter Area (SPA, 68 FR 44259) and the Surface Deletion Area (SDA, 68 FR 44265) of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU) from the National Priorities List (NPL) on July 28, 2003. In response to a written request, EPA extended both public comment periods for an additional 30 days concluding on September 25, 2003 (68 FR 51221). EPA has received a request to further extend these public comment periods. In response, EPA is extending both public comment periods for an additional 30 days concluding on October 27, 2003.

The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA

promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the SPA and SDA portions of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare, and the environment and that no further response action by responsible parties is appropriate. This basis for deleting the SPA and SDA from the RMA/NPL Site has not changed. The **Federal Register** notice for the SPA (68 FR 44259) and the SDA (68 FR 44265) provide a discussion of the bases for the intended partial deletions.

DATES: Comments concerning the proposed partial deletions may be submitted to EPA on or before October 27, 2003.

ADDRESSES: Comments may be mailed to: Catherine Roberts, Community Involvement Coordinator (80C), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, 1–800–227–8917 or (303) 312–6025.

Comprehensive information on the RMA/NPL Site, as well as information specific to both proposed partial deletions, is available through EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site and the Deletion Dockets for these partial deletions are maintained at the Joint Administrative Records Document Facility, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday or by appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6660.

Dated: September 29, 2003.

Robert E. Roberts,

Regional Administrator, Environmental Protection Agency, Region 8.

[FR Doc. 03–25402 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7439]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § 67.4

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (NGVD)	
				Existing	Modified
California	Goleta (City), Santa Barbara County.	Maria Ygnacia Creek	Approximately 900 feet downstream of Hollister Avenue.	None	*36
			Approximately 80 feet downstream of confluence of San Antonio Creek.	None	*64

Depth in feet above ground.

Maps are available for inspection at City Hall, 6500 Hollister Avenue, Goleta, California 93117.

Send comments to The Honorable Jack Hawxhurst, Mayor, City of Goleta, 6500 Hollister Avenue, Suite 120, Goleta, California 93117.

Colorado	City and County, Broomfield.	Rock Creek	At Brainard Drive (Country Road 19)	*5,307	*5,309
			Approximately 200 feet upstream of West Flatiron Bridge.	None	+5,373

Depth in feet above ground.

Maps are available for inspection at City Hall One Descombes Drive, Broomfield, Colorado 80020.

Send comments to The Honorable Karen Stuart, Mayor, City and County of Broomfield, One Descombes Drive, Broomfield, Colorado 80020.

Colorado	Pitkin County	Southside Split	Approximately 1,200 feet Flow downstream of State Highway 82 Bypass.	None	*6,558
			Approximately 6,000 feet upstream of State Highway\ 82 Bypass.	None	*6,637
		Roaring Fork River	Approximately 5,500 feet downstream of Hooks Spur Road.	*6,524	*6,526
			Approximately 50 feet downstream of confluence of Snowmass Creek.	*6,844	*6,844

Depth in feet above ground.

Maps are available for inspection at the GIS Department, 130 South Galena Street, Aspen, Colorado 81611.

Send comments to The Honorable Jack Hatfield, Chairperson, Pitkin County Board of Commissioners, 530 East Main Street, Third Floor, Aspen, Colorado 81611.

Idaho	Kootenai County	Coeur d'Alene River	Approximately 1.5 miles downstream of Interstate Highway 90.	*2,145	*2,145
			Approximately 100 feet upstream of the Abandoned Union Pacific Railroad.	*2,148	*2,151
		Coeur d'Alene River Overflow	At Tamarack Ridge Road	*2,146	*2,145
			Mission Flats area north of Interstate 90	*2,146	*2,145

Depth in feet above ground.

Maps are available for inspection at the Kootenai County Planning Department, 451 Government Way, Coeur d'Alene, Idaho 83816.

Send comments to The Honorable Richard Panabaker, Chairperson, Kootenai County Board of Commissioners, 451 Government Way, Coeur d'Alene, Idaho 83816.

North Dakota	Bismarck (City), Burleigh County.	Missouri River	Approximately 3.8 miles upstream of confluence of Little Heart River.	*1,631	*1,632
			Approximately 1.7 miles upstream of Old Brunt Creek.	*1,638	*1,639

Depth in feet above ground.

Maps are available for inspection at the Building Inspection Office, 1020 East Central Avenue, Bismarck, North Dakota 58501.

Send comments to The Honorable John Warford, Mayor, City of Bismarck, P.O. Box 5503, Bismarck, North Dakota 58506–5503.

North Dakota	Burleigh County	Missouri River	Approximately 500 feet downstream of confluence of Apple Creek.	*1,627	*1,628
			Approximately 5.7 miles upstream of confluence Square Butte Creek.	*1,643	*1,644
		Burnt Creek	At confluence with Missouri River	*1,639	*1,640
			Just upstream of North Dakota Highway 1804.	*1,646	*1,650

Depth in feet above ground.

Maps are available for inspection at the County Building Inspections Office, 1020 East Central Avenue, Bismarck, North Dakota 58501.

Send comments to The Honorable Claus Lembke, Chairman, Burleigh County Board of Commissioners, 221 North Fifth Street, Bismarck, North Dakota 58506.

North Dakota	Mandan (City), Morton County.	Missouri River	Approximately 1.1 miles downstream of Bismarck Expressway bridge.	*1,634	*1,635
			Approximately 2.8 miles upstream of Interstate Highway 94.	*1,638	*1,639

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (NGVD)	
				Existing	Modified
Depth in feet above ground.					
Maps are available for inspection at City Hall, 205 Second Avenue, Northwest, Mandan, North Dakota 58554.					
Send comments to The Honorable Ken LaMont, Mayor, City of Mandan, 205 Second Avenue, Northwest, Mandan, North Dakota 58554.					
North Dakota	Morton County	Missouri River	At confluence of Apple Creek	*1,627	*1,628
			Approximately 5.7 miles upstream of confluence of Square Butte Creek.	*1,643	*1,644
Depth in feet above ground.					
Maps are available for inspection at the County Courthouse, 210 Second Avenue, Northwest, Mandan, North Dakota 58554.					
Send comments to The Honorable Dick Tokach, Chairman, Morton County Board of Commissioners, 210 Second Avenue, Northwest, Mandan, North Dakota 58554.					
South Dakota	Standing Rock Sioux Tribe.	Grand River (at Bullhead)	Approximately 4,000 feet downstream of confluence of Rock Creek.	None	+1,759
			Approximately 4,600 feet upstream of confluence of Stink Creek.	None	+1,774
		Grand River (at Little Eagle).	Approximately 3.4 miles downstream of State Route.	None	+1,638
			Approximately 2,000 feet upstream of State Route 63.	None	+1,651
		Oak Creek	Approximately 7,500 feet downstream of Sewage Lagoons.	None	+1,622
			Approximately 2,900 feet upstream of Old Irrigation Dam.	None	+1,646
		Rock Creek	At confluence with Grand River (at Bullhead).	None	+1,761
			Approximately 7,500 feet upstream of Bullhead Road.	None	+1,793
Depth in feet above ground.					
Maps are available for inspection at the Tribal Land Management, South River Road, Fort Yates, North Dakota 58538.					
Send comments to The Honorable Charles Murphy, Chairman, Standing Rock Sioux Tribe, P.O. Box D, Fort Yates, North Dakota 58538.					
South Dakota	Cheyenne River Sioux Tribe, Dewey and Ziebach County.	Bear Creek	Approximately 5,800 feet upstream of State Route 65.	None	+2,345
			Just upstream of Cherry Road	None	+2,357
			Approximately 1,200 feet upstream of U.S. Route 212.	None	+2,365
		Cherry Creek	At confluence with Cheyenne River	None	+1,723
			Just upstream of Main Street	None	+1,729
			Approximately 7,000 feet upstream of Main Street.	None	+1,735
		Cheyenne River	Approximately 6,200 feet upstream of Plum Creek.	None	+1,714
			Just upstream confluence of Cherry Creek.	None	+1,723
			Approximately 1,730 feet upstream confluence of Cherry Creek.	None	+1,728
		Virgin Creek	Approximately 5,800 feet downstream of U.S. Route 212.	None	+1,896
			Just upstream of U.S. Route 212	None	+1,914
			Approximately 3 miles upstream of U.S. Route 212.	None	+1,950
Depth in feet above ground.					
Maps are available for inspection at the Economic Development Center, P.O. Box 590, Eagle Butte, South Dakota 57625.					
Send comments to The Honorable Harold Frazier, Tribal Chairman, Cheyenne River Sioux Tribe, P.O. Box 590, Eagle Butte, South Dakota 57625.					

EAGLE COUNTY, AND INCORPORATED AREAS

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet + (NAVD)		Communities affected
		Effective	Modified	
Buffehr Creek	At confluence with Gore Creek	*7,951	+7,956	Eagle County.
	Approximately 1,700 feet upstream of Circle Drive	None	+8,180	(Uninc. Area) and Town of Vail.
Black Gore Creek	At confluence with Lower Gore Creek	*8,574	+8,575	Town of Vail.
	Approximately 1,280 feet upstream of confluence with Lower Gore Creek.	*8,632	+8,628	
Bighorn Creek	At confluence with Gore Creek	*8,422	+8,431	Town of Vail.
	Approximately 350 feet upstream of Columbine Drive	None	+8,639	
Middle Creek	At confluence with Gore Creek	*8,112	+8,118	Town of Vail.
	Approximately 850 feet upstream of Interstate Highway 70.	*8,330	+8,335	
Pitkin Creek	At confluence with Gore Creek	*8,358	+8,366	Town of Vail.
	Approximately 200 feet upstream of Fall Line Drive	None	+8,454	Town of Vail.
Red Sandstone Creek	At confluence with Gore Creek	*8,071	+8,078	
	Just upstream of Potato Patch Drive	None	+8,254	
Roaring Fork River	At Eagle County/Garfield County boundary	None	+6,380	Eagle County.
	Just downstream of Emma Road	None	+6,600	(Uninc. Areas) and Town of Basalt.
South Side Split Flow	At confluence with Roaring Fork River	None	+6,553	Eagle County.
	Approximately 1,200 feet downstream of State Highway 82 Bypass.	None	+6,563	(Uninc. Areas) and Town of Basalt.
Eagle River	Approximately 500 feet downstream of U.S. Highway 6.	*6,273	+6,277	(Uninc. Areas).
	Just downstream of confluence with Brush Creek	None	+6,502	
East Mill Creek	At confluence with Gore Creek	*8,168	+8,175	Eagle County.
	Just upstream of Vail Road	None	+8,292	(Uninc. Areas) and Town of Vail.
Gore Creek	Just upstream of confluence with Eagle River	.....		Eagle County.
	At confluence with Upper and Lower Gore Creek	None	+8,561	(Uninc. Areas) and Town of Vail.
Lower Gore Creek	At confluence with Gore Creek	*8,555	+8,561	Eagle County.
	At Divergence from Upper Gore Creek	None	+8,610	(Uninc. Areas) and Town of Vail.
Spraddle Creek	At confluence with Gore Creek	*8,132	+8,138	Town of Vail.
	Approximately 1,150 feet upstream of Interestate Highway 70.	None	+8,274	
Upper Gore Creek	At confluence with Gore Creek	*8,556	+8,562	Eagle County.
	Approximately 1,000 feet upstream of Interstate Highway 70 westbound.	None	+8,682	(Uninc. Areas) and Town of Vail.
West Mill Creek	Just downstream of Gore Drive	*8,176	+8,165	Eagle County.
	Just upstream of Vail Road	None	+8,292	(Uninc. Areas) and Town of Vail.
Booth Creek	At confluence with Gore Creek	*8,290	+8,296	Town of Vail.
	Approximately 1,300 feet upstream of interstate Highway 70.	*8,384	+8,392	

Depth in feet above ground.
* National Geodetic Datum.
+ National American Vertical Datum.

Addresses: Unincorporated Areas Eagle County:
Maps are available for inspection at 500 Broadway Street, Eagle, Colorado 81631.
Send comments to the Honorable Michael Gallagher, Chairman Eagle County Board of Commissioners, P.O. Box 850, Eagle, Colorado 81631.

Town of Gypsum:
Maps are available for inspection at 50 Lundgren Boulevard, Gypsum, Colorado 81637.
Send comments to the Honorable Stephen M. Carver, Mayor, Town of Gypsum, P.O. Box 28, Gypsum, Colorado 81637.

Town of Basalt:
Maps are available for inspection at the Town Hall, 101 Midland Avenue, Basalt, Colorado 81621.
Send comments to the Honorable Richard P. Stevens, Mayor, Town of Basalt, Town Hall, 101 Midland Avenue, Basalt, Colorado 81621.

Town of Vail:
Maps are available for inspection at the Community Development Office, 75 South Frontage Road, Vail, Colorado 81657.
Send comments to the Honorable Ludwig Kurz, Mayor, Town of Vail, 75 South Frontage Road, Vail, Colorado 81657.

CHARLES MIX COUNTY, AND INCORPORATED AREAS

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet + (NAVD)		Communities affected
		Effective	Modified	
Unnamed Creek (near Wagner)..	Approximately 400 feet upstream of 396th Avenue	None	*1,413	Yankton Sioux Tribe and City of Wagner.
	Approximately 600 feet downstream of 394th Avenue	None	*1,458	
Left Bank Tributary of Mosquito Creek (near Marty).	Approximately 1,400 feet downstream of 303rd Street	None	*1,434	Yankton Sioux Tribe.
	Approximately 1,950 feet upstream of 303rd Street	None	*1,458	

Depth in feet above ground.

* National Geodetic Datum.

+ National American Vertical Datum.

Addresses: Yankton Sioux Tribe:

Maps are available for inspection at 100 North Main Street, Marty, South Dakota 57361.

Send comments to the Honorable Madonna Archambeau, Tribal Chairwoman, Yankton Sioux Tribe, 100 Main Street, Marty South Dakota 57361.

City of Wagner:

Maps are available for inspection at the City Hall, 106 Sheridan Avenue, Southeast, Wagner, South Dakota 57380.

Send comments to the Honorable Sharon Haar, Mayor, City of Wagner, 106 Sheridan Avenue, Southeast, Wagner, South Dakota 57380.

KING COUNTY, AND INCORPORATED AREAS

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet + (NAVD)		Communities affected
		Effective	Modified	
Snoqualmie River	Approximately 2,000 feet downstream of confluence of Middle Fork and South Fork Snoqualmie River.	*425	*424	King County (Uninc. Areas) and City of Snoqualmie.
South Fork Snoqualmie River	At confluence with Middle Fork Snoqualmie River	*427	*425	King County (Uninc. Areas), City of Snoqualmie, and City of North Bend.
	Approximately 700 feet upstream of eastbound I–90 bridge.	*475	*475	
Middle Fork Snoqualmie River.	At confluence of North Fork Snoqualmie River	*426	*426	King County (Uninc. Areas) and City of Snoqualmie.
	Approximately 260 feet downstream of Southeast Mount SI Road.	*478	*478	
Lower Overflow	At Southeast 100th Street	*429	*428	King County (Uninc. Areas) and City of North Bend.
	Approximately 1,400 feet upstream of North Pickett Avenue.	None	*449	
Middle Overflow	Just upstream of Northeast 420th Avenue	*431	*432	King County (Uninc. Areas) and City of North Bend.
	At Borst Avenue Northeast	#2	*441	
Upper South Overflow	Approximately 400 feet downstream of Ballarat Avenue North.	#2	*437	King County (Uninc. Areas) and City of North Bend.
	At divergence from Middle Fork Snoqualmie River	*467	*467	
Upper North Overflow	Approximately 150 feet downstream of Ogle Avenue Northeast.	#2	*441	King County (Uninc. Areas) and City of North Bend.
	Approximately 400 feet downstream of 120th Street ...	*460	*457	

KING COUNTY, AND INCORPORATED AREAS—Continued

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet + (NAVD)		Communities affected
		Effective	Modified	
Gardiner Creek	At Bolch Avenue Northwest	None	*429	King County (Uninc. Areas) and City of North Bend.
	Upstream of Northwest Eighth Street	None	*435	

Depth in feet above ground.
* National Geodetic Datum.
+ National American Vertical Datum.

Addresses: Unincorporated Areas of King County:
Maps are available for inspection at the King DDES, Blackriver Corp. Park, 900 Oakesdale Avenue Southwest, Suite 100, Renton, Washington 98055.
Send comments to the Honorable Ron Sims, King County Executive, 516 Third Avenue, Suite 400, Seattle, Washington 98104.

City of North Bend:
Maps are available for inspection at 1155 East North Bend Way, North Bend, Washington 98045.
Send comments to the Honorable Joan Simpson, Mayor, City of North Bend, P.O. Box 896, North Bend, Washington 98045.

City of Snoqualmie:
Maps are available for inspection at the Planning Directors Office, 8020 Railroad Avenue Southeast, Snoqualmie, Washington 98065.
Send comments to the Honorable Randy Fletcher, Mayor, City of Snoqualmie, P.O. Box 987, Snoqualmie, Washington 98065.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: September 30, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–25346 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2930, MB Docket No. 03–210, RM–10791]

Digital Television Broadcast Service; Elmira, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Smith Television of New York License Holdings, Inc., licensee of station WETM-TV, requesting the substitution of DTV channel 33 for DTV channel 2. DTV Channel 33 can be allotted to at reference coordinates 42–06–22 N. and 76–52–17 W. with a power of 525, a height above average terrain HAAT of 363 meters. Since the community of Elmira is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before November 24, 2003, and reply comments on or before October 1, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceedings involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brad C. Deutsch, Hogan & Hartson LLP, 555 Thirteenth Street, NW., Washington, DC 20004–1109 (Counsel for Smith Television of New York License Holdings, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–210, adopted September 23, 2003, and released October 1, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail: *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under New York is amended by removing DTV channel 2 and adding DTV channel 33 at Elmira.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–25334 Filed 10–6–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 68, No. 194

Tuesday, October 7, 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

Agriculture Marketing Service

[Doc. No. TM–03–10]

Notice of Agricultural Marketing Assistance Organic Certification Cost Share Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice invites eligible States to submit a Standard Form 424, Application for Federal Assistance, and to enter into a Cooperative Agreement with the Agricultural Marketing Service (AMS) for the Allocation of Organic Certification Cost-Share Funds. The AMS has allocated $1.0 million for this organic certification cost-share program in Fiscal Year 2003. Funds will be available under this program to 15 designated States to assist organic crop and livestock producers certified by the Department of Agriculture (USDA) accredited certifying agents to the National Organic Program (NOP). Eligible States interested in obtaining cost-share funds for their organic producers will have to submit an Application for Federal Assistance, and will have to enter into a cooperative agreement with AMS for the allocation of such funds.

DATES: Completed applications for federal assistance along with signed cooperative agreements must be received by November 21, 2003 in order to participate in this program.

ADDRESSES: Applications for federal assistance and cooperative agreements shall be requested from and submitted to: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TMP/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: bob.pooler@usda.gov. Additional information may be found through the National Organic Program's Home page at *http://www.ams.usda.gov/nop.*

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW, Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: *bob.pooler@usda.gov.*

SUPPLEMENTARY INFORMATION: This Organic Certification Cost-Share Program is part of the Agricultural Management Assistance Program authorized under the Federal Crop Insurance Act (FCIA), as amended, (7 U.S.C. 1521). Under the applicable FCIA provisions, the Department is authorized to provide cost share assistance to producers in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. This organic certification cost share program provides financial assistance to organic producers certified to the National Organic Program authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*)

To participate in the program, eligible States must complete a Standard Form 424, Application for Federal Assistance, and enter into a written cooperative agreement with AMS. The program will provide cost-share assistance, through participating States, to organic crop and livestock producers receiving certification or update of certification by a USDA accredited certifying agent from October 1, 2003 through September 30, 2004. The Department has determined that payments will be limited to 75 percent of an individual producer's certification costs up to a maximum of $500.00.

Authority: 7 U.S.C. 1521.

Dated: October 2, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–25458 Filed 10–6–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. # TM–03–09]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are: Wednesday, October 22, 2003, 1 p.m. to 5:30 p.m., Thursday, October 23, 2003, 8 a.m. to 5:30 p.m., and Friday, October 24, 2003, 8 a.m. to 5:30 p.m. Requests from individuals and organizations wishing to make an oral presentation at the meeting are due by the close of business on October 7, 2003. A closed session will be held on Wednesday, October 22, 2003, 8:30 a.m. to 12 p.m., at which administrative matters will be handled.

ADDRESSES: The meeting will take place at the Radisson Barceló Hotel Washington, The Phillips Ballroom, 2121 P Street, NW., Washington, DC. Requests for copies of the NOSB meeting agenda, requests to make an oral presentation at the meeting, or written comments may be sent to Ms. Katherine Benham at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250–0200. Requests to make an oral presentation at the meeting may also be sent electronically to Ms. Katherine Benham at *katherine.benham@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Mathews, Program Manager, National Organic Program, (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in

organic production and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six committees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Livestock; Materials; Handling; and Policy Development.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 50 addenda to its recommendations and reviewed more than 256 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on May 13–14, 2003, in Austin, Texas.

The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000 (65 FR 80548). The rule became effective April 21, 2001.

The principal purposes of the meeting are to provide an opportunity for the NOSB to hear a presentation from FDA on their substance approval process for livestock; to hear recommendations from contractors, past and present, for enhancing petitions for the addition or removal of substances from the National List and for enhancing the statement of work between contractors and USDA; receive public comment regarding what constitutes compatibility/consistency with a system of sustainable agriculture/organic production and handling relative to substance review and evaluations; to develop a statement for public distribution on what constitutes compatibility/consistency with a system of sustainable agriculture/organic production and handling relative to substance review and evaluations; and finally to document and clarify, for the NOP, substance recommendations from the May 2003 NOSB meeting in Austin, Texas.

For further information, see *http://www.ams.usda.gov/nop.* Copies of the NOSB meeting agenda can be requested from Ms. Katherine Benham by telephone at (202) 205–7806; or by accessing the NOP Web site at *http://www.ams.usda.gov/nop.*

The meeting is open to the public. The NOSB has scheduled time for public input on Thursday, October 23, 2003, 8 a.m. to 12 p.m., for individuals to speak on the issue of what constitutes compatibility/consistency with a system of sustainable agriculture/organic production and handling. Individuals and organizations wishing to make an oral presentation at the meeting may forward their request by facsimile to Ms. Katherine Benham at (202) 205–7808. While persons wishing to make a presentation may sign up at the door, advance registration will ensure that a person has the opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and to accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation.

Written comments may also be submitted at the meeting. Persons submitting written comments at the meeting are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site *http://www.ams.usda.gov/nop* to view available documents prior to the meeting. Approximately 6 weeks following the meeting interested persons will be able to visit the NOSB portion of the NOP Web site to view documents from the meeting.

Dated: October 1, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–25311 Filed 10–6–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices by the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices required under 36 CFR part S. 215 and 217. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment or appeal, and establish the date that the Forest Service will use to determine if comments or appeals were timely.

DATES: Publication of legal notices in the listed newspapers will begin on or after October 1, 2003. The list of newspapers will remain in effect until April 1, 2004, when another notice will be published in **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Priscilla McLain, Regional Appeals Coordinator, Intermountain Region, 324 25th Street, Ogden, UT 84401, and phone (801) 625–5146.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR parts 215 and 217 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR part 215 and 217. In general, the notices will identify: the decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals. The date the notice is published will be used to establish the official date for the beginning of the comment or appeal period. The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting national Forests in Idaho:

The Idaho Statesman, Boise, Idaho

For decisions made by the Regional Forester affecting National Forests in Nevada:

The Reno Gazette-Journal, Reno, Nevada

For decisions made by the Regional Forester affecting National Forests in Wyoming:

Casper Star-Tribune, Casper, Wyoming

For decisions made by the Regional Forester affecting National Forests in Utah:

Salt Lake Tribune, Salt Lake City, Utah

For the decisions made by the Regional Forester that affect all National Forests in the Intermountain Region:

Salt Lake Tribune, Salt Lake City, Utah

Ashley National Forest

Ashley Forest Supervisor decisions:

Vernal Express, Vernal, Utah

Duchesne District Ranger decisions:

Uinta Basin Standard, Roosevelt, Utah

Flaming Gorge District Ranger for decisions affecting Wyoming:
Rocket Miner, Rock Springs, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah
Roosevelt District Ranger decisions:
Uinta Basin Standard, Roosevelt, Utah
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah

Boise National Forest

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho
Cascade District Ranger decisions:
The Long Valley Advocate, Cascade, Idaho
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Lowman District Ranger decisions:
The Idaho World, Garden Valley, Idaho
Mountain Home District Ranger decisions:
The Idaho Statesman, Boise, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming
Big Piney District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Buffalo District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion:
Idaho State Journal, Pocatello, Idaho
Caribou-Targhee Forest Supervisor decisions for the Targhee portion:
The Post Register, Idaho Falls, Idaho
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Dabois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Montpelier District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Westside District Ranger decisions:
Idaho State Journal, Pocatello, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah
Escalante District Ranger decisions:
The Daily Spectrum, St. George, Utah
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah
Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah

Fishlake National Forest

Fishlake National Supervisor decisions:
Richfield Reaper, Richfield, Utah
Beaver District Ranger decisions:
Richfield Reaper, Richfield, Utah
Fillmore District Ranger decisions:
Richfield Reaper, Richfield, Utah
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion:
Elko Free Press, Elko, Nevada
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion:
Reno Gazette-Journal, Reno, Nevada
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Bridgeport District Ranger decisions:
The Review-Herald, Mammoth Lakes, California
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Ely District Ranger decisions:
Ely Daily Times, Ely Nevada
Jarbidge District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Ruby Mountains District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada
Spring Mountains National Recreation Area District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada

Manti-LaSal National Forest

Manti-LaSal Forest Supervisor decisions:
Sun Advocate, Price, Utah
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah
Moab District Ranger decisions:
The Times Independent, Moab, Utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah

Payette National Forest

Payette Forest Superevisor decisions:
Idaho Statesman, Boise, Idaho
Council District Ranger decisions:
Adam County Record, Council, Idaho
Krassel District Ranger decisions:
Star News, McCall, Idaho
McCall District Ranger decisions:
Star News, McCall, Idaho
New Meadows District Ranger decisions:
Star News, McCall, Idaho
Weiser District Ranger decisions:
Signal American, Weiser, Idaho

Salmon-Challis National Forests

Salmon-Challis Forest Supervisor decisions for the Salmon portion:
The Recorder-Herald, Salmon, Idaho
Salmon-Challis Forest Supervisor decisions for the Challis portion:
The Challis Messenger, Challis, Idaho
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho
Middle Fork District Ranger decisions:

The Challis Messenger, Challis, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Salmon/Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho
Ketchum District Ranger decisions:
Idaho Mountain Express, Ketchum, Idaho
Minidoka District Ranger decisions:
The Times News, Twin Falls, Idaho
Sawtooth National Recreation Area decisions:
Challis Messenger, Challis, Utah

Uinta National Forest

Unita Forest Supervisor decisions:
The Daily Herald, Provo, Utah
Heber District Ranger decisions:
The Daily Herald, Provo, Utah
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah
Evanston District Ranger decisions:
Uinta County Herald, Evanston, Wyoming
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah
Mountain View District Ranger decisions:
Uinta County Herald, Evanston, Wyoming
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah

Dated: October 1, 2003.

Jack G. Troyer,

Regional Forester.

[FR Doc. 03–25327 Filed 10–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Gifford Pinchot National Forest Resource Advisory Committee will meet on Friday, October 24, 2003, at the WSU Conference Room, located in the basement of the Lewis County Courthouse, 351 NW. North Street, Chelhalis, Washington 98532. The meeting will begin at 9 a.m. and continue until 12 noon. The purpose of the meeting is to review proposals for Title II funding of Forest projects under the Secure Rural Schools and County Self-Determination Act of 2000.

All North Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled to occur at 9:15 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Peterson, Public Affairs Specialist, at (360) 891–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: September 30, 2003.

Earl W. Ford,

Acting Forest Supervisor.

[FR Doc. 03–25326 Filed 10–6–03; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into a violent explosion that occurred in a chemical distillation tower at First Chemical Corporation in Pascagoula, Mississippi, on October 13, 2002, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9:30 am Eastern Standard time on October 15, at the LaFont Inn, Highway 90, Pascagoula, Mississippi 39595.

The explosion occurred in a chemical distillation tower, sending heavy debris over a wide area. No one was seriously injured or killed in the incident, which occurred early on a Sunday morning. One nitrotoluene storage tank at the site was punctured by explosion debris, igniting a fire that burned for several hours. Three out of the 23 workers on site at the time of the incident received minor injuries, and nearby residents were temporarily sheltered in place. A producer of aniline and nitrotoluene derivatives and intermediates, First Chemical Corp. is a subsidiary of ChemFirst Inc., which was acquired by Dupont after the accident.

At the meeting CSB staff will present to the Board the results of their investigation into this incident, including an analysis of the incident together with a discussion of the key findings, root and contributing causes, and draft recommendations.

Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher Lyon,

Attorney Advisor.

[FR Doc. 03–25564 Filed 10–3–03; 3:54 pm]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington State Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12 p.m., on October 17, 2003 at the Westin Hotel, 1900 Fifth Avenue, Seattle, Washington 98101. The purpose of the meeting is to obtain information on education issues and plan Committee activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 30, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–25395 Filed 10–6–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Membership of the Departmental Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of membership of Departmental Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4313(c)(4), Department of Commerce (DOC) announces the appointment of persons to serve as members of the Departmental Performance Review Board (DPRB). The DPRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and serves as the higher level review for executives who report to an appointing authority. The appointment of these members to the DPRB will be for periods of 24 months.

DATES: The effective date of service of appointees to the Department of Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Janet C. Hoffheins, Deputy Director for Human Resources Management, Office of Human Resources Management, Office of the Director, 14th and Constitution Ave, NW., Washington, DC 20230, (202) 482–4807.

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the DPRB are set forth below by organization:

2003–2005 DPRB Membership

Office of the Secretary

Fred L. Schwien, Director, Executive Secretariat.

Office of General Counsel

Eleanor R. Lewis, Chief Counsel for International Commerce.

Roxie J. Jones, Chief Counsel for Economic Affairs.

Office of the Chief Financial Officer and Assistant Secretary for Administration

Richard Yamamoto, Director, Office of Security.

Bureau of Industry and Security

Miriam Cohen, Director of Administration.

Economic Development Administration

David M. Bearden, Deputy Assistant Secretary for Economic Development.

Economics and Statistics Administration

James K. White, Associate Under Secretary for Management.

Hermann Habermann, Deputy Director, Bureau of the Census.

Marvin D. Raines, Associate Director for Field Operations, Bureau of the Census.

J. Steven Landefeld, Director, Bureau of Economic Analysis.

Gloria A. Gutierrez, Assistant Director for Marketing and Customer Liaison, Bureau of the Census.

International Trade Administration

Henry P. Misisco, Director, Office Of Automotive Affairs.

Susanne S. Lotarski, Director, Office Eastern Europe, Russia, and Independent States.

Nealton J. Burnham, Deputy Assistant Secretary for Export Promotion Services.

Linda Moye-Cheatham, Chief Financial Officer and Director of Administration.

National Oceanic and Atmospheric Administration

Colleen N. Hartman, Deputy Assistant Administrator for Environmental Satellite Data and Information Services, National Environmental Satellite Services.

John E. Oliver, Jr., Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

Helen Hurcombe, Director, Acquisition and Grants Office.

Louisa Koch, Deputy Assistant Administrator for Oceanic and Atmospheric Research, Office of Oceanic and Atmospheric Research.

John E. Jones, Jr., Deputy Assistant Administrator for Weather Services, National Weather Service.

Jamison S. Hawkins, Deputy Assistant Administrator for Ocean and Coastal Zone.

Management, National Ocean Service.

William Brennan, Deputy Assistant Secretary for International Affairs.

National Telecommunications and Information Administration

Robin R. Layton, Associate Administrator, Office of International Affairs.

Technology Administration

Hratch G. Semerjian, Deputy Director, National Institute of Standards and Technology.

Richard F. Kayser, Jr., Director, Technology Services, National Institute of Standards and Technology.

Marilia A. Matos, Deputy Director for Management Services, National Institute of Standards and Technology.

Dated: September 30, 2003.

Janet C. Hoffheins,

Deputy Director for Human Resources Management.

[FR Doc. 03–25380 Filed 10–6–03; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 50–2003]

Foreign-Trade Zone 249—Pensacola, FL; Application for Subzone Status, General Electric Wind Energy and Energy Rentals (Wind Turbines), Pensacola, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Pensacola-Escambia County Promotion and Development Commission, grantee of FTZ 249, requesting special-purpose subzone status for the wind turbine manufacturing plant of General Electric Wind Energy and Energy Rentals (GEWE/GEER), located in Pensacola, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 25, 2003.

The GEWE/GEER plant (102 acres/375,000 sq. ft.) is located at 8301 Scenic Highway in Pensacola (Escambia County), Florida. The facility (250 employees) is used to produce 1.5 megawatt, wind-powered turbines (with potential for 3.6 megawatt units in the future) and wind turbine blades for export and the domestic market. The manufacturing process at the facility involves machining, assembly, testing, and warehousing. The plant has capacity to produce about 500 turbines and 850 wind turbine blades annually. Components that are, or may be, purchased from abroad (representing about 40–70% of finished product value) used in manufacturing include: glue, polycetal/polyester/epoxide/polyamide/polycarbonate resins (hardeners), plastic foil/film/tape, plate/sheet/film of styrene/polyvinyl polymers (foam cores), printed labels, glass fibers and fabric (root bands), glass fiber yarn (Category 201; must be admitted under privileged foreign status—19 CFR 146.41), electrical grounding rods, steel belts/bands, doors, fasteners, pumps, cylinders, hub castings, bed plates, compressors, pulleys, winches, hoists, electric motors, generators, transmissions, transmission shafts, gear boxes, bearings, flanges/couplers, gears, clutches, couplings, chains, sprockets, electrical connectors, motors, transformers, stators, rotors, ballasts, static converters, inductors, magnets, batteries (Ni-Cad, Ni-Iron, lead acid), lightning arresters, circuit breakers, relays, switches, lampholders/sockets, panel/distribution boards, speed controllers, control panels, pitch motor encoders, motor starters, terminals, connectors, diodes, transistors, bridge rectifiers, photosensitive semiconductors, conductors, revolution counters, and voltage meters (2003 duty rate range: free—8.5%).

FTZ procedures would exempt GEWE/GEER from Customs duty payments on the foreign component inputs used in export production. On its domestic shipment and exports to NAFTA markets, the company would be able to choose the duty rate that applies to finished wind turbines (2.5%) or wind turbine blades (3%) for the foreign-sourced inputs noted above. The company would be able to defer Customs duty payments on the foreign-origin finished turbines that would be admitted to the proposed subzone for U.S. distribution. Duties would be deferred or reduced on foreign production equipment admitted to the proposed subzone until which time it becomes operational. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is December 8, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 22, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the Office of the Port Director, U.S. Bureau of Customs and Border Protection, Suite 102, 1 South A Street, Pensacola, FL 32501.

Dated: September 25, 2003.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 03–25388 Filed 10–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Reza Moghadam Pirasteh

ORDER

The Bureau of Industry and Security, United States Department of Commerce (''BIS'') having notified Reza Moghadam Pirasteh (''Pirasteh'') of its intention to initiate an administrative proceeding against Pirasteh pursuant to Section 766.3 of the Export Administration regulations (currently codified at 15 CFR Parts 730–744 (2003)) (''Regulations''), and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. Sections 2401–2420 (2000)) (''Act''),[1] based on the proposed charging letter issued to Pirasteh that alleged Pirasteh committed four violations of the Regulations, by aiding and abetting exports of liquid injectors to Iran, items subject to the Regulations and the Iran Transactions Regulations, without authorization from the Office of Foreign Assets control, U.S. Department of Treasury (on two occasions); by acting to evade the Regulations by directing that the name of the country ''Iran'' not be used in communications so as to conceal the ultimate destination of the exports; and by making a false statement to a BIS investigator.

BIS and Pirasteh having entered into a Settlement Agreement pursuant to section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), contineud the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701—1707 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as last extended by the Notice of August 7, 2003 (68 FR 47833 (August 11, 2003)), has continued the Regulations in effect under IEEPA.

It Is Therefore Ordered:

First, that a civil penalty of $4,500 is assessed against Pirasteh. Payment of the civil penalty shall be made in seven payments to the Department of Commerce. The first payment shall be of $300 and shall be paid within 30 days from the date of entry of this Order. The next six payments shall each be of $700 and shall be made on or before; April 1, 2004, July 1, 2004, October 1, 2004, January 4, 2005, April 1, 2005, and July 1, 2005. Payments shall be made in the manner specified in the attached instructions.

Second, that pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached notice, and, if a payment is not made by the due date specified herein, Pirasteh will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that for a period of seven years from the date of this Order, Pirasteh, 2308 Arroyo Court, Plano, Texas 75074, his successors or assigns, and when acting for or on behalf of Pirasteh, his representatives, agents, or employees (''denied person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United State. For purposes of this paragraph, servicing means installations, maintenance, repair, modification or testing.

Fifth, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Pirasteh by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that, the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action ion this matter, is effective immediately.

Entered this 30th day of September 2003.

Lisa A. Prager,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 03–25390 Filed 10–6–03; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–862]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: October 7, 2003.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on foundry coke from the People's Republic of China (''PRC'') in response to requests from ABC Coke, Citizens Gas & Coke Utility, Erie Coke Corporation, Sloss Industries Corporation, and Tonawanda Coke Corporation (collectively, ''Domestic Producers'' or ''Petitioners''). The period of review (''POR'') is from March 8, 2001 through August 31, 2002.

We preliminarily determine, based on adverse facts available, that CITIC Trading Company, Ltd. (''CITIC'') sold subject merchandise at less than normal value (''NV''). The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection (''Customs'') to assess antidumping duties based on the PRC-wide rate. We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to sumbit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

FOR FURTHER INFORMATION CONTACT: Michael Holton, Office of AD/CVD Enforcement 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1324.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 2001, the Department published the antidumping duty order on foundry coke from the People's Republic of China (''Foundry Coke from the PRC''). *See Notice of Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China*,

66 FR 39487 (July, 31, 2001); *see also Notice of Amended Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China*, 66 FR 45962 (August 31, 2001), and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Foundry Coke Products From The People's Republic of China*, 66 FR 48025 (September 17, 2001). On September 3, 2002, the Department published a notice of opportunity to request an administrative review for this order covering the period March 8, 2001, through August 31, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 56267 (September 3, 2002). On September 30, 2002, the Department received a request from the Petitioners, requesting the review of CITIC, in accordance with 19 CFR 351.213(b). The Department initiated the review on October 24, 2002. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 65336 (October 24, 2002).

On November 8, 2002, the Department issued an antidumping questionnaire to CITIC with instructions that it and the appropriate producers/suppliers (''suppliers'') of the subject merchandise are required to respond by the due dates. The original due dates were November 11, 2002, for section A and December 17, 2002, for sections C-E. After two separate extensions, the Department received a timely section A questionnaire response, in part, on December 12, 2002, from CITIC. There were multiple transactions of subject merchandise during the POR in which CITIC was the exporter and other parties were the suppliers. During the POR, CITIC obtained the foundry coke that was ultimately sold in the United States from three suppliers.

On December 16, 2002, the Department received a completed section A response from CITIC. On December 19, 2002, CITIC submitted its response to section C of the questionnaire. On January 3, 2003, CITIC requested a two-week extension for section D of the questionnaire, which was originally due on December 17, 2002. On January 7, 2003, the Department granted a one-week extension for section D of the questionnaire, setting a new deadline of January 13, 2003. CITIC did not supply the Department with a response to section D of the questionnaire by the January 13, 2003, deadline.

On April 15, 2003, the Department issued CITIC a supplemental questionnaire with a response date of April 29, 2003. After five additional extensions, CITIC responded to the supplemental questionnaire, in part, on June 5, 2003, and stated that the Department would receive the full information as soon as the information was available. CITIC did not provide a complete response to all questions of the supplemental questionnaire.

On May 1, 2003, we requested comments on surrogate-country selection and requested that parties provide surrogate factors of production values for the preliminary results no later than May 15, 2003. We received comments from the Petitioners, on May 8, 2003. On May 15, 2003, CITIC submitted publicly available Indian import statistics for valuing the subject merchandise's factors of production in this review.

On May 28, 2003, the Department determined that it was not practicable to complete the preliminary results of this review within the statutory time limit. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(1) of the Department's regulations, the Department extended the deadline for completion of the preliminary results of the administrative review by 120 days, to September 30, 2003. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China*, 68 FR 31681 (May 28, 2003) (''*Extension of Time Limits*''). On July 24, 2003, the Department published a correction to the *Extension of Time Limits*, due to incorrect information regarding the deadline of the preliminary results. *Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China; Correction*, 68 FR 43712 (July 24, 2003).

Scope of Review

For purposes of this investigation, the product covered is coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100-mm (4 inch) sieve, of a kind used in foundries.

The foundry coke products subject to this investigation were classifiable under subheading 2704.00.00.10 (as of January 1, 2000) and are currently classifiable under subheading 2704.00.00.11 (as of July 1, 2000) of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Nonmarket Economy Country

The Department has treated the PRC as a non-market economy (''NME'') country in all past antidumping investigations (*see e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000)). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Tariff Act of 1930, as amended (''the Act''). The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as a NME country. When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base the NV on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise.

Furthermore, no interested party has requested that the foundry coke industry in the PRC be treated as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have not treated the foundry coke industry in the PRC as a market-oriented industry in this investigation.

Separate Rate

Although CITIC, a mandatory respondent, submitted a response to section A of the questionnaire, it did not respond to section D of the questionnaire and other vital information requested by the Department. As a mandatory respondent, CITIC was required to provide complete questionnaire responses. Therefore, as detailed in the ''Application of Adverse Facts Available'' section below, adverse facts available have been assigned to CITIC. As a result, CITIC will not receive a separate rate for these preliminary results.

Application of Facts Available

On November 8, 2002, the Department sent CITIC section D of the questionnaire, requesting CITIC and its three suppliers to provide factors of production (''FOP'') information for the

subject merchandise during the POR. The original deadline to file a response to section D of the questionnaire was December 17, 2002. On December 6, 2002, CITIC requested an extension of the December 17, 2002, due date for filing its response to section D of the questionnaire. On December 12, 2002, the Department granted an extension, giving CITIC until January 6, 2003, to file its section D questionnaire response.

On January 3, 2003, CITIC requested a second two-week extension for filing its section D questionnaire response. Due to the necessity of meeting the statutory time limits, the Department only granted CITIC a one week extension, until January 13, 2003, for filing its response to section D of the questionnaire. On January 13, 2003, the Department did not receive a response from CITIC, either requesting a third extension or a response to section D of the questionnaire. One week later, the Department still had not received any response from CITIC or any other communication, and on January 21, 2003, the Department sent CITIC a letter requesting that CITIC file its late section D response by the close of business of the same day. Additionally, the letter requested that CITIC provide a detailed explanation on what measures it had taken to file section D of the questionnaire and what prevented it from submitting the response on January 13, 2003.

On January 23, 2003, CITIC responded to the Department's letter of January 21, 2003, stating that because ''section D requires cooperation of unrelated producers of foundry coke . . . CITIC Trading has been unable to persuade those producers to undertake the time and expense of responding to the questionnaire, despite is best efforts.'' *See* CITIC's response to Department's letter of January 21, 2003, dated January 23, 2003. On January 28, 2003, the Department sent a second letter requesting that CITIC file its late section D response. In addition, the Department requested that CITIC provide a detailed explanation of the measures it had taken in securing a response from it suppliers. CITIC did not provide a responses to the requested information identified in the letter of January 28, 2003.

Because it is imperative that the Department obtains the FOP information for the normal value calculation, the Department attempted to contact CITIC's suppliers directly. Due to the lack of information on the record regarding CITIC's suppliers, on February 10, 2003, the Department requested that CITIC supply additional detailed contact information for its POR suppliers. On February 10, 2003, CITIC responded by stating that the contact information was already included in the section A response. Because CITIC had not provided names of persons to contact and because the information on the record was less than complete, on March 21, 2003, the Department again requested that CITIC supply complete and detailed contact information for its suppliers. On April 4, 2003, CITIC responded, providing the Department with names of the people whom the Department should contact for only two of the three suppliers.

On April 9, 2003, using the contact information provided by CITIC, the Department attempted to fax two of the three suppliers (hereinafter ''Supplier A,'' ''Supplier B'' and ''Supplier C''). The Department contacted Supplier A via fax with a response due date of April 23, 2003, for the section D questionnaire. To date, we have not received a response from Supplier A, although the Department received conformation that the fax was transmitted successfully. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Fax Transmission Verification Report for Supplier A, dated April 10, 2003.

With regard to Supplier B, the Department was unable to contact the company via fax on April 9, 2003. On April 10, 2003, the Department attempted to contact Supplier B a second time via fax, again there was no connection. On April 16, 2003, the Department made a third attempt to send section D of the questionnaire via fax to Supplier B. Again, the Department received no fax connection. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Fax Transmission Verification Report for Supplier B, dated April 16, 2003. Upon closer examination of the fax number provided by CITIC, the Department discovered that the fax number appeared to be incomplete. Thus, on May 1, 2003, the Department requested that CITIC provide a complete fax number for Supplier B. On May 2, 2003, CITIC's counsel informed the Department that CITIC was unable to find any other additional information regarding the Supplier B's fax number. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Request for a Correction to the Fax Number, dated May 6, 2003.

Because the Department did not have the correct fax number for Supplier B and CITIC did not provide a fax number for Supplier C, the Department sent section D questionnaires via FedEx to these two suppliers on April 22, 2003. The Department received confirmation via the FedEx internet tracking system that section D of the questionnaire was delivered to Supplier B on May 15, 2003. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Delivery Status of Section D Questionnaire Sent to Supplier B, dated July 21, 2003. To date, we have not received a response from Supplier B. The section D questionnaire, however, for Supplier C was returned to the Department, with an indication that Supplier C was not in FedEx's service area. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Delivery Status of Section D Questionnaire Sent to Supplier C, dated July 21, 2003. Additionally, the Department requested assistance from its Chinese Commercial Service Division (''Division'') in contacting Supplier C. The Division made several attempts in locating and contacting the supplier, but it was unsuccessful in contacting them. *See* Memorandum to the File, from Chris Cloutier, Senior Import Administration Officer, United States Embassy Beijing, regarding Foundry Coke, dated September 23, 2003.

On August 12, 2003, the Department sent CITIC a letter requesting several items with respect to Supplier C. First, the Department requested that CITIC reconsider its decision not to release Supplier C's name from APO protection, so the Department could receive aid in contacting the supplier from Chinese governmental agencies. Second, the Department requested documentation relating to CITIC's purchase of subject merchandise from Supplier C during the POR and post POR, which would contain further contact information. Third, the Department requested that CITIC reconfirm the contact information provided to the Department. Finally, the Department again requested that CITIC supply information and documentation regarding its efforts to persuade the three suppliers to respond to section D of the questionnaire. The Department requested that CITIC file its response to this letter no later than August 18, 2003. On August 18, 2003, the Department did not receive a response from CITIC with respect to the information we requested. On August 19, 2003, the Department contacted CITIC's counsel who indicated that he had faxed the letter to CITIC, yet he had not received a response from them. CITIC's counsel then requested that the Department send him an electronic copy of the letter so

that he could e-mail it to CITIC. The Department sent CITIC's counsel an electronic copy of the letter on August 19, 2003, requesting that CITIC file its response no later than August 22, 2003. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Request for Release from APO of Supplier's C Name, dated August 28, 2003. On August 22, 2003, the Department did not receive a response from CITIC regarding the information the Department requested.

On August 27, 2003, the Department made a final request that CITIC respond to the letter sent on August 12, 2003. Despite the Department's best efforts to provide CITIC with every opportunity to respond to our requests, we did not receive a response to the letter originally sent out on August 12, 2003, nor has the Department received the FOP information necessary to calculate the a normal value.

Section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested under the antidumping statute; (C) significantly impedes an antidumping review; or (D) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination as provided in Section 782 (d) of the Act. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part*, 64 FR 30481 (June 8, 1999); *Silicon Metal From The People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 37850 (July 14, 1998); *Silicon Metal From The People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 11654 (March. 10, 1998). CITIC and its suppliers, as ''interested parties,'' have failed to respond and CITIC has engaged in pattern of non-compliance in submitting its responses to the Department's request for information, which have impeded the Department's best efforts in conducting this review. Specifically, CITIC failed to either report or supply the Department with FOP information. For these reasons, the Department finds that use of facts otherwise available is appropriate for these preliminary results.

Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

For the Department to calculate an accurate margin in an NME proceeding, it needs valid FOP information. CITIC and its suppliers failed to provide the FOP information for the transactions. There has been no alternative or substitutable information suggested for use in place of the missing FOP data. Therefore, in cognizance of CITIC's submission of section A and section C response, we find that the submitted data is nevertheless so incomplete that reliance on it would not result in an accurate measurement or reflection of CITIC's selling practices. Further, as detailed above, CITIC and its suppliers had ample time and extraordinary number of opportunities to submit the requested FOP data for this review and the requested explanation as to its efforts to secure responses from the suppliers, but they failed to do so.

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference ''. . . to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870. It also instructs the Department, in employing adverse inferences, to consider ''. . . the extent to which a party may benefit from its own lack of cooperation.'' *Id.*

When determining whether a company has acted to the best of their ability the Department ''must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations;'' and ''a subjective showing that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.'' *See Nippon Steel Co. v. U.S.*, 337 F.3d 1373 (Fed Cir 2003) (''*Nippon*'').

In this particular case, CITIC and its suppliers failed to respond to several of the Department's requests for information for which they should have known the Department would need to conduct this administrative review. We note that CITIC participated in the investigation only two years ago and one of its suppliers during this review also participated in that investigation. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding CITIC's Suppliers in the Investigation, dated September 23, 2003. Therefore, the Department finds that, by not providing the necessary responses to the questionnaires issued by the Department, CITIC and its suppliers have failed to cooperate to the best of its ability.

First, FOP information is fundamental for calculating the a dumping margin. Section 771(35)(A) of the Act, requires that dumping margins are calculated by comparing the NV to the export price or constructed export price. For NME countries, the Act states that the NV is determined ''on the basis of the value of the factors of production utilized in producing the merchandise.'' *See* section 773(c)(1) of the Act. Because this is an NME proceeding, it is necessary that the Department have valid FOP information in order to calculate the NV. In cases such as this, we are precluded from reviewing the FOP of the suppliers, and absent any FOP information provided, the Department cannot simply create or postulate the costs of the uncooperative suppliers. In addition, the Department has no other FOP information on the record. Because CITIC and its suppliers have failed to provided FOP information for this administrative review the Department cannot properly calculate a dumping margin in accordance with section 773(c)(1) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from*

the People's Republic of China, 64 FR 71104, 71108 (December 20, 1999) (''*Creatine from the PRC*'');*see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997–998 Antidumping Duty Administrative Review and Final Results of New Shipper Review*, 64 FR 61837, 61846 (November 15, 1999) (''*TRBs-11*''); *see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003), and accompanying Issues and Decision Memorandum, Comment 7 (''*Crawfish*''). Because CITIC and one of its suppliers had participated in the original investigation, it is reasonable to presume that CITIC should have known that the Department would request FOP information for this administrative review. Because CITIC and its suppliers failed to provide the information which they knew the Department would need to calculate a dumping margin, the Department finds that CITIC and its suppliers have not acted to the best of their ability.

Second, CITIC and the suppliers failed to provided any explanation why they were unable provide the FOP information, nor did they offer any alternative forms by which they might be able to comply with the Department's requests. As the Court of Appeals for the Federal Circuit has held, respondents must ''put forth its maximum efforts'' in complying with the Department's requests. *See Nippon*, 337 F.3d at 1382. The issue of cooperation from unrelated suppliers was raised by CITIC in the investigation. CITIC should have known that its claims of being unable to persuade unrelated supplies to provide FOP information would require convincing evidence of the suppliers' inability or unwillingness to supply the requested information. *See CITIC Trading Co., Ltd et al v. U.S.*, No. 01–00901, slip op. 03–23 (CIT 2003) (finding that CITIC acted to the best of its ability when in it provided Commerce with documentation that its unrelated non-responding suppliers had been shutdown). On numerous occasions, the Department requested that CITIC supply detailed information regarding its attempts to contact its suppliers for the FOP information. The only response the Department received from CITIC was a conclusory statement explaining that ''section D requires cooperation of unrelated producers of foundry coke . . . CITIC Trading has been unable to persuade those producers to undertake the time and expense of responding to the questionnaire, despite is best efforts.'' *See* CITIC's response to Department's letter of January 21, 2003, dated January 23, 2003.

CITIC's claim that it was unable persuade it suppliers to cooperate despite its best efforts, provides the Department with no reliable basis to determine that CITIC in fact cooperated to the best of its ability. As noted earlier, the Department requested that CITIC explain and provide documentation of its efforts to persuade its supplies to respond to section D of the questionnaire. CITIC failed to provide any explanation or documentation showing that it had contacted its suppliers to respond to section D of the questionnaires. Because the information on the record is so incomplete it is impossible for the Department to determine what efforts CITIC made in contacting its suppliers regarding their cooperation in responding to section D of the questionnaire. Therefore, the Department finds that CITIC has not acted to the best of its ability.

Additionally, it has been the Department practice to apply adverse facts available when a respondent has failed to provide convincing evidence ''claiming that their suppliers cannot supply requested factors of production information.'' *See Creatine from the PRC*, 64 FR at 71108 (applying adverse facts available because the respondent did not provide an acceptable explanation on the record for its suppliers failure to provide the FOP information); *see also TRBs-11*, 64 FR at 61846 (finding that the respondent did not act to the best of its ability when it was unable to provide letters from unrelated suppliers stating their unwillingness to supply factors of production information); *see also Notice of Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 68 FR 36767, 36768 (June 19, 2003) (''*Garlic*'') (applying adverse facts available when a supplier stated that it was unwilling to provide details on its production process or its FOP; and the respondent did not provide an explanation as to why it or its supplier could not provide the FOP information); *see also Notice of Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum, Comment 10 (finding that there was no acceptable explanation on the record for the supplier's failure to provide factor of production information, an adverse inference in applying facts available was warranted due to the supplier's failure to act to the best of its ability).

Although the Department made extensive efforts to obtain the information, it is ultimately CITIC's responsibility for submitting accurate FOP information as it is the party that is seeking the rate based on the FOP information and it is more readily available to them, and any ''failures, even if made by a supplier, may provide grounds for the application of adverse facts available.'' *See Crawfish* 68 FR at 19504; *see also Garlic* 68 FR at 36768.

Finally, CITIC engaged in pattern of non-compliance to the Department's requests. On numerous occasions, CITIC requested extensions to the original filing dates which the Department granted. After granting CITIC's requested extensions to file its section D responses on two separate occasions, and nearly one full month from the original due date, CITIC nonetheless failed to respond to the Department's request for FOP information. Only after two further requests by the Department did CITIC respond that it was unable to get its suppliers to respond to section D of the questionnaire. The Department finds it is reasonable that CITIC could have submitted this information before the original deadline for information had passed. If CITIC was having problems in obtaining the information from its suppliers, it should have notified the Department at that time. Instead, CITIC informed the Department only after the deadline passed and after the Department had sent two requests for the information.

Similarly, on four separate occasions the Department granted CITIC's requests to extend the deadline to file its response to the Department's supplemental questionnaire. Again, only after the Department sent a letter requesting that the late information be supplied did CITIC respond. Additionally, CITIC's response to the supplemental questionnaire was incomplete, informing the Department that it would supply the missing information at a later date. To date, the Department has not received a complete supplemental questionnaire response. Further, as noted earlier, CITIC failed to respond on three separate occasions to the Department's requests for information regarding Supplier C and any documentation with respect to each of its suppliers purported inability to supply the FOP information. The information that the Department requested was for documentation relating to CITIC's purchase of subject merchandise from Supplier C (*e.g.*, contracts, payment documentation,

shipment documentation, etc.). A reasonable respondent would have maintained all this documentation in anticipation the Department would request it. Finally, throughout the process the Department informed CITIC of the importance of the information and the need to respond to the requests for information.

Therefore, in accordance with the statute, the Department finds that CITIC and its suppliers, as interested parties, have not acted to the best of their ability. First, it reasonable that CITIC should have known, as a responsible exporter, that the requested FOP information was required to be kept and maintained under the applicable statutes, rules, and regulations, as CITIC and one of its suppliers participated in the original investigation. Second, it reasonable that an interested party could have provided an explanation for either its inability to respond to the Department's requested information or offer alternative forms for which to comply with the Department's requests. Further, it is the Department's procedure to apply adverse facts available when a respondent is unable to provide an explanation and documentation for its failure to supply complete FOP information, even if it is the failure of one of its suppliers. Finally, the Department finds that CITIC and its suppliers, by failing produce the requested information, engaged in a pattern of non-compliance and also failed to put forth a maximum efforts to investigate and obtain the requested information from their records. *See Nippon*, 337 F.3d at 1382. Thus, because CITIC and its suppliers have failed to act to the best of their ability the Departments finds that an adverse facts available is applicable to this review.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. Section 776(c) of the Act provides, however, that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See id.* As discussed in *Notice of Preliminary Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (''*TRBs*''), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The highest rate determined in any segment of this proceeding is the PRC-wide rate from the investigation, which is 214.89 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. *See Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China*, 66 FR 39487 (July, 31, 2001). The information contained in the petition was corroborated for the final determination of the investigation. In the investigation, the Department reviewed the adequacy and accuracy of the petition. To the extent practicable, the Department examined the key elements of the U.S. price and NV calculations on which the petition margin was based and compared the sources used in the petition to publicly available information, where available, and respondent data as appropriate. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Foundry Coke From the People's Republic of China*, 66 FR 13885 (March 8, 2001). Additionally, no information has been presented in the current review that calls into question the reliability of this information. We note that this is the highest rate from the investigation and is less than two years old. Thus, the Department finds that the information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department stated in TRBs that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.'' *See* TRBs at 61 FR 57392; *see also Stainless Steel Sheet and Strip in Coils from Taiwan; Final Result and Rescission of Antidumping Duty Administrative Review*, 67 FR 40914, 40916 (June 14, 2002) (where the Department disregarded the highest margin for the use as adverse facts available because the margin was based on a finding of middleman dumping by another producer). The rate used is the rate currently applicable to all exporters subject to the PRC-wide rate. Further, there is no information on the administrative record of the current review that indicates the application of this rate would be inappropriate or that the margin is not relevant. Therefore, for all sales of subject merchandise by the PRC entity, we have applied, as adverse facts available, the 214.89 percent margin from the investigation and have satisfied the corroboration requirements under section 776(c) of the Act. *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

Preliminary Results Of The Review

As a result of the application of adverse facts available, we preliminarily determine that a dumping margin of 214.89 percent exists for the period March 8, 2001, through August 31, 2002, on all exports of foundry coke by the PRC entity.

An interested party may request a hearing within 30 days of publication of these preliminary results. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, within 120 days of publication of this notice. *See* 19 CFR 351.213(h)(1).

Assessment Rates

Upon issuance of the final results, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate

assessment instructions directly to Customs upon completion of this review. If these preliminary results are adopted in our final results of review, we will direct Customs to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for all previously investigated companies which have a separate rate, the cash-deposit rates will continue to be the company specific rates published for the most recent period; (2) for all other PRC exporters, including CITIC, the cash-deposit rate will be the PRC countrywide rate, which is 214.89 percent; and (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification To Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: September 30, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–25384 Filed 10–6–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–501]

Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received timely requests to conduct new shipper reviews of the antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China (PRC). In accordance with 19 CFR 351.214(d), we are initiating a review for Shanghai R&R Imp./Exp. Co., Ltd. (Shanghai) and its producer Zhejiang Lin'an Maxiao Brushes Factory (ZLMBF), and for Changshan Import/Export Co., Ltd. (Changshan) and its producer ZLMBF.

EFFECTIVE DATE: October 7, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Dana Mermelstein, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0961 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 2003, the Department received timely requests from Shanghai and Changshan, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930 (the Act) and in accordance with 19 CFR 351.214(c), for new shipper reviews under the antidumping duty order on natural bristle paintbrushes and brush heads from the PRC. This order has a February anniversary month and therefore an August semiannual anniversary month. On August 27, 2003, the Department issued a letter to Shanghai and Changshan noting that there were similarities in the new shipper review requests for both companies, and we asked whether Shanghai and Changshan were related in any way. Shanghai and Changshan, in their response of August 29, 2003, replied that the similarities occurred because the actions by both Shanghai and Changshan occurred shortly after their counsel conducted a program in China discussing the antidumping law and various ways of participating. Because of the schedule for filing new shipper review requests, both Shanghai and Changshan arranged their sales and made the shipments on relatively short notice. While there are similarities in the shipments, the two companies stated that they are not affiliated, and therefore they requested separate new shipper reviews. The Department will continue throughout the review to examine carefully any similarities between Shanghai and Changshan.

Initiation of Reviews

Pursuant to 19 CFR 351.214(b)(2)(ii) and 19 CFR 351.214(b)(2)(iii)(A), in their August 14, 2003 requests for review, Shanghai and Changshan certified that they did not export the subject merchandise to the United States during the period of investigation (POI) and that they are not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(ii)(B), Shanghai's and Changshan's producer, ZLMBF, certified that it did not export subject merchandise during the period of investigation. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shanghai and Changshan further certified that their export activities are not controlled by the central government of the PRC. Also, in accordance with 19 CFR 351.214(b)(2)(iv), Shanghai and Changshan submitted documentation establishing the date on which each company first shipped the subject merchandise to the United States, the volume of its first shipment, and the date of the first sale to an unaffiliated customer in the United States. Shanghai and Changshan also stated that they had no shipments to the United States other than their first shipment.

Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating new shipper reviews of the antidumping duty order on natural bristle paintbrushes and brush heads from the PRC. In accordance with 19 CFR 351.214(i), we intend to issue the preliminary results not later than 180 days from the date of initiation of these reviews. All provisions of 19 CFR 351.214 will apply to Shanghai and Changshan throughout the duration of these new shipper reviews.

In accordance with 19 CFR 351.214(g)(1)(i)(B), the POR for a new shipper review initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for these new shipper reviews is February 1, 2003 through July 31, 2003. Pursuant to

section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews for shipments of natural bristle paintbrushes and brush heads from the PRC: (1) produced by ZLMBF and exported by Shanghai; (2) produced by ZLMBF and exported by Changshan.

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. Accordingly, we will issue a questionnaire to Shanghai and Changshan (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of natural bristle paintbrushes and brush heads, the review will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and not eligible for a separate rate, and the review of that respondent will be rescinded.

Antidumping Duty New Shipper Reviews:	Period To Be Reviewed:
Shanghai R&R Imp./Exp. Co., Ltd. / Produced by Zhejiang Lin'an Maxiao Brushes Factory	2/1/03–7/31/03
Changshan Import/Export Co., Ltd. / Produced by Zhejiang Lin'an Maxiao Brushes Factory	2/1/03–7/31/03

We will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for subject merchandise exported by and produced by the above listed companies. See 19 CFR 351.214(e). Shanghai and Changshan certified that they exported but did not produce the subject merchandise on which they based their new shipper review requests (i.e. ZLMBF certified that it produced the subject merchandise exported by Shanghai and Changshan). Therefore, we will instruct BCBP to limit the bonding option only to entries of subject merchandise: (1) exported by Shanghai and produced by ZLMBF; or (2) exported by Changshan and produced by ZLMBF.

Interested parties may submit applications for disclosure of business proprietary information 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 and 19 CFR 351.214.

Dated: September 30, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–25385 Filed 10–6–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Adminstration

[A-570–504]

Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received timely requests to conduct new shipper reviews of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). In accordance with 19 CFR 351.214(d), we are initiating a review for Shanghai R&R Imp./Exp. Co., Ltd. (Shanghai) and its producer Qing Yuan Huaxing Arts and Crafts Candle Co., Ltd. (Qing Yuan), and for Changshan Import/Export Co., Ltd. (Changshan) and its producer Shaoxing Youcheng Artcraft Knitting Co., Ltd. (Shaoxing). We are also initiating a review for Shandong Huihe Trade Co., Ltd. (Huihe), which is both the exporter and the producer.

EFFECTIVE DATE: October 7, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Dana Mermelstein, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0961 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 2003, the Department received timely requests from Shanghai and Changshan and on August 28, 2003 the Department received a timely request from Huihe pursuant to section 751(a)(2)(B) of the Tariff Act of 1930 (the Act) and in accordance with 19 CFR 351.214(c), for new shipper reviews under the antidumping duty order on petroleum wax candles from the PRC. This order has an August anniversary month. On August 27, 2003, the Department issued a letter to Shanghai and Changshan noting that there were similarities in the new shipper review requests for both companies, and we asked whether Shanghai and Changshan were related in any way. Shanghai and Changshan, in their response of August 29, 2003, replied that the similarities occurred because the sales by both Shanghai and Changshan occurred shortly after their counsel conducted a program in China discussing the U.S. antidumping law. Shanghai and Changshan further explained that, because of the schedule for filing new shipper review requests, they both arranged the sales and made the shipments on relatively short notice. While we noted the similarities in the shipments, the two companies claimed that they are not affiliated, and therefore they requested separate new shipper reviews. The Department will continue to examine carefully any similarities between Shanghai and Changshan throughout the review.

Initiation of Reviews

Pursuant to 19 CFR 351.214(b)(2)(i), 19 CFR 351.214(b)(2)(ii) and 19 CFR 351.214(b)(2)(iii)(A), in their August 14, 2003 requests for review, Shanghai and Changshan certified that they did not export the subject merchandise to the United States during the period of investigation (POI) and that neither they nor their producers are affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(ii)(B), Shanghai's producer, Qing Yuan, and Changshan's producer,

Shaoxing, each certified that it did not export subject merchandise during the period of investigation. Pursuant to 19 CFR 351.214(b)(2)(i) Huihe (which is both the producer and exporter) certified that it did not export subject merchandise to the United States during the period of investigation. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shanghai, Changshan, and Huihe further certified that their export activities are not controlled by the central government of the PRC. Also, in accordance with 19 CFR 351.214(b)(2)(iv), Shanghai, Changshan, and Huihe submitted documentation establishing the date on which each company first shipped the subject merchandise to the United States, the volume of each company's first and only shipment, and the date of the first sale to an unaffiliated customer in the United States.Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating new shipper reviews under the antidumping duty order on petroleum wax candles from the PRC. In accordance with 19 CFR 351.214(i), we intend to issue the preliminary results not later than 180 days from the date of initiation of these reviews. All provisions of 19 CFR 351.214 will apply to Shanghai, Changshan and Huihe throughout the duration of these new shipper reviews.

In accordance with 19 CFR 351.214(g)(1)(i)(A), the POR for a new shipper review initiated in the month immediately following the anniversary month is the twelve-month period immediately preceding the anniversary month. Therefore, the POR for these new shipper reviews is August 1, 2002 through July 31, 2003. Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews for shipments of petroleum wax candles from the PRC: (1) produced by Qing Yuan and exported by Shanghai; (2) produced by Shaoxing and exported by Changshan; and, (3) produced and exported by Huihe.

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. Accordingly, we will issue a questionnaire to Shanghai and Changshan (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of natural bristle paintbrushes and brush heads, the review will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and not eligible for a separate rate, and the review of that respondent will be rescinded.

Antidumping Duty New Shipper Reviews	Period to be reviewed
Shanghai R&R Imp./Exp. Co., Ltd./Produced by Qing YuanHuaxing Arts and Crafts Candle Co., Ltd.	8/01/02–7/31/03
Changshan Import/Export Co., Ltd./Produced by ShaoxingYoucheng Artcraft Knitting Co., Ltd.	8/01/02–7/31/03
Shandong Huihe Trade Co., Ltd./Produced by ShandongHuihe Trade Co., Ltd.	8/01/02–7/31/03

We will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to allow, at the option of the importer, the posting, of a single entry bond or security in lieu of a cash deposit for subject merchandise exported by and produced by the above listed companies. *See* 19 CFR 351.214(e). Shanghai and Changshan certified that they exported but did not produce the subject merchandise on which they based their new shipper review requests; Qing Yuan certified that it produced the subject merchandise exported by Shanghai and Shaoxing certified that it produced the subject merchandise exported by Changshan. Therefore, we will instruct BCBP to limit the bonding option only to entries of subject merchandise: (1) exported by Shanghai and produced by Qing Yuan; or (2) exported by Changshan and produced by Shaoxing. Shandong Huihe Trade Co., Ltd. certified that it is both the producer and exporter of the petroleum wax candles. Therefore, we will instruct BCBP to limit the bonding option only to entries of subject merchandise both produced and exported by Shandong Huihe Trade Co., Ltd.

Interested parties may submit applications for disclosure of business proprietary information 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)(2)(B) of the Act and 19 CFR 351.214.

Dated: September 30, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–25383 Filed 10–6–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–851]

Certain Preserved Mushrooms from the People's Republic of China: Initiation of Seventh New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce received several requests in August 2003 to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC''). In accordance with 19 CFR 351.214(d), we are initiating a new shipper review for two of the companies that requested such a review: Guangxi Hengxian Pro-Light Foods, Inc., a producer and exporter of certain preserved mushrooms from the PRC; and Nanning Runchao Industrial Trade Company, Ltd., an exporter of certain preserved mushrooms from the PRC.

EFFECTIVE DATE: October 7, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Sophie Castro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1766 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests in August 2003 from: (1) Guangxi Hengxian Pro-Light Foods, Inc. (''Guangxi Hengxian''); (2) Nanning Runchao Industrial Trade Company, Ltd. (''Nanning Runchao''); (3) Xiamen International Trade and Industry Company, Ltd. (''XITIC''); (4) Xiamen Zhongjia Import and Export Company, Ltd. (''Zhongjia''); (5) Zhangzhou

Longhai Minhui Industry and Trade Co., Ltd. (''Minhui''); and (6) Shanghai Superlucky Import & Export Company, Ltd (''Superlucky''), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC, which has an August semi-annual anniversary month. On September 22, 2003, Superlucky withdrew its request for a new shipper review. Accordingly, we have not considered Superlucky in this new shipper review initiation.

Guangxi Hengxian identified itself as the producer of the preserved mushrooms it exports. Nanning Runchao identified itself as an exporter of preserved mushrooms produced by its supplier, Guangxi Yizhou Dongfang Cannery (''Guangxi Yizhou''). XITIC identified itself as an exporter of preserved mushrooms produced by its supplier, Inter-Foods (D.S.) Company, Ltd.[1] Zhongjia identified itself as an exporter of preserved mushrooms produced by its supplier, Zhangzhou Hongning Canned Food Factory. Minhui identified itself as an exporter of preserved mushrooms produced by its supplier, Longhai Jiuhu Longhuan Tin Food Factory.[2]

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export certain preserved mushrooms to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which did export certain preserved mushrooms during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to 19 CFR 351.214(b)(2)(iv)(A), each company provided the date of the first sale to an unaffiliated customer in the United States. Each company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States and the volume of that shipment. Nanning Runchao, Zhongjia and Minhui also provided the date of entry of that first shipment.

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930 (''the Act''), as amended, and 19 CFR 351.214(b), and based on our analysis of the information and documentation provided with the new shipper review requests, as well as our analysis of proprietary import data from the U.S. Bureau of Customs and Border Protection (''Customs''), we find that Nanning Runchao and Guangxi Hengxian have met the requirements under which the Department can initiate a new shipper review (for more details, *see* New Shipper Initiation Checklists for Nanning Runchao and Guangxi Hengxian). Therefore, we are initiating a new shipper review for Nanning Runchao and Guangxi Hengxian. Furthermore, based on our analysis of the information and documentation provided with the new shipper review requests, as well as our analysis of proprietary import data from Customs, we find that XITIC, Zhongjia and Minhui all had transactions which took place outside of the relevant period of review (''POR'') and therefore do not meet the requirements under which the Department can initiate a new shipper review (for more details, *see* New Shipper Initiation Checklists for XITIC, Zhongjia and Minhui). Thus, we are not initiating a new shipper review for XITIC, Zhongjia and Minhui.

In cases involving non-market economies, it is the Department's normal practice 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. Accordingly, we will issue a questionnaire to Nanning Runchao and Guangxi Hengxian (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors, the review will proceed. If a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and that it did not establish entitlement to a separate rate, and the review of that respondent will be rescinded.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on certain preserved mushrooms 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.

In accordance with 19 CFR 351.214(g)(1)(i)(B), the POR for a new shipper review, initiated in the month following the semi-annual anniversary month, will be the six-month period immediately proceeding the semi-annual anniversary month. Therefore, the POR for this new shipper review is:

Antidumping Duty New Shipper Review Proceeding	Period to be Reviewed
PRC: Certain Preserved Mushrooms, A-570–851:.	
Nanning Runchao Industrial Trade Company, Ltd.	02/01/03 - 07/31/03
Guangxi Hengxian Pro-Light Foods, Inc.	02/01/03 - 07/31/03

We will instruct Customs 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 the above-listed companies. This action is in accordance with section 751(a)(2)(B)(iii) of the Act, as amended, and 19 CFR 351.214(e). With regard to Guangxi Hengxian, because Guangxi Hengxian has certified that it both produces and exports the subject merchandise, the sale of which was the basis for its new shipper review request, we will apply the bonding privilege only to entries of subject merchandise for which it is both the producer and exporter. With regard to Nanning Runchao and its producer Guangxi Yizhou, we will apply the bonding privilege only to entries of the subject merchandise exported by Nanning Runchao which was also produced by Guangxi Yizhou.

Interested parties that need access to proprietary information in this new shipper review should submit

[1] On August 7, 2003, the Department issued a memorandum notifying interested parties of its intent to rescind the new shipper review of this company, initiated on March 28, 2003 (see 68 FR 15152), because XITIC's certification failed to identify correctly the producer of the subject merchandise.

[2] On August 4, 2003, the Department preliminarily rescinded the new shipper review of Zhongjia and Minhui, initiated on October 7, 2002, because Zhongjia's and Minhui's certifications failed to identify correctly the producer of the subject merchandise (*see* 68 FR 45792 and 67 FR 62438, respectively).

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)(2)(B) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: September 30, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–25387 Filed 10–6–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–829]

Stainless Steel Wire Rod From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from the Republic of Korea (Korea). The review covers two manufacturers/exporters of subject merchandise during the period of review (POR) September 1, 2001 through August 31, 2002. Based upon our analysis, the Department has preliminarily determined that dumping margins exist for both manufacturers/exporters. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE : October 7, 2003.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan, Jeff Pedersen, or Crystal Scherr Crittenden, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4081, (202) 482–2769 or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1998, the Department published in the **Federal Register** the antidumping duty order on SSWR from Korea. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod From Korea*, 63 FR 49331 (September 15, 1998) (*Amended Final Determination*). On September 3, 2002, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on SSWR from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 56267 (September 3, 2002). On September 30, 2002, Changwon Specialty Steel Co., Ltd. (Changwon) and Dongbang Special Steel Co., Ltd. (Dongbang) (collectively, together with Pohang Iron and Steel Co., Ltd. (POSCO), respondent[1] (*see* the ''Affiliation and Collapsing'' section of this notice)) requested an administrative review of the U.S. sales of Changwon and Dongbang that were subject to the antidumping order on SSWR from Korea. On October 24, 2002, the Department initiated an administrative review of Changwon and Dongbang. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 65336 (October 24, 2002).

On October 15, 2002, the Department issued an antidumping questionnaire to Changwon and Dongbang. The Department received Changwon's and Dongbang's responses in November and December 2002. The Department issued supplemental questionnaires to Changwon and Dongbang in December 2002 and, January, February, March and April 2003, and received responses from Changwon and Dongbang in January, February, March and April 2003.

On May 16, 2003 the Department published in the **Federal Register** a notice extending the deadline for issuing the preliminary results in this case until no later than September 30, 2003. *See Stainless Steel Wire Rod from South Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 26571 (May 16, 2003).

Scope of the Review

For purposes of this review, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.

Two stainless steel grades are excluded from the scope of the review. SF20T and K-M35FL are excluded. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max	Chromium	19.00/21.00
Manganese	2.00 max	Molybdenum	1.50/2.50
Phosphorous	0.05 max	Lead-added	(0.10/0.30)
Sulfur	0.15 max	Tellurium-added	(0.03 min)
Silicon	1.00 max		

[1] Although we are treating POSCO, Changwon, and Dongbang, as a single entity, we may, in certain instances, refer to POSCO, Changwon, and Dongbang separately to distinguish the information separately reported by these companies.

K-M35FL

Carbon	0.015 max	Nickel	0.30 max
Silicon	0.70/1.00	12.50/14.00	
Manganese	0.40 max	Lead	0.10/0.30
Phosphorous	0.04max	Aluminum	0.20/0.35
Sulfur	0.03 max		

The products subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Affiliation and Collapsing

A. Changwon, POSCO, and Dongbang

During the less-than-fair value (LTFV) investigation, POSCO was the sole supplier to Dongbang of black coil (unfinished SSWR). *See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Korea*, 63 FR 40404, 40410 (July 29, 1998) (*Final Determination*). Based on this fact, and the fact that Dongbang was not able to obtain suitable black coil from alternative sources, the Department determined that POSCO and its wholly-owned subsidiary, Changwon, were affiliated with Dongbang through a close supplier relationship pursuant to section 771(33)(G) of the Act and section 351.102(b) of the Department's regulations. See id. In the Final Determination, the Department also collapsed Changwon, POSCO, and Dongbang and treated them as a single entity for purposes of the dumping analysis in accordance with section 351.401(f) of the Department's regulations. *See id.*

Neither POSCO, Changwon, nor Dongbang has provided any new evidence requiring the Department to revisit this finding. Therefore, we continue to find that POSCO and Changwon are affiliated with Dongbang through a close supplier relationship.[2] Further, we have continued to treat POSCO, Changwon, and Dongbang as a single entity and to calculate a single margin for them. (*See, e.g., Frozen Concentrated Orange Juice from Brazil; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 29930, 29931 (June 4, 2001), citing *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 17998, 17999 (April 13, 1999) (unchanged by the final results)).

B. Affiliation Between Changwon, Dongbang and U.S. Trading Company Customers

Dongbang reported U.S. sales to trading companies whom it classified as unaffiliated parties in its November 19, and December 12, 2002 questionnaire responses. The petitioners (Carpenter Technoloy Corporation and Empire Specialty Steel) contend that Dongbang is affiliated with these trading company customers through a principal/agent relationship.

In the review of SSWR from Korea covering the period September 1, 1999 through August 31, 2000, the petitioners also contended that Changwon and Dongbang were affiliated with certain U.S. trading company customers through a principal/agent relationship. However, the Department determined that no such relationship existed. *See Stainless Steel Wire Rod From Korea; Final Results of Antidumping Duty Administrative Review*, 67 FR 6685 (February 13, 2002). *See also* Memorandum from Holly Kuga to Bernard Carreau on Whether Changwon and Dongbang are Affiliated With Certain U.S. Customers Under Section 771(33) of the Act, dated October 1, 2001. Because the petitioners have not provided any new evidence indicating a change in the relationship between these companies, we continue to find that Dongbang is not affiliated with its U.S. trading company customers through a principal/agent relationship.

Duty Absorption

On November 5, 2002, the petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR by the respondent. Section 751(a)(4) of the Tariff Act of 1930, as amended (the Act), provides for the Department, if requested, to determine, during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because the collapsed entity POSCO/Changwon/Dongbang (*see* ''Affiliation and Collapsing'' section of this notice) sold to unaffiliated customers in the United States through an importer that is affiliated, and because this review was initiated four years after the publication of the order, we will make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

On February 21, 2003, the Department requested evidence from the respondent to demonstrate that the U.S. purchasers will pay any antidumping duties ultimately assessed on entries during the POR. In its response, submitted on February 28, 2003, Changwon, which is affiliated with the importer of the subject merchandise, stated that it negotiates a duty paid delivered price that includes the antidumping duties, and thus it sets prices so as to pass the cost of the antidumping duties to the customer. In determining whether the antidumping duties have been absorbed by the respondent during the POR we presume that the duties will be absorbed for those sales that have been made at less than normal value (NV). This presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise.

Although Changwon claims that the price charged to the unaffiliated U.S. customer includes duties paid, it provided no evidence that these duties include antidumping duties nor did it provide an agreement between the affiliated importer and the unaffiliated purchaser stating that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. Therefore, we preliminarily find that antidumping duties have been absorbed by POSCO/Changwon/Dongbang on all U.S. sales made through its affiliated importer.

[2] During the POR, Changwon, and not POSCO, was Dongbang's sole supplier of black coil. However, since we continue to treat POSCO and Changwon as a single entity (as we did in the LTFV investigation), this does not change our determination that POSCO/Changwon are affiliated with Dongbang through a close supplier relationship.

Section 201 Duties

The Department notes that merchandise subject to this review is subject to duties imposed under section 201 of the Act (section 201 duties). Because the Department has not previously addressed the appropriateness of deducting section 201 duties from export price and constructed export price, on September 9, 2003 the Department published a request for public comments on this issue (68 FR 53104). All comments are due by October 9, 2003 and rebuttal comments are due October 24, 2003. Since the Department has not made a determination on this issue at this time, for purposes of these preliminary results, no adjustment has been made.

Normal Value Comparisons

To determine whether the respondent's sales of SSWR from Korea to the United States were made at less than NV, we compared the export price (EP) and constructed export price (CEP), as appropriate, to the NV, as described in the ''Export Price,'' ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. We first attempted to compare contemporaneous U.S. and comparison-market sales of products that are identical with respect to the following characteristics: grade, diameter, further processing and coating. Where we were unable to compare sales of identical merchandise, we compared U.S. sales to comparison-market sales of the most similar merchandise based on the above characteristics, which are listed in order of importance for matching purposes.

Export Price

For all reported U.S. sales, other than those made by the U.S. affiliate POSAM, in calculating U.S. price, the Department used EP, as defined in section 772(a) of the Act, because the merchandise was sold, prior to importation, to unaffiliated purchasers in the United States, or to an unaffiliated purchaser for exportation to the United States, and CEP methodology was not otherwise warranted based on the facts on the record. We calculated EP based on the packed, delivered prices charged to unaffiliated customers in the United States or to unaffiliated customers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price, where applicable, for foreign movement expenses (including brokerage and handling and inland freight), international freight, and marine insurance. We added duty drawback received on imported materials, pursuant to section 772(c)(1)(B) of the Act.

Constructed Export Price

For all reported sales by the U.S. affiliate POSAM, in calculating U.S. price, the Department used CEP, as defined in section 772(b) of the Act, because the merchandise was sold, after importation, to unaffiliated purchasers in the United States. We calculated CEP based on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for foreign and U.S. brokerage and handling, foreign and U.S. inland freight, international freight, marine insurance, U.S. duties, and direct and indirect selling expenses to the extent that they are associated with economic activity in the United States in accordance with section 772(d)(1)(B) and (D) of the Act. These deductions included credit expenses. We added duty drawback received on imported materials pursuant to section 772(c)(1)(B) of the Act. Finally, in accordance with section 772(d)(3) of the Act, we made a deduction for CEP profit.

For further details, *see* Calculation Memorandum dated September 30, 2003, on file in the Central Records Unit, Room B-099 of the Main Commerce Building (CRU).

Level of Trade (LOT)

In accordance with section 773(a)(1)(B) of the Act, to the extent practical, we determined NV based on sales in the comparison market at the same LOT as the EP or CEP sales. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale. For CEP sales, it is the level of the constructed sale from the exporter to the importer. The Department adjusts the CEP, pursuant to section 772(d), prior to performing the LOT analysis, as articulated by the Department's regulations at section 351.412. *See Micron Technology, Inc. v. United States*, 243 F.3rd 1301, 1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than the EP or CEP sales, we examined stages in the marketing process and selling activities along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV as provided under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs exist, we obtained information from the collapsed entity POSCO/Changwon/Dongbang about the marketing stages for the reported U.S. and comparison-market sales, including a description of the selling activities performed by POSCO/Changwon/Dongbang for each channel of distribution. In identifying LOTs for EP and comparison-market sales, we considered the selling functions reflected in the starting price before any adjustments. *See* 19 CFR 351.412(c)(1)(i). In identifying LOTs for CEP sales, we considered the selling functions reflected in the starting price, as adjusted under section 772(d) of the Act. *See* 19 CFR 351.412(c)(ii). We expect that, if claimed LOTs are the same, the selling functions and activities of the seller at each level should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

In their questionnaire responses, Changwon and Dongbang reported that, during the POR, they sold the foreign like product in the home market through one channel of distribution and in the United States through one channel of distribution. We examined the selling functions for the collapsed entity POSCO/Changwon/Dongbang and found that the selling functions performed by Changwon and Dongbang in the home market are similar. Also, we found that the selling functions performed by Changwon and Dongbang with respect to the U.S. channels of distribution are similar. Based on the similarity of the selling functions, we have determined that the collapsed entity's sales of SSWR are made at one LOT in the home market and one LOT in the U.S. market. Moreover, we examined the selling functions for the collapsed entity POSCO/Changwon/

Dongbang, and found that the selling functions performed by the collapsed respondent are sufficiently similar in the home market and the United States to consider the LOTs in the two markets to be the same LOT. Therefore, we preliminarily find that there is one LOT in the U.S. and comparison-market, and thus, no LOT adjustment is required for comparison of U.S. sales to comparison-market sales. Moreover, because there is one LOT in the U.S. and comparison market, we have denied the respondent's request for a CEP offset. For further details, *see* Memorandum regarding Level of Trade Analysis dated September 30, 2003 on file in the CRU.

Normal Value

After testing home market viability, whether sales to affiliates were at arm's-length prices, and whether home market sales failed the cost test, we calculated NV as noted in subsection 4, ''Calculation of NV,'' below.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Because the respondents' aggregate volume of home market sales of the foreign like product is greater than five percent of its aggregate volume of U.S. sales of subject merchandise, we determined that the home market is viable for the respondent.

2. Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's length prices were excluded from our analysis because the Department considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's length prices, the Department compared, on a product-specific and quality-specific (*i.e.*, prime and non-prime quality) basis, the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested products, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, the Department determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, the Department was unable to determine that these sales were made at arm's length prices and, therefore, excluded them from our analysis. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, the Department made a comparison to the next most similar product.

3. Cost of Production (COP) Analysis

In the second administrative review of SSWR from Korea, the most recently completed segment of this proceeding, the Department disregarded POSCO/Changwon/Dongbang's sales that were found to have failed the cost test. Accordingly, the Department, pursuant to section 773(b) of the Act, initiated a COP investigation of the respondent for purposes of this administrative review. We conducted the COP analysis as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, for the POR based on the sum of materials and fabrication costs, general and administrative (G&A) expenses, and packing costs.

B. Test of Comparison-Market Sales Prices

As required under section 773(b) of the Act, we compared the weighted-average COPs to the comparison-market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the comparison-market prices, less any applicable movement charges and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of POSCO/Changwon/Dongbang's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of POSCO/Changwon/Dongbang's sales of a given product were made at prices below the COP, we determined that such sales were made in substantial quantities within an extended period of time (i.e., a period of one year). Further, because we compared prices to POR-average costs, we determined that the below-cost prices would not permit recovery of all costs within a reasonable time period, and thus, we disregarded the below-cost sales in accordance with sections 773(b)(1) and (2) of the Act.

We found that for certain products, POSCO/Changwon/Dongbang made home market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sale prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated POSCO/Changwon/ Dongbang's CV based on the sum of POSCO/Changwon/Dongbang's cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COPs included in the calculation of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by POSCO/Changwon/Dongbang in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

4. Calculation of NV

We determined price-based NVs for POSCO/Changwon/Dongbang as follows: we calculated NV based on packed, delivered and ex-factory prices to home market customers. We increased the starting price for duty drawback revenue received from customers, where applicable, and for freight revenue. We made deductions from the starting price for foreign inland freight, where applicable, pursuant to section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale (COS) adjustments to the starting price, where appropriate, for differences in credit and warranty.

We deducted home market packing costs from, and added U.S. packing costs to, the starting price, in accordance with section 773(a)(6)(A) and (B) of the Act. Where appropriate,

we made adjustments to NV to account for differences in the physical characteristics of the merchandise sold in the U.S. and comparison market, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margin exists for the period September 1, 2001, through August 31, 2002:

Manufacturer/Exporter	Margin (percent)
POSCO/Changwon/ Dongbang	1.77

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication date of this notice. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the deadline for filing case briefs. Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on a diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days from the publication date of this notice.

Assessment Rate

Upon completion of this administrative review, the Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. For CEP sales, since the respondent reported the entered values and importer for these sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the entered value of sales used to calculate those duties. Where the importer-specific assessment rate is above *de minimis*, we will instruct the BCBP to assess the importer-specific rate uniformly on all entries made during the POR. For EP sales, since the respondent did not report the entered value for these sales, we have calculated exporter-specific per-unit duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the quantity corresponding to the sales used to calculate those duties. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rate listed above (except that if the rate is *de minimis*, *i.e.*, less than 0.5 percent, a cash deposit rate of zero will be required); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 5.77 percent, which is the ''all others'' rate established in the LTFV investigation (*see Amended Final Determination*). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: September 30, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–25386 Filed 10–6–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–844]

Steel Concrete Reinforcing Bar from The Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: October 7, 2003.

SUMMARY: In response to a request from Dongkuk Steel Mill Corporation Ltd. (''DSM''), the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on steel concrete reinforcing bar (''rebar'') from the Republic of Korea (Korea). The period of review (''POR'') is January 30, 2001 through August 31, 2002.

As discussed below, the Department collapsed DSM and Korea Iron and Steel Co., Ltd. (''KISCO'') into a single entity for purposes of this administrative review. We preliminarily determine that DSM/KISCO made sales at less than normal value during the POR. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Bureau of Customs and Border Protection (''BCBP'') to assess antidumping duties based on the difference between the United States Price (''USP'') and normal value (''NV''). Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Richard Johns or Mark Manning at (202) 482–2305 or (202) 482–5253, respectively, Antidumping and Countervailing Duty Enforcement Group

II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2001, the Department issued an antidumping duty order on rebar from Korea. *See Antidumping Duty Orders: Steel Concrete Reinforcing Bars From Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine*, 66 FR 46777 (September 7, 2001). On September 3, 2002, the Department published a notice of opportunity to request the first administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 56267 (September 3, 2002). On September 30, 2002, in accordance with 19 CFR § 351.213(b), DSM requested an administrative review. On October 24, 2002, the Department published the notice of initiation of this administrative review, covering the period January 30, 2001, through August 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 65336 (October 24, 2002).

On October 18, 2002, the Department issued a questionnaire to DSM. On November 15, 2002, DSM notified the Department that its corporate structure had changed since the less-than-fair-value (''LTFV'') investigation and that it is no longer affiliated with KISCO. DSM stated that it should not be required to submit information regarding KISCO's sales or costs of production, and that it would respond to the Department's questionnaire with only its own data. We received timely responses to Sections A-D of the initial questionnaire in November and December 2002. The Department issued supplemental questionnaires for Sections A-D, in addition to questions regarding the relationship between DSM and KISCO, from January through April 2003. We received timely responses from DSM from February through May 2, 2003.

Because it was not practicable to issue the preliminary results of this review within the normal time frame, on June 3, 2003, we published in the Federal Register our notice of the extension of time limits for these preliminary results. *See Steel Concrete Reinforcing Bars from the Republic of Korea: Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 33105 (June 3, 2003). This extension established the deadline for these preliminary results as September 30, 2003.

On May 7, 2003, the Department released to DSM the results of a query of entry data obtained from the BCBP, and requested that DSM verify that all sales through an affiliated company were included in the sales data set submitted to the Department. In response, on May 14, 2003, DSM submitted additional U.S. sales, some of which had been previously unreported. On May 27, 2003, the petitioner[1] objected to the additional sales contained in DSM's May 14, 2003 letter, stating that such sales constitute untimely submitted new factual information and should be removed from the record. On June 2, 2003, DSM submitted comments objecting to the petitioner's request that the additional sales be stricken from the record. On June 23, 2003, the petitioner rebutted DSM's June 2, 2003 submission.

On August 6, 2003, the Department instructed DSM to remove the additional sales from its May 14, 2003 submission and delete all references to those sales from its June 2, 2003 submission. On August 11, 2003, DSM submitted a letter objecting to the removal of the additional sales it had reported. DSM argued that the rejected information was an appropriate and necessary response to questions posed in the Department's May 7, 2003 letter. On August 12, 2003, DSM submitted redacted versions of its May 14, 2003 and June 2, 2003 letters, as well as a revised version of its May 14, 2003 letter. The revised version of DSM's May 14, 2003 letter contains a reconciliation worksheet which shows that DSM's previously reported sales and the additional sales reported on May 14, 2003, sum to the total quantity of entries identified by the BCBP data query.

After reviewing the arguments contained in DSM's August 11 and August 12, 2003 submissions, the Department has decided to accept DSM's additional U.S. sales, as reported in its revised May 14, 2003 submission, and include them in our margin calculation for purposes of the preliminary determination. *See* DSM's May 14, 2003 submission at Attachment III.On September 12, 2003, the Department collapsed DSM and KISCO into a single entity for the purposes of this administrative review. *See* Memorandum from Thomas F. Futtner, Acting Office Director to Holly A. Kuga, Acting Deputy Assistant Secretary Group II, ''Decision Memorandum: Whether to Collapse Dongkuk Steel Mill Co., Ltd., and Korea Iron and Steel Co., Ltd., Into a Single Entity,'' dated September 12, 2003 (''Collapsing Memorandum''), on file in the Central Records Unit, Room B-099 of the Main Commerce Building (''CRU''). On September 15, 2003, we issued the antidumping questionnaire to KISCO. Since the questionnaire was released to KISCO approximately two weeks before the fully extended deadline for the preliminary results, KISCO's sales and costs of production data are not available for inclusion in these preliminary results. For this reason, the preliminary results are based only upon DSM's data. We will provide the petitioner an opportunity to comment on KISCO's questionnaire responses and will include KISCO's information in our final results of review.

Scope of the Review

The product covered by this administrative review is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Verification

Pursuant to 19 CFR § 351.307, the Department will conduct verification of the information and data submitted by DSM and KISCO prior to the final results of administrative review.

Fair Value Comparisons

To determine whether sales of rebar in the United States were made at LTFV, we compared USP to NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (''the Act''), we calculated monthly weighted-average NVs and compared these to individual U.S. transactions.

Constructed Export Price

We calculated the constructed export price (''CEP'') in accordance with subsection 772(b) of the Act, because the subject merchandise was first sold in the United States by Dongkuk International Inc. (''DKA''), a U.S. seller affiliated with DSM, to a purchaser not affiliated with the producer, DSM. We

[1] The petitioner in this administrative review is the Rebar Trade Action Coalition and its individual members (collectively, the ''petitioner'').

based CEP on the packed prices charged to the first unaffiliated customer in the United States. Pursuant to section 772(c)(1)(B) we increased the starting price by the amounts reported by DSM for duty drawback. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. customs duties, and U.S. brokerage and handling. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and other direct selling expenses), and indirect selling expenses. We also made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. *See* Memorandum from Mark Manning, Senior Import Compliance Specialist, to Ronald Trentham, Acting Program Manager, ''Calculation Memorandum of the Preliminary Results of Administrative Review,'' dated September 30, 2003 (''Preliminary Calculation Memorandum''), on file in the CRU.

Home Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. As DSM's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

It is the Department's practice to remove from our analysis sales to affiliated customers for consumption in the home market which are determined not to be at arm's-length. To test whether these sales were made at arm's-length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR § 351.403(c), and in accordance with our practice, when the prices to the affiliated party are, on average, less than 99.5 percent of the prices to unaffiliated parties, we determine that the sales made to the affiliated party are not at arm's-length. See 19 CFR § 351.403(c).[2] In the instant review, we found that all sales to the single affiliated home market customer passed the arm's-length test and, for this reason, were included in our analysis. See Preliminary Calculation Memorandum.

Cost of Production Analysis

The Department disregarded certain sales made by DSM in the investigation because these sales failed the cost test. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bar from the Republic of Korea*, 66 FR 33526 (June 22, 2001); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars from the Republic of Korea*, 66 FR 8348, 8354 (January 30, 2001). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that sales of rebar in the home market were made at prices below their cost of production (''COP'') in the current review period. Accordingly, pursuant to section 773(b) of the Act, we initiated a cost investigation to determine whether sales made during the POR were at prices below their respective COP.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (''G&A'') and interest expenses. We relied on the COP data submitted by DSM. *See* Preliminary Calculation Memorandum.

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of DSM's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of DSM's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were made: (1) in substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV in accordance with section 773(b)(1) of the Act. We did not use the constructed value (''CV''), as all U.S. sales were matched to home market merchandise.

Normal Value

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We adjusted the starting price for the discount DSM provided to certain home market customers. We made deductions, where appropriate, for foreign inland freight and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR § 351.411. We also adjusted the starting price for differences in circumstances of sale (''COS'') in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR § 351.410. We made a COS adjustment for imputed credit expenses. *See* Preliminary Calculation Memorandum. We also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act. *See* ''Level of Trade and CEP Offset'' section below. Finally, we deducted home-market (''HM'') packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer. Moreover, for CEP sales, we consider

[2] Because this review was initiated before November 23, 2002, the 99.5 percent test applies to this review. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69197 (November 15, 2002).

only the selling activities reflected in the price after the deduction of expenses and profit, pursuant to section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

To determine whether the comparison-market sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV LOT is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(a)(7)(B) of the Act (''the CEP offset provision''). *See, e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we asked DSM to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States. DSM identified two channels of distribution in the home market: (1) direct sales and (2) warehouse sales. For both channels DSM performs similar selling functions such as negotiating prices with customers, setting similar credit terms, arranging freight to the customer, and conducting market research and sales calls. The remaining selling activities did not differ significantly by channel of distribution. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each customer class or channel are sufficiently similar, we determined that one level of trade exists for DSM's HM sales.

For the U.S. market, DSM reported one channel of distribution sales to unaffiliated U.S. customers through DKA, DSM's affiliated U.S. sales company. All of DSM's U.S. sales were CEP transactions and DSM performed the same selling functions in each instance. Therefore, the U.S. market has one LOT.

When we compared CEP sales (after deductions made pursuant to section 772(d) of the Act) to HM sales, we determined that for CEP sales, DSM did not have interaction with customers, did not perform market research, and did not provide inventory maintenance. However, these functions are performed for HM sales. The differences in selling functions performed for home market and CEP transactions indicate that HM sales involved a more advanced stage of distribution than CEP sales. In the home market, DSM provides services normally found further down the chain of distribution which are normally performed by the affiliated reseller in the U.S. market (*e.g.*, interaction with customers, market research).

Based on our analysis, we determined that CEP and the starting price of HM sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to HM sales, we examined whether a LOT adjustment may be appropriate. In this case, DSM sold at one LOT in the home market; therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of DSM's sales of other similar products, and there is no other record evidence upon which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in Korea for DSM is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by DSM. Therefore, we applied the CEP offset to NV.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin exists for the period January 30, 2001 through August 31, 2002:

Manufacturer / Exporter	Weighted Average Margin (percentage)
Dongkuk Steel Mill Co., Ltd./Korea Iron and Steel Co., Ltd.	10.37

The Department will disclose the calculations performed within five days of the date of publication of this notice in accordance with 19 CFR § 351.224(b). An interested party may request a hearing within thirty days of publication. *See* CFR § 351.310(c). The date of any hearing, if requested, will be announced to all interested parties by the Department pursuant to 19 CFR § 351.310(d). The Department will establish a schedule for interested parties to submit case briefs regarding the preliminary results and verification findings. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 5 days after the submission of case briefs. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of these administrative reviews, including the results of our analysis of the issues raised in any such written comments, within 120 days of publication of these preliminary results.

The Department shall determine, and BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR § 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise subject to this review. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. The Department will issue appropriate appraisement instructions directly to BCBP within fifteen days of publication of the final results of review.

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of rebar from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: 1) the cash deposit rate for DSM/KISCO will be the rate established in the final results of this review; 2) for previously reviewed or investigated companies not listed above, the cash deposit rate will

continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 22.89 percent, the ''all others'' rate made effective by the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the Republic of Korea*, 66 FR 33526 (June 22, 2001). The required cash deposits shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 30, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–25382 Filed 10–6–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100103A]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Joint Salmon Technical Team (STT) and Scientific and Statistical Committee (SSC) Salmon Subcommittee will hold a work session to review proposed salmon methodology changes. The Council's Model Evaluation Workgroup (MEW) will hold a work session to review documentation of Fishery Regulation Assessment Models (FRAMs). The work sessions are open to the public.

DATES: The joint STT and SSC Salmon Subcommittee work session will be held Thursday, October 23, 2003 from 9 a.m. to noon. The MEW work session will be held Thursday, October 23, 2003 from 1 p.m. to 5 p.m.

ADDRESSES: The work sessions will be held at the Embassy Suites Hotel, Pine II Room, 7900 NE 82nd Ave., Portland, OR 97220; telephone: 503–460–3000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the joint STT & SSC Salmon Subcommittee work session is to brief the STT and SSC on changes made to or proposed for the Coho FRAM, review the scientific bases for those changes, and compare results from the updated model with those from the previous version. The purpose of the MEW work session is to further develop documentation for the Chinook and Coho FRAM.

Although non-emergency issues not contained in the meeting agendas may come before the these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 2, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–25374 Filed 10–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–356–000]

El Paso Natural Gas Company; Notice of Request for Authorization

October 1, 2003.

Take notice that on September 22, 2003, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado, 80904, filed in Docket No. CP03–356–000 a request pursuant to Sections 157.216(b) and 157.208(b) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA) for authorization to abandon by removal and reconfigure segments of El Paso's 8–⅝ inch Willcox/Safford line (Line 2105), located between milepost (MP) 0+0000 and MP 11+0264, located in Cochise County, Arizona, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

El Paso states the proposed abandonment and reconfiguration is necessary in order to address anomalies discovered in Line 2105 (between MP 0 and MP 11.05) during an internal inspection conducted by El Paso during 2001 and 2002. Any questions concerning this request may be directed to Robert T Tomlinson, Director, Regulatory Affairs Department, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, at (719) 520–3788 or fax (719) 520–4318.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time

for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00006 Filed 10–6–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–580–003, *et al.*]

Midwest Independent Transmission System Operator, Inc., *et al.*; Electric Rate and Corporate Filings

September 30, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER03–580–003 EL03–119–003]

Take notice that on September 26, 2003, the GridAmerica Companies and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) (Applicants) submitted proposed revisions to the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. Applicants state that these revisions supplement the Compliance Filing made by the Applicants on May 30, 2003 in Docket Nos. ER03–580–001 and EL03–119–001.

The Midwest ISO has requested an effective date upon commencement of service over the GridAmerica transmission facilities under the Midwest ISO OATT.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO also states that it will provide hard copies to any interested parties upon request.

Comment Date: October 17, 2003.

2. Craven County Wood Energy Limited Partnership

[Docket No. ER03–1379–000]

Take notice that on September 25, 2003, Craven County Wood Energy Limited Partnership (Craven) tendered for filing a Supplement No. 5 to Rate Schedule FERC No.1. Craven states that the Supplement consists of a letter agreement, dated January 28, 1991, amending an agreement for the sale of power dated December 21, 1983, as subsequently amended by letters dated August 5, 1987, August 1, 1988, August 9, 1988, and June 14, 1989, all previously filed with the Commission. Craven states that a review of its files caused it to be aware of the need to file the January 28, 1991 letter agreement as a Supplement to its previously filed power sales agreement with Carolina Power & Light Company.

Comment Date: October 16, 2003.

3. Southern Company Services, Inc.

[Docket No. ER03–1381–000]

Take notice that on September 24, 2003, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company (Georgia Power), tendered for filing an unexecuted Interconnection Agreement by and between Georgia Power and Live Oaks Company, LLC (Live Oaks) (the Agreement), under Southern Operating Companies' Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5) designated as Service Agreement No. 464. SCS states that the Agreement provides the general terms and conditions for the interconnection and parallel operation of Live Oaks's electric generating facility located near the City of Brunswick, Georgia in Glynn County. SCS also states that the Agreement terminates forty years from the effective date unless extended or terminated earlier by mutual written agreement.

Comment Date: October 15, 2003.

4. American Electric Power Service Corporation

[Docket No. ER03–1382–000]

Take notice that on September 24, 2003, American Electric Power Service Corporation (AEPSC) as agent for Public Service Company of Oklahoma (PSO), tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, Notices of Cancellation of Service Agreements between PSO and various entities under PSO's FERC Electric Tariff, First Revised Volume No. 5. AEPSC requests an effective date of September 1, 2003 for the cancellations.

AEPSC states that it has served copies of the filing upon the parties to the cancelled service agreements and the affected state regulatory commissions.

Comment Date: October 15, 2003.

5. DeSoto County Generating Company, L.L.C.

[Docket No. ER03–1383–000]

Take notice that on September 25, 2003, Progress Energy, Inc. (Progress Energy), on behalf of DeSoto County Generating Company, L.L.C. (DeSoto), tendered for filing a request for market-based rate (MBR) authority for DeSoto. Progress Energy requests that the Commission make DeSoto's MBR tariff effective on November 25, 2003, sixty days after the date of this filing. Progress Energy also requests waiver for DeSoto from the Commission's accounting, reporting and other requirements under Parts 41,101 and 141 of the Commission's regulations.

Progress Energy states that a copy of the filing was served on each entity operating a control area in Peninsular Florida and the Florida Public Service Commission.

Comment Date: October 16, 2003.

6. Tampa Electric Company

[Docket No. ER03–1384–000]

Take notice that on September 25, 2003, Tampa Electric Company (Tampa Electric) tendered for filing amendments to Appendices Card D to its Market-Based Sales Tariff. The amendments lower the credit rating thresholds in Appendix C and update the statement of rates for services under Tampa Electric's open access transmission tariff in Appendix D. Tampa Electric proposes that the amendments be made effective on September 25, 2003.

Tampa Electric states that copies of the filing have been served on the customers under Tampa Electric's Market-Based Sales Tariff and the Florida Public Service Commission.

Comment Date: October 16, 2003.

7. Exelon Corporation

[Docket No. ER03–1385–000]

Take notice that on September 25, 2003, Exelon Corporation submitted for filing revised and redated Network Service and Network Operating Agreements between Commonwealth Edison Company and the Cities of Batavia and St. Charles, Illinois.

Comment Date: October 16, 2003.

8. Cleco Power LLC

[Docket No. ER03–1386–000]

Take notice that on September 25, 2003, Cleco Power LLC (Cleco) filed changes to Sections 3, 13.7, 14.5, and 15.7 of its Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 14, 22, 24, and 26 to incorporate charges for unauthorized use of transmission and ancillary services. Cleco states that it is submitting First Revised Sheet Nos. 14, 22, 24, and 26 and Original Sheet Nos. 14A, 22A, 24A, and 26A to its FERC Electric Tariff, Original Volume No. 1 and proposes that they be made effective October 1, 2003.

Comment Date: October 16, 2003.

9. LG&E Capital Trimble County LLC

[Docket No. ER03–1387–000]

Take notice that on September 25, 2003, LG&E Capital Trimble County LLC tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, in order to reflect the cancellation of its Market Rate Tariff, designated as Rate Schedule FERC No. 2, Original Sheet Nos. 1–4, originally accepted for filing in Docket No. ER02–1756–000.

Comment Date: October 16, 2003.

10. Electrion, Inc.

[Docket No. ER03–1388–000]

Take notice that on September 25, 2003, Electrion, Inc. submitted for filing a Notice of Cancellation of its Market-based Rate Authority in Docket No. ER98–3171–000 issued on June 29, 1998. Electrion, Inc. is requesting an effective date of October 1, 2003.

Comment Date: October 16, 2003.

11. Progress Energy, Inc., Carolina Power & Light Company, Progress Ventures, Inc., Effingham County Power, LLC, MPC Generating, LLC, Rowan County Power, LLC, Walton County Power, LLC, Washington County Power, LLC

[Docket No. ER03–1389–000]

Take notice that on September 25, 2003, Progress Energy, Inc., (Progress Energy) on behalf of certain of its subsidiaries including: Carolina Power & Light Company; Progress Ventures, Inc.; Effingham County Power, LLC; MPC Generating, LLC (formerly known as Monroe Power Company); Rowan County Power, LLC; Walton County Power, LLC; and Washington County Power, LLC (collectively, the Progress Energy Affiliates), tendered for filing a request for clarification of the Progress Energy Affiliates' Market-based Rate (MBR) authority within Peninsular Florida, with the exception of the Florida Power Corporation (FPC) service territory. Progress Energy also submitted revised MBR tariffs for each of the Progress Energy Affiliates which describe their authority to make MBR sales within Peninsular Florida, with the exception of FPC service territory.

Progress Energy states that copies of the filing were served on the official service lists in the above-captioned proceedings, each entity operating a control area in Peninsular Florida, and the Florida Public Service Commission.

Comment Date: October 16, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00007 Filed 10–6–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000 and RT01–95–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, New York Independent System Operator, Inc. ; Notice of Technical Conference

October 1, 2003.

As announced in the Notice of Technical Conference issued on August 15, 2003, a technical conference will be held on October 20, 2003, to discuss with state regulators and market participants the timetables for addressing wholesale power market design issues and to explore ways to provide flexibility the region may need to meet the requirements of the final rule in this proceeding. Members of the Commission will attend and participate in the discussion.

The conference will focus on the issues identified in the agenda, which is appended to this notice as Attachment A. However, participants/stakeholders may present their views on other important issues that relate to the development of the Wholesale Power Market Platform.

The conference will begin at 1 p.m. Eastern Time and will adjourn at about 5 p.m. Eastern Time at the offices of Consolidated Edison Company, 4 Irving Place, 19th floor auditorium, New York City, New York. The conference is open for the public to attend. Please note: to accommodate security regulations for the Consolidated Edison building, we are asking all attendees to preregister for the conference by close of business on Thursday, October 16 on-line at *http://www.ferc.gov/whats-new/registration/smd_1020-form.asp*.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity to remotely listen to the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on ''FERC.'' If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov*.

Magalie R. Salas,

Secretary.

Appendix A—Agenda

1–1:20 p.m. Opening Remarks
Pat Wood, III, Chairman, Federal Energy Regulatory Commission
William Flynn, Chairman, New York Public Service Commission
Joe Oates, Consolidated Edison, Chairman, Management Committee, New York ISO
1:20–1:30 p.m. Summary of NYISO Issues
William J. Museler, President and CEO, New York ISO
1:30–2:15 p.m. Panel I Discussion:
Transmission Planning and Incentives for Infrastructure Development
Generator Owners:
• Glenn Haake, General Counsel, Independent Power Producers of New York Inc.
Public Power/Environment:
• Jim Parmelee, Director, Long Island Power Authority End Use Consumers:
• Mike Mager, Counsel, Couch White LLP, representing Multiple Intervenors
Transmission Owners:
• Masheed Rosenqvist, Vice President—Director Transmission Regulation and Policy U.S., National Grid
• Stuart Nachmias, Project Manager, Consolidated Edison Company of New York, Inc.
Other Suppliers:
• Matt Picardi, General Manager—Regulatory Affairs, Coral Power LLC
2:15–3 p.m. Panel II Discussion:
Pancaked Transmission Rates and Seams Issues
Generator Owners:
• Mark Younger, Vice President, Slater Consulting, representing Indeck and Fortistar
• William Roberts, Senior Counsel, Edison Mission Marketing & Trading, Inc.
Public Power/Environment:
• Tom Rudebusch, Counsel, Duncan Weinberg Genzer & Pembroke, representing City of Jamestown Public Utilities
End Use Consumers:
• Tariq Niazi, Chief Economist, New York State Consumer Protection Board
Transmission Owners:
• Ray Kinney, Project Manager, New York State Electric & Gas
Other Suppliers:
• Peter Brown, Brown Olson & Wilson P.C., representing Aquila
3–3:15 p.m. Break
3:15–4 p.m. Panel III Discussion: Regional Decision-making:
NYISO Governance and State/Regional Committees
Generator Owners:
• Susann Felton, Director, Regulatory Affairs, Mirant Americas Energy Marketing LP
Public Power/Environment:
• Bob Hiney, Executive Vice President, Power Generation, New York Power Authority
End Use Consumers:
• Mike Delaney, Energy Policy Advocate, City of New York
Transmission Owners:
• Paul Gioia, Counsel, LeBoeuf Lamb Greene & MacRae LLP
Other Suppliers:
• Dan Allegretti, Vice President, Regulatory Origination, Constellation
4–5 p.m. Discussion with Regulators and Industry Representatives

[FR Doc. E3–00004 Filed 10–6–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2030–036]

Portland General Electric and the Confederated Tribes of the Warm Springs Reservation of Oregon; Notice of Meeting To Discuss Update on Pelton Round Butte Hydroelectric Project Collaborative Settlement Process

October 1, 2003.

a. *Date and Time of Meeting:* Wednesday, October 15, 2003 at 11 a.m. Eastern Daylight Saving Time.

b. *Place:* Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC.

c. *FERC Contact:* Nicholas Jayjack.

d. *Purpose of Meeting:* Portland General Electric has requested a meeting with Commission staff to update staff on the status of ongoing settlement talks and to request procedural advice regarding the Pelton Round Butte Hydroelectric Project. The project is located on the Deschutes River in north central Oregon.

e. *Proposed Agenda:* (1) Introduction of participants; (2) Portland General Electric presentation on the purpose of the meeting; (3) Discussion; and (4) Conclusion.

f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate. Please call Nicholas Jayjack at (202) 502–6073 by October 8, 2003, to RSVP and to receive instructions on how to participate in person or by phone.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00005 Filed 10–6–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7569–5]

Science Advisory Board Staff Office; Advisory Council on Clean Air Compliance Analysis; Notification of Upcoming Public Teleconferences for Its Subcommittees and Special Panel and a Public Meeting for Its Special Panel and Air Quality Modeling Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board Staff Office is announcing a public meeting and a public teleconference of the Advisory Council on Clean Air Compliance Analysis Special Council Panel for the Review of the Third 812 Analysis (Council Special Panel). It is also announcing a public meeting and a public teleconference of the Council's Air Quality Modeling Subcommittee and a public teleconference for the Council's Health Effects Subcommittee.

DATES: October 15, 2003. A public teleconference for the Health Effects Subcommittee (HES) will be held from 11 a.m. to 12:30 p.m. (Eastern Time).

October 23, 2003. A public teleconference call meeting for the Council Special Panel will be held from 11 a.m. to 12:30 p.m. (Eastern Time).

October 24, 2003. A public teleconference call meeting for the Air Quality Modeling Subcommittee (AQMS) will be held from 11 a.m. to 12:30 p.m. (Eastern Time).

November 5–6, 2003. A public meeting for the Council Special Panel will be held from 8:30 a.m. to 6 p.m. November 5, 2003 and from 8:30 a.m.to 5 p.m on November 6, 2003 (Eastern Time).

November 7, 2003. A public meeting for the AQMS will be held from 8:30 a.m. to 5 p.m on November 7, 2003 (Eastern Time).

ADDRESSES: The meeting location for the November 5–6, 2003 meeting of the Council Special Panel and for the November 6–7, 2003 meeting of the AQMS will be in Washington, DC. The meeting location will be announced on the SAB website, *http://www.epa/sab* in advance of the meeting. Participation in the teleconference meetings will be by teleconference only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the teleconference meeting may contact Ms. Sandra

Friedman, EPA Science Advisory Board Staff Office, at telephone/voice mail: (202) 564–2526; or via e-mail at: *friedman.sandra@epa.gov,* or Ms. Delores Darden, EPA Science Advisory Board Staff Office at telephone/voice mail: (202) 564–2282; or via e-mail at *darden.delores@epa.gov.* Any member of the public wishing further information regarding the Council Special Panel or the Council's Subcommittees may contact Dr. Angela Nugent, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4562; or via e-mail at *nugent.angela@epa.gov.* General information about the SAB can be found in the SAB web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is given that the Council Special Panel and the AQMS will each hold a public meeting and the HES will hold a public teleconference call, as described above, to advise the Agency on its plan to develop the third in a series of statutorily mandated comprehensive analyses of the total costs and benefits of programs implemented pursuant to the Clean Air Act.

Background on the Council Special Panel, the AQMS, and this advisory project was provided in a Federal Register notice published on February 14, 2003 (68 FR 7531–7534).

The Council Special Panel and the Council subcommittees will be providing advice on the review document, ''Benefits and Costs of the Clean Air Act 1990–2020; Revised Analytical Plan for EPA's Second Prospective Analysis'' currently found at the following website, maintained by EPA's Office of Air and Radiation at: *http://www.epa.gov/oar/sect812/* under the link ''Study Blueprint and Charge Questions Electronic Copy.'' This link provides electronic access to the Revised Analytical Plan, the ''change pages'' given to the Council in July 2003, and the detailed review charge questions.

The public meeting for the Council Special Panel, described above is planned for the Council to provide advice to the Agency on remaining charge questions related to its review of the Revised Analytical Plan for EPA's Second Prospective Analysis. These charge questions include the Agency's plans for valuation and its plans for addressing uncertainties associated with the analysis.

The public teleconference for the Council Special Panel is planned to prepare the Council for its public meeting and to discuss the Council Special Panel draft report ''Interim Installment: Review of the Revised Analytical Plan for EPA's Second Prospective Analysis'' posted on the SAB website as a draft report (consult the following page: *http://www.epa.gov/science1/drrep.htm*).

The purpose of the public meeting for the AQMS is for the AQMS to provide advice on the Agency's plans for air quality modeling.

The public teleconference for the AQMS, also described above, is planned to prepare the AQMS for its public meeting, which will focus on the Agency's plans for air quality modeling.

The purpose of the public teleconference for the HES is to discuss a draft report entitled ''Advisory on Plans for Health Effects Analysis in the Analytical Plan for EPA's Second Prospective Analysis—Benefits and Costs of the Clean Air Act, 1990–2020,'' developed during the HES public meeting on August 28–28, 2003. That meeting was previously announced in the **Federal Register** on July 30, 2003 (68 FR 44766–44767). The HES draft report will be posted on the SAB website (on the special page for Draft Reports at *http://www.epa.gov/science1/drrep.htm*) in advance of the meeting.

Agendas for the public meetings and teleconferences will be posted on the SAB website ten days before the dates of those events.

Procedures for Providing Public Comment

It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) identified above at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact Dr. Nugent at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 30, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–25404 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7569–6]

Science Advisory Board Staff Office; Notification of a Consultative Meeting of the Radiation Advisory Committee of the Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the Science Advisory Board's Radiation Advisory Committee (RAC). The SAB RAC will conduct a second consultation regarding the Multi Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) supplement dealing with the Multi Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME).

DATES: *October 21, 2003:* 9 a.m. to 5 p.m. eastern standard time.

October 22, 2003: 8:30 a.m. to no later than 3:30 p.m. eastern standard time.

ADDRESSES: The meeting location for this face-to-face meeting of the RAC will be in the Washington, DC, metropolitan area and will be announced on the SAB Web site, *http://www.epa.gov/sab*) in advance prior to the meeting. Any member of the public wishing to provide comment should contact the Designated Federal Officer as indicated below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the SAB or the RAC may contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board Staff Office (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4557; or via e-mail at *kooyoomjian.jack@epa.gov*. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Summary: The EPA SAB Staff Office is announcing that the Radiation Advisory Committee (RAC), a standing committee of the SAB will conduct a second consultation regarding the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) supplement dealing with the Multi-Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME). The first consultation took place on February 25 through 27, 2003 (see 68 FR, 6914-6915, February 11, 2003). The RAC will also receive an update on EPA's Office of Radiation and Indoor Air (ORIA) and the federal MARSSIM Work Group activities, receive program updates from ORIA, as well as plan other committee business for the balance of the fiscal year.

The Committee is to provide advice to the Agency as part of the SAB mission established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This committee will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies.

Background: The RAC had previously given advice to the federal MARSSIM Work Group pertaining to the MARSAME supplement on a variety of issues, including advice on better definition of the problems and issues, better specification on monitoring and measurement technologies and a discussion on a variety of topics and approaches. This consultative advice included development of scenarios and modeling technology that could be used as a tool to guide sampling approaches to be considered by the federal MARSSIM Work Group as they develop the MARSAME supplement.

Charge to the Panel: The SAB's RAC was asked to provide a second round of consultative advice on the technical approach and to provide suggestions for additional approaches to the problem, and to comment on any technical issues that the federal MARSSIM Work Group might encounter in development of the MARSSIM Supplement dealing with Materials and Equipment (MARSAME).

Further Information: The SAB Staff Office will re-post the names and biosketches for members of the RAC on the SAB Web site for examination by the interested public and will provide copies of the biosketches at the public meeting. Additional information regarding this advisory meeting, such as the agenda and this FR notice for the meeting can be found at the SAB Web site at *http://www.epa.gov/sab.* Since this is a consultation, there are no review or background documents posted on the SAB website.

Procedures for Providing Public Comment. It is the policy of the EPA SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at the SAB RAC meeting will not be repetitive of previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Officer (DFO) in writing (email, fax or mail) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Definition: A SAB balanced review panel: For the EPA SAB, A balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspective (which, among other factors, can be influence by work history and affiliation), and the collective breadth of expertise to adequately address the charge. Information considered in the selection of the panel, include information provided by the public, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) scientific credibility and impartiality; and (e) ability to work constructively and effectively in committees.

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact Dr. K. Jack Kooyoomjian at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 30, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–25403 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0054; FRL–7329–7]

Forum on State and Tribal Toxics Action; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the meeting of the Forum on State and

Tribal Toxics Action (FOSTTA) to collaborate on environmental protection and toxic chemical issues. The Chemical Information and Management Project and the Tribal Affairs Project, components of FOSTTA, will be meeting October 20-21, 2003. The meeting is being held to provide the participants of the two projects an opportunity to have in depth discussions on issues concerning the environment and human health, which are affecting the States and Indian country. This notice announces the location and times for the meeting and sets forth some tentative agenda topics. EPA invites all interested parties to attend the public meeting.

DATES: The two projects will meet concurrently on October 20, 2003, from 10 a.m. to 5 p.m., and October 21, 2003, from 8 a.m. to noon. A plenary session is being planned for the participants on Monday, October 20,

Requests to participate in the meeting, identified by docket ID number OPPT–2003–0054, must be received on or before October 16, 2003.

ADDRESSES: The meeting will be held at the Washington Court Hotel, 525 New Jersey Ave., NW., Washington, DC.

Requests to participate in the meeting may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Darlene Harrod, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8814; fax number: (202) 564–8813; e-mail address:*harrod.darlene@epa.gov.*

Christine Eppstein, Environmental Council of the States, 444 North Capitol Street, NW., Suite 445, Washington, DC 20001; telephone number: (202) 624–3661; fax number: (202) 624–3666; e-mail address: ceppstein@sso.org.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in FOSTTA and hearing more about the perspectives of the States and Tribes on EPA programs and information exchange regarding important issues related to human health and environmental exposure to toxics. Potentially affected entities may include, but are not limited to:

- States and federally recognized tribes.
- State, Federal, and local environmental and public health organizations.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2003–0054. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

The Toxic Substances Control Act, 15 U.S.C. 2609 section 10(g), authorizes EPA and other Federal agencies to establish and coordinate a system for exchange among Federal, State, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures. Through FOSTTA, the Chemical Information and Management Project (CIMP) focuses on EPA's chemical program and works to develop a more coordinated effort involving Federal, State, and Tribal agencies. The Pollution Prevention Project (P2) promotes the prevention ethic across society, helping companies incorporate P2 approaches and techniques and integrating P2 into mainstream environmental activities at both the Federal level and among the States. The Tribal Affairs Project (TAP) concentrates on chemical and prevention issues that are most relevant to the Tribes, including lead control and abatement, Tribal traditional/subsistence lifeways, and hazard communications and outreach. FOSTTA's vision is to reinvigorate the projects, focus on major policy-level issues, recruit more senior State and Tribal leaders, increase outreach to all 50 States and some 560 federally recognized tribes, and vigorously seek ways to engage the States and Tribes in ongoing substantive discussions on complex and oftentimes controversial environmental issues that States and Tribes resolve at their respective levels of government. In January 2002, the Environmental Council of the States (ECOS), in cooperation with the National Tribal Environmental Council (NTEC), was awarded the new FOSTTA cooperative agreement. ECOS, NTEC, and EPA's Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meetings. As part of a cooperative agreement, ECOS facilitates ongoing efforts of the State and Tribal leaders and OPPT to increase understanding and improve collaboration on toxics and pollution prevention issues and to continue a dialogue on how Federal environmental programs can best be implemented among the States, Tribes, and EPA.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical persons, listed under **FOR FURTHER INFORMATION CONTACT.** Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number OPPT–2003–0054, must be received on or before October 16, 2003.

IV. The Meeting

In the interest of time and efficiency, the meetings are structured to provide maximum opportunity for State, Tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. The FOSTTA representatives and EPA will collaborate on environmental protection and prevention issues. The tentative agenda items identified by the States and the Tribes follow:

1. Tribal environmental indicators project.
2. Risk Screening Environmental Indicators model.
3. OPPTS Tribal Strategy.
4. High Production Volume (HPV) Challenge Program and data base update.
5. Practical and conceptual aspects of environmental indicators.

List of Subjects

Environmental protection, Chemical information and management.

Dated: September 30, 2003.

Barbara Cunningham,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–25405 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting ; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 9, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—September 11, 2003 (Open and Closed)

B. Reports

- Corporate/Non-corporate Approvals Report.
- Financial Institution Rating System (FIRS)—Liquidity Discussion.
- Strategic Plan—Third Quarter Goal Status Report.
- White Paper on Governance, Conflict of Interest, Compensation Disclosure, and Audit Committee Standards.

C. New Business—Other

- FCA Draft Strategic Plan for Fiscal Years 2003–2008.

Closed Session*

Reports

- East Carolina Farm Credit, ACA Class A Cumulative Preferred Stock.

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

Dated: October 3, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–25556 Filed 10–3–03; 3:05 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 25, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 6, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*; or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0310.

Title: Cable Community Registration, FCC Form 322.

Form Number: FCC 322.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; not-for-profit institutions.

Number of Respondents: 316.

Estimated Time Per Response: 30 minutes.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 158 hours.

Total Annual Costs: $15,800.

Needs and Uses: On March 13, 2003, the Commission adopted a Report and Order (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms,*

Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service, FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Section 76.1801, cable operators will be required to file FCC Form 322 with the Commission prior to commencing operation of a community unit. FCC Form 322 will collect biographical information about the operator and system as well as a list of broadcast channels carried on the system. This form will replace the requirement that cable operators send a letter containing approximately the same information.

OMB Control Number: 3060–XXXX.

Title: Operator, Mail Address, and Operational Information Changes, FCC Form 324.

Form Number: FCC 324.

Type of Review: New collection.

Respondents: Business and other for-profit entities; not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time Per Response: 10 minutes to 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 2,500 hours.

Total Annual Costs: None.

Needs and Uses: On March 13, 2003, the Commission adopted a Report and Order (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Section 76.1610, cable operators must notify the Commission of changes in ownership information or operating status within 30 days of such change using FCC Form 324. FCC Form 324 will cover a variety of changes related to cable operators, replacing the requirement of a letter containing approximately the same information. Every Form 324 filing will require biographical information about the operator and system—the additional information required depending largely upon the nature of the change.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–25301 Filed 10–6–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 17, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 6, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*; or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0113.

Type of Review: Extension of a currently approved collection.

Title: Broadcast EEO Program Report, FCC Form 396.

Form Number: FCC 396.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 2,000.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: Recordkeeping; Renewal reporting requirement.

Total Annual Burden: 3,000 hours.

Total Annual Cost: $100,000.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new rules reinstate the requirement that broadcast licensees file the FCC Form 396 at the time they file for renewal of license. The new EEO rules also ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. Among other things, the Second R&O affords broadcasters with five or more full-time employees maximum flexibility in designing EEO programs while ensuring broad dissemination of full-time employment opportunities. These broadcasters must file annually an EEO public file report detailing their outreach efforts. In addition, licensees must include a narrative statement demonstrating how the station achieved an inclusive outreach in the prior two years and report the status of any employment discrimination complaints.

OMB Control Number: 3060–0120.

Type of Review: Extension of a currently approved collection.

Title: Broadcast Equal Employment Opportunity Model Program Report, FCC Form 396–A.

Form Number: FCC 396–A.

Respondents: Business or other for-profit entity; not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 5,000 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/*

DC/DE Broadcasters Association v. *FCC.* The new rules reinstate the requirement that broadcast licensees file the FCC Form 396–A at the time they file applications for construction permits, or assignments or transfers of license. The new EEO rules also ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. While FCC Form 396–A remains almost entirely the same as the form used under the rules adopted in 2000, the Second R&O also builds in flexibility for licensees to implement a program in compliance with the new rules, *i.e.,* it allows for a range of community outreach programs to those interested in broadcast careers, and broadcasters with five or more full-time employees may list recruitment sources they plan to use.

OMB Control Number: 3060–0212.

Type of Review: Extension of a currently approved collection.

Title: Section 73.2080, Equal Employment Opportunities (EEO Rule).

Form Number: N/A.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 10,825.

Estimated Time Per Response: 42 hours.

Frequency of Response: Recordkeeping; Annual reporting requirement.

Total Annual Burden: 454,650 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new EEO rules ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. Specifically, the Second R&O adopts EEO recordkeeping and reporting requirements; specifies which EEO materials must be kept in the public inspection file; and requires all broadcasters to adhere to the EEO rules' general anti-discrimination provisions. Only station employment units with five or more full-time employees are subject to the EEO program provisions. Among other requirements, broadcasters must widely distribute job vacancy information and provide full-time job vacancy information to requesting organizations. Broadcasters must also retain records to demonstrate that they have recruited for all full-time permanent positions, *i.e.,* full-time vacancy filled, listings of recruitment sources, dated copies of advertisements, etc., and place such types of records annually in their local public inspection file.

OMB Control Number: 3060–0349.

Type of Review: Extension of a currently approved collection.

Title: Equal Employment Opportunity Requirements.

Form Number: N/A.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 2,125.

Estimated Time Per Response: 42 hours.

Frequency of Response: Recordkeeping; Annual and five year reporting requirements.

Total Annual Burden: 89,250 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* Among other things, the Second R&O adopts several EEO recordkeeping and reporting requirements. It specifies which EEO materials must be kept in the public inspection file. All multi-channel video program distributor (MVPD) employment units with six or more full-time employees are subject to EEO program provisions and must disseminate employment information widely. These MVPDs must also retain records to demonstrate they have recruited for all full-time permanent positions and must place a listing of all full-time vacancies filled and recruitment sources used for each vacancy for the preceding year in their EEO records file.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–25302 Filed 10–6–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–53D (Auction No. 53); DA 03–2354]

Auction of Licenses in the Multichannel Video Distribution and Data Service (MVDDS) Rescheduled for January 14, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of MVDDS licenses and announces that the auction has been rescheduled for January 14, 2004. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 53 is scheduled to begin on January 14, 2004.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Legal questions: Brian Carter at (202) 418–0660, or General auction questions: Roy Knowles or Barbara Sibert at (717) 338–2888. Media Contact: Press inquiries: Chelsea Fallon at (202) 418–0660. Public Safety and Private Wireless Division: Legal questions: Jennifer Burton at (202) 418–0680, or Technical questions: Michael Pollak at (202) 418–0680 or Steve Buenzow at (717) 338–2646.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 53 Procedures Public Notice* released on August 28, 2003. The complete text of the *Auction No. 53 Procedures Public Notice,* including attachments, as well as related Commission documents, are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 53 Procedures Public Notice* and related Commission documents 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.* When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 02–116 for the *Second Report and Order*). The *Auction No. 53 Procedures Public Notice* and related documents are also

available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/53/.*

I. General Information

A. Introduction

1. The *Auction No. 53 Procedures Public Notice,* announces that the auction of licenses in the Multichannel Video Distribution and Data Service (''MVDDS'') (Auction No. 53) has been rescheduled for January 14, 2004. In addition, the Wireless Telecommunications Bureau (''Bureau'') announces the procedures and minimum opening bids for this auction. On January 30, 2003, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices and/or minimum opening bids and the procedures to be used in Auction No. 53. The Bureau received one comment and one reply comment in response to the *Auction No. 53 Comment Public Notice,* 68 FR 6167 (February 6, 2003).

i. Background

2. On April 15, 2003, the Commission released the *Second Further Notice of Proposed Rule Making,* 68 FR 19486 (April 21, 2003), which sought further comment on the appropriate service area definition for MVDDS and on whether the build out requirement for this service should be modified. On July 7, 2003, the Commission released the *Third Report and Order,* 18 FCC Rcd 13468 (2003), in which it decided to license MVDDS on the basis of Designated Market Areas (''DMAs'') rather than Component Economic Areas (''CEAs'') and adopted a five-year build out requirement.

3. MVDDS licensees may provide any digital fixed one-way non-broadcast service including direct-to-home/office wireless service. Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path. MVDDS providers will share the 12.2–12.7 GHz band on a co-primary basis with non-geostationary satellite orbit (''NGSO'') fixed-satellite services (''FSS'') and on a non-harmful interference basis with incumbent Direct Broadcast Satellite (''DBS'') providers. The technical criteria for sharing established in the *MVDDS Second Report and Order,* 67 FR 43031 (June 26, 2002), ET Docket No. 98–206, released May 23, 2002, are designed to protect NGSO FSS and DBS operations from harmful interference.

ii. Licenses To Be Auctioned

4. Auction No. 53 will offer 214 licenses based on DMAs and FCC-defined DMA-like service areas encompassing the United States, Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. The 214 service areas are based on the 210 DMAs delineated by Nielsen in its publication entitled ''U.S. Television Household Estimates'' dated September 2002 (which lists estimates of television households ''as of January 2003'' and can be found at Nielsen's Web site at *http://www.nielsenmedia.com*) plus the following four FCC-defined service area additions: Alaska—Balance of State (all geographic areas of Alaska not included in Nielsen's three DMAs for the state: Anchorage, Fairbanks, and Juneau), Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. Potential applicants should note that the boundaries of the DMA-based service areas of the 214 licenses offered in Auction No. 53 will not change, even if Nielsen alters the boundaries of its DMAs in the future, as it has in the past. Each license will authorize the use of one block of unpaired spectrum in the 12.2–12.7 GHz band.

5. Applicants should note that Nielsen owns the copyright to the DMA listing. The Commission's assignment of MVDDS licenses will not confer on applicants or licensees the right to use Nielsen's DMA mark, regions, or data, and such right must be obtained from Nielsen. In addition, the Commission does not have the right to republish DMA regions or data. Therefore, the Commission will not provide the populations, counties, or a map of DMAs to applicants for Auction No. 53 either before or during the auction. Applicants wishing to obtain such DMA data and maps will need to acquire them from Nielsen.

6. A complete list of the licenses available in Auction No. 53 is included in Attachment A of the *Auction No. 53 Procedures Public Notice.* The characteristics of these licenses are shown in the following table:

Frequencies	Bandwidth	Geographic Area Type	No. of Licenses
12.2–12.7 GHz	500 MHz	DMA	214

B. Rules and Disclaimers

i. Relevant Authority

7. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to MVDDS contained in title 47, part 101, of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1, of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, ''terms'') contained in the *Auction No. 53 Procedures Public Notice;* the *Auction No. 53 Comment Public Notice;* and the *Part 1 Fifth Report and Order,* 65 FR 52323 (August 29, 2000), as well as prior and subsequent Commission proceedings regarding competitive bidding procedures.

8. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion

9. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in

the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.

10. Applicants for licenses in any of the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the applicants he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.,* law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

11. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. In Auction No. 53, for example, the rule will apply to any applicants that apply for the same DMA-based service area. In addition, applicants that apply to bid for all markets will be precluded from communicating with all other applicants until after the down payment deadline. However, all applicants may enter into bidding agreements before filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering any of the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

12. In addition, § 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, §§ 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

13. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 53 Procedures Public Notice.*

iii. Interference Protection

14. Among other licensing and technical rules, MVDDS licensees must comply with the interference protection and coordination requirements set forth in §§ 101.105, 101.1421, and 101.1440 of the Commission's rules. Generally, §§ 101.105, 101.1421, and 101.1440 establish standards for protection of co-primary NGSO FSS earth stations, incumbent and adjacent area licensees and co-primary DBS earth stations. MVDDS shall be licensed on a non-harmful interference co-primary basis to existing DBS operations and on a co-primary basis with NGSO FSS stations in this band. MVDDS licensees must also protect and/or develop sharing agreements with neighboring licensees.

a. Incumbent Licensees

15. Terrestrial private operational fixed point-to-point stations in the 12.2–12.7 GHz band which were licensed prior to MVDDS are incumbent point-to-point stations. However, only those stations licensed as public safety must be protected from harmful interference caused by later MVDDS entrants in the 12.2–12.7 GHz band. MVDDS operators have the responsibility of resolving any harmful interference problems that their operations may cause to these public safety incumbent point-to-point operations in the 12.2–12.7 GHz band. To aid potential bidders, a list of public safety incumbents in this band can be found at Appendix I to the MVDDS *Second Report and Order.*

b. Canadian and Mexican Border Regions

16. MVDDS systems in the United States within 56 km (35 miles) of the Canadian and Mexican border will be granted conditional licenses, until final international agreements are approved. MVDDS systems may not cause harmful interference to stations in Canada or Mexico. No stations are allowed within 5 miles of the borders.

c. Quiet Zone

17. MVDDS stations must protect the radio quiet zones. Stations are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating.

iv. Due Diligence

18. Potential applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 53.

19. Potential applicants also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority (''STA''), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 53, may be commenced, or may be pending, or may be subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 53. In addition, although the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

20. In addition, potential applicants may research the licensing database for the Wireless Telecommunications Bureau on the Internet in order to determine which frequencies are already licensed to incumbent licensees. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated

into the database. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid.

21. Licensing records for terrestrial private operational fixed point-to-point public safety are contained in the Bureau's Universal Licensing System (''ULS'') and may be researched on the Internet at *http://wireless.fcc.gov/uls.* Potential applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the ''?'' button at the upper right-hand corner of the License Search screen.

22. Potential applicants should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via e-mail at *ulscomm@fcc.gov.* The hotline is available to assist with questions Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

v. Bidder Alerts

23. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

24. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 53 to deceive and defraud unsuspecting investors.

25. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 53 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

vi. National Environmental Policy Act Requirements

26. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (''NEPA''). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility.

C. Auction Specifics

i. Auction Date

27. The auction will begin on Wednesday, January 14, 2004. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

28. Auction No. 53—Multichannel Video Distribution and Data Service

iii. Bidding Methodology

29. The bidding methodology for Auction No. 53 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

30. The following is a list of important dates related to Auction No. 53:

Auction Seminar	October 29, 2003.
Short-Form Application (FCC FORM 175) Filing Window Opens.	October 29, 2003; 12 p.m. ET.
Short-Form Application (FCC FORM 175) Filing Window Deadline.	November 12, 2003; 6 p.m. ET.
Upfront Payments (via wire transfer).	December 8, 2003; 6 p.m. ET.
Mock Auction	January 9, 2004.
Auction Begins	January 14, 2004.

v. Requirements For Participation

31. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, November 12, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, December 8, 2003.
- Comply with all provisions outlined in the *Auction No. 53 Procedures Public Notice.*

vi. General Contact Information

32. The following is a list of general contact information related to Auction No. 53:

General Auction Information: General Auction Questions, Seminar Registration—FCC Auctions Hotline, (888) 225–5322, Press Option #2 or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET, Monday through Friday.

Auction Legal Information: Auction Rules, Policies, Regulations—Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues—Public Safety and Private Wireless Division (202) 418–0680.

Technical Support: Electronic Filing, FCC Automated Auction System—FCC Auctions Technical Support Hotline (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: 8 a.m.–6 p.m. ET, Monday through Friday.

Payment Information: Wire Transfers, Refunds—FCC Auctions Accounting Branch (202) 418–0578, (202) 418–2843 (Fax).

Telephonic Bidding: Will be furnished only to qualified bidders.

FCC Forms: (800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html*

FCC Internet Sites:
http://www.fcc.gov
http://wireless.fcc.gov/auctions
http://wireless.fcc.gov/uls

II. Short-Form (FCC Form 175) Application Requirements

33. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 53 Procedures Public Notice.*

A. License Selection

34. In Auction No. 53, FCC Form 175 will include a mechanism that allows an applicant to create customized lists of licenses. The applicant will select the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the list (by using the ''Save all filtered licenses'' option) or select and save individual licenses separately from the list.

B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

35. All applicants must comply with the uniform part 1 ownership disclosure standards and in completing FCC Form 175 provide information required by §§ 1.2105 and 1.2112 of the Commission's rules.

C. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

36. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.

37. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

D. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

38. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.

39. In the *Second Report and Order,* the Commission determined that three levels of bidding credits are appropriate for MVDDS. Therefore, bidding credits will be available to entrepreneurs, small businesses, and very small businesses, and consortia thereof, as follows for Auction No. 53:

- A bidder with attributed average annual gross revenues of not more than $40 million for the preceding three years (''entrepreneur'') will receive a 15 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years (''small business'') will receive a 25 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than $3 million for the preceding three years (''very small business'') will receive a 35 percent discount on its winning bids.

Bidding credits are not cumulative; a qualifying applicant receives the 15 percent, 25 percent, or 35 percent bidding credit on its winning bid, but only one credit per license.

40. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

ii. Tribal Land Bidding Credit

41. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* section V.F. of the *Auction No. 53 Procedures Public Notice.*

42. *Attribution for entrepreneur, small business, and very small business eligibility.* In determining which entities qualify as entrepreneurs, small businesses, or very small business, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

43. Each member of a consortium of entrepreneurs, small businesses or very small businesses must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests.

iii. Eligibility Restrictions for Cable Operators

44. Applicants should note that § 101.1412 of the Commission's rules provide certain eligibility restrictions for cable operators. Specifically, no cable operator, nor any entity owning an attributable interest in a cable operator, shall have an attributable interest in an MVDDS license if such cable operator's service area significantly overlaps the MVDDS license area.

iv. Supporting Documentation

45. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as entrepreneurs, small businesses, or very small businesses (or consortia of entrepreneurs, small businesses, or very small businesses) for this auction. Applicants should also note that they must fulfill the certification requirements of § 101.1412(g)(2) of the Commission's rules relating to complying with the eligibility restrictions for cable operators.

46. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

47. *Entrepreneur, small business, or very small business eligibility (Exhibit C).* Entities applying to bid as entrepreneurs, small businesses, or very small businesses (or consortia of entrepreneurs, small businesses, or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate,* the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of entrepreneurs, small

businesses, or very small businesses, this information must be provided for each consortium member.

E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

48. Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Applicants must include this statement as Exhibit D of the FCC Form 175.

49. ''Former defaulters''—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 53, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

F. Installment Payments

50. Installment payment plans will not be available in Auction No. 53.

G. Other Information (FCC Form 175 Exhibits E and F)

51. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of ''designated entities'' in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175. Applicants must also certify as an exhibit to their short-form application that they, and all parties to the application, will come into compliance with § 101.1412(a) regarding eligibility restrictions for cable operators. This certification should be included as Exhibit F.

H. Minor Modifications to Short-Form Applications (FCC Form 175)

52. After the short-form filing deadline (6:00 p.m. ET on November 12, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction53@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 53. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

53. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

54. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

II. Pre-Auction Procedures

A. Auction Seminar

55. On Wednesday, October 29, 2003, the FCC will sponsor a free seminar for Auction No. 53 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, auction conduct, the FCC Automated Auctions System, auction rules, and the MVDDS service rules. A registration form is attached as Attachment D of the *Auction No. 53 Procedures Public Notice.*

B. Short-Form Application (FCC Form 175)—Due November 12, 2003

56. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on November 12, 2003. Late applications will not be accepted.

57. There is no application fee required when filing an FCC Form 175.

i. Electronic Filing

58. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on October 29, 2003, until 6 p.m. ET on November 12, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on November 12, 2003.

59. Applicants must press the ''SUBMIT Application'' button on the ''Submission'' page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 AM to 6 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

ii. Completion of the FCC Form 175

60. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 53 Procedures Public Notice.*

iii. Electronic Review of FCC Form 175

61. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. *See* Attachment C of the *Auction No. 53 Procedures Public Notice* for details on accessing the review system.

62. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

Note: Applicants should not include sensitive information (*i.e.,* TIN/EIN) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

63. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

D. Upfront Payments—Due December 8, 2003

64. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on December 8, 2003. For specific instructions regarding upfront payments, *see* section III.D. of the *Auction No. 53 Procedures Public Notice*. Failure to deliver the upfront payment by the December 8, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

65. Wire transfer payments must be received by 6 p.m. ET on December 8, 2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

66. Applicants must fax a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 53.'' In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 53 Procedures Public Notice.*

ii. Amount of Upfront Payment

67. In the *Part 1 Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order,* the Commission ordered that ''former defaulters,'' *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-''former defaulters.'' For purposes of this calculation, the ''applicant'' includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the Part 1 Fifth Report and Order).

68. In the *Auction No. 53 Comment Public Notice,* we proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

69. In the *Auction No. 53 Comment Public Notice,* the Bureau proposed upfront payments on a license-by-license basis for both CEAs and DMAs. Upfront payment calculations for DMA licenses are based upon CEA upfront payment calculations. With respect to CEAs we proposed to use the following formula: $0.025 * License Area Population with a minimum of $1,000 per license. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 53 Procedures Public Notice.*

70. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Market Name	Bidding Units	Upfront Payment
DMA001	New York	480,000	$480,000
DMA004	Philadelphia	187,000	$187,000

Note: If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 667,000 bidding units (480,000 + 187,000). If a bidder only wishes to bid on one, but not both, purchasing 480,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time.* If the bidder purchased only 187,000 bidding units, it would have enough eligibility for the Philadelphia license but not for the New York license.

71. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iii. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

72. The Commission will use wire transfers for all Auction No. 53 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number
Correspondent Bank (if applicable)
ABA Number
Account Number

Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418–2843 by December 8, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418–0578.

E. Auction Registration

73. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

74. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

75. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, January 7, 2004, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

76. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC headquarters, located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

77. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 53. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

78. SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

79. All qualified bidders will be eligible to participate in a mock auction on Friday, January 9, 2004. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

80. The first round of bidding for Auction No. 53 will begin on Wednesday, January 14, 2004. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

81. In the *Auction No. 53 Comment Public Notice*, we proposed to award all licenses in Auction No. 53 in a simultaneous multiple round auction. We received no comments on this issue. We conclude that it is operationally feasible and appropriate to auction the MVDDS licenses through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

82. In the *Auction No. 53 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

83. For Auction No. 53 we adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial eligibility (in bidding units) for each bidder. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, applicants are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

84. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

85. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (see ''Minimum Acceptable Bids and Bid Increments'' in section IV.B.iii). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under ''Auction Stages'' in section IV.A.iii and ''Stage Transitions'' in section IV.A.iv), we adopt them for Auction No. 53.

iii. Auction Stages

86. In the *Auction No. 53 Comment Public Notice*, we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain its current eligibility, would be required to be active on 98 percent of its current bidding eligibility. We received no comments on this proposal.

87. We adopt our proposals for the activity rules and stages. Here are the activity levels for each stage of the auction. The Bureau reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by ten-ninths (10/9).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by fifty-fortyninths (50/49).

CAUTION: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

88. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 53.

iv. Stage Transitions

89. In the *Auction No. 53 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. We further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We received no comments on this issue.

90. We adopt our proposal. Thus, the auction will start in Stage One and will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 53.

v. Activity Rule Waivers and Reducing Eligibility

91. Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

92. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

93. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in ''Auction Stages'' (see section IV.A.iii). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

94. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open. **Note:** Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

vi. Auction Stopping Rules

95. For Auction No. 53, the Bureau proposed to employ a simultaneous stopping rule. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder.

96. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a designated number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.

97. We adopt the proposals concerning the auction stopping rules. Auction No. 53 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule.

vii. Auction Delay, Suspension, or Cancellation

98. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety.

B. Bidding Procedures

i. Round Structure

99. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

100. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

101. For Auction No. 53, the Bureau proposed the following license-by-license basis for calculating minimum opening bids: $0.05 * License Area Population with a minimum of $1,000 per license.

102. The Bureau received no comments on this issue. Consequently, the Bureau adopts its proposed minimum opening bids for Auction No. 53. The minimum opening bids we adopt for Auction No. 53 are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid on specific licenses.

103. The specific minimum opening bids for each license available in Auction No. 53 are set forth in Attachment A of the *Auction No. 53 Procedures Public Notice.*

iii. Minimum Acceptable Bids and Bid Increments

104. In Auction No. 53 we will use a smoothing methodology to calculate minimum acceptable bids. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum percentage based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity on a license, decreasing the time it takes for licenses receiving many bids to reach their final prices. The formula used to calculate this increment is included as Attachment F of the *Auction No. 53 Procedures Public Notice.* We will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

105. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine bid amounts for each license.

106. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F of the *Auction No. 53 Procedures Public Notice.* The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid)—(standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

107. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum

opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described in Attachment F of the *Auction No. 53 Procedures Public Notice,* and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid) (1 + percentage increment) {rounded}—(minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc).

108. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

109. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

iv. High Bids

110. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a ''standing high bid.'' A ''standing high bid'' will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids count towards bidding activity.

111. A Sybase® SQL pseudo-random number generator based on the L'Ecuyer algorithms will be used to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids). The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

v. Bidding

112. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

113. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. (Normally, five to ten minutes are necessary to complete a bid submission).

114. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

115. In order to access the bidding function of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the password generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round *after* they have completed all of their activity for that round.

116. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information and a Type Bids function that allows bidders to enter specific licenses for filtering.

117. Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a standing high bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

118. In the *Auction No. 53 Comment Public Notice,* the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used, we proposed, would be at the bidder's discretion. We received no comments on this issue.

119. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. This procedure, about which we received no comments, will enhance bidder flexibility during the auction, and therefore we adopt these procedures for Auction No. 53.

120. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). **Note:** Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

121. The Bureau will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

122. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).

123. In instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

124. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 53 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

125. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

126. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments and any withdrawn bid payments due.

127. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 53 to 20 percent of the net amount of its winning bids (gross bids less any applicable entrepreneur, small business, or very small business bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in ''Bid Removal and Bid Withdrawal,'' section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Final Payments

128. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

C. Auction Discount Voucher

129. On June 8, 2000, the Commission awarded Qualcomm, Inc., a transferable Auction Discount Voucher (''ADV'') in the amount of $125,273,878.00. Subject to the terms and conditions set forth in the Commission's Order, Qualcomm or its transferee could use this ADV, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003. On April 28, 2003, the Bureau granted Qualcomm an additional year, until June 8, 2004, to use the remaining amount of its ADV. Qualcomm transferred $10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35. The transferee used this amount to pay a portion of one of its winning bids in Auction No. 35. Qualcomm also transferred $50,536,998.75 of the ADV to an assignee of broadband PCS licenses that used this amount to pay the unpaid principal and interest accrued on the licenses. Qualcomm also transferred $4,020,165.65 of the ADV to an entity that made installment payments on behalf of several of the entity's affiliates, that are broadband PCS C Block licensees. On July 30, 2003, Qualcomm transferred an additional $4,020,165.65 of the ADV to the same entity. Qualcomm also used $7,607,200.00 of its ADV to make its down payment on licenses it won in Auction No. 49. The remaining $48,240,565.96 of Qualcomm's ADV could be used to adjust winning bids in another FCC Auction, including Auction No. 53.

D. Long-Form Application (FCC Form 601)

130. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 53. Winning bidders that are entrepreneurs, small businesses, or very small businesses must include an exhibit demonstrating their eligibility for entrepreneur, small business, or very small business bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

E. Ownership Disclosure Information Report (FCC Form 602)

131. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112. We remind applicants that effective December 10, 2002, electronic filing of the Ownership Disclosure Information Report (FCC Form 602) became mandatory. Accordingly, forms filed manually will not be accepted. Winning bidders without a current Form 602 already on file with the Commission must submit a properly completed Form 602 at the time they submit their long-form applications. Further filing instructions will be provided to auction winners at the close of the auction.

F. Tribal Land Bidding Credit

132. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

133. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601).

134. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to *http://wireless.fcc.gov/auctions* and clicking on the *Tribal Land Credits* link.

G. Default and Disqualification

135. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

H. Refund of Remaining Upfront Payment Balance

136. All applicants that submit upfront payments but are not winning bidders for a license in Auction No. 53 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

137. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

138. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418–0578.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–25199 Filed 10–6–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled: (1) Application for Consent to Exercise Trust Powers and (2) Appraisal Standards.

DATES: Comments must be submitted on or before December 8, 2003.

ADDRESSES: Interested parties are invited to submit written comments to Leneta Gregorie, Counsel (Consumer and Compliance Unit), (202) 898–3719, Legal Division, Room 3062, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: *comments@fdic.gov].*

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, Counsel (Consumer and Compliance Unit) (202) 898–3719.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Application for Consent to Exercise Trust Powers.

OMB Number: 3064–0025.

Form Number: 6200/09.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 18.

Estimated Time per Response: 14 applications—8 hours; 4 applications—24 hours.

Estimated Total Annual Burden: 82,150 hours.

General Description of Collection: Insured state nonmember banks submit applications to the FDIC for consent to exercise trust powers. Applications are evaluated by the FDIC to verify qualifications of bank management to administer a trust department and to ensure that the bank's financial condition will not be jeopardized as a result of trust operations.

2. *Title:* Appraisal Standards.

OMB Number: 3064–0103.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 5,346.

Estimated Number of Responses: 328,600.

Estimated Time per Response: 15 minutes.

Estimated Annual Burden: 82,150 hours.

General Description of Collection: FIRREA directs the FDIC to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under its jurisdiction. The information collection activities attributable to 12 CFR part 323 are a direct consequence of the statutory requirements and the legislative intent.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether

the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated in Washington, DC, this 1st day of October, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–25375 Filed 10–6–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. SNB Financial, Inc., O'Donnell, Texas; to acquire 100 percent of the voting shares of The State National Bank of Big Spring, Big Spring, Texas. SNB Financial, Inc., currently operates as O'Donnell Bancshares, Inc., O'Donnell, Texas.

Board of Governors of the Federal Reserve System, October 1, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–25319 Filed 10–6–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0213]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by November 6, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products (OMB Control Number 0910–0025)—Extension

Under sections 532 through 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii through 360ss), FDA has the responsibility to protect the public from unnecessary exposure from radiation from electronic products. The regulations issued under these authorities are listed in 21 CFR chapter I, subchapter J. Specifically, subchapter A regulations, 21 CFR 5.10(a)(3), 5.25(b), 5.35(a)(4), and 5.600 through 5.606, delegate administrative authorities to FDA.

Section 532 of the act directs the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program, including the development, issuance, and administration of performance standards to control the emission of electronic product radiation from electronic products. The program is designed to protect the public health and safety from electronic radiation, and the act authorizes the Secretary to procure (by negotiation or otherwise) electronic products for research and testing purposes and to sell or otherwise dispose of such products.

Section 534(g) of the act directs the Secretary to review and evaluate industry testing programs on a continuing basis; and sections 535(e) and (f) of the act direct the Secretary to immediately notify manufacturers of, and ensure correction of, radiation defects or noncompliances with performance standards.

Section 537(b) of the act contains the authority to establish and maintain records (including testing records), make reports, and provide information to determine whether the manufacturer has acted in compliance.

Parts 1002 through 1010 (21 CFR parts 1002 through 1010) specify reports to be

provided by manufacturers and distributors to FDA and records to be maintained in the event of an investigation of a safety concern or a product recall.

FDA conducts laboratory compliance testing of products covered by regulations for product standards in parts 1020, 1030, 1040, and 1050 (21 CFR parts 1020, 1030, 1040, and 1050).

FDA details product-specific performance standards that specify information to be supplied with the product or require specific reports. The information collections are either specifically called for in the act or were developed to aid the agency in performing its obligations under the act. The data reported to FDA and the records maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. This information refers to the identification of, location of, operational characteristics of, quality assurance programs for, and problem identification and correction of electronic products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

FDA uses the following forms to aid respondents in the submission of information for this information collection: (1) Form FDA 2767, ''Notice of Availability of Sample Electronic Product;'' (2) Form FDA 2877, ''Declaration for Imported Electronic Products Subject to Radiation Control Standards,'' and (3) Form FDA 3147, ''Application for a Variance From 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device.''

The most likely respondents to this information collection will be electronic product and x ray manufacturers, importers, and assemblers.

In the **Federal Register** of June 12, 2003 (68 FR 35231), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received two comments on the FDA radiation program paperwork burden (under OMB control number 0910–0025). One comment pertained to the information collection. It stated that the Occupational Safety and Health Administration and the Department of Health and Human Services (DHHS) already have radiation standards and that government paperwork on radiation emissions is of dubious value until more research is conducted, particularly on nonthermal effects of microwave/radiofrequency radiation. FDA is the agency of DHHS that is responsible for radiation safety standards for electronic products. Industry paperwork on radiation safety provides the agency with critical information on radiation controls, such as safety interlocks, timers, warning labels, etc., and on radiation emissions that are compared to known bioeffects hazards, whether specified in mandatory FDA standards or more recent consensus standards. Specifically, information provided to FDA on microwave radiation is compared to levels known to cause thermal injuries.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1002.3		10	1	10	12	120
1002.10 and 1010.3		540	1.6	850	24	20,400
1002.11		1,000	1.5	1,500	0.5	750
1002.12		150	1	150	5	750
1002.13 annual		900	1	900	26	23,400
1002.13 quarterly		250	2.4	600	0.5	300
1002.20		40	1	40	2	80
1002.50(a) and 1002.51		10	1.5	15	1	15
	FDA 2877	600	32	19,200	0.2	3,840
1010.2		1	1	1	5	5
1010.4(b)		1	1	1	120	120
1010.5 and 1010.13		3	1	3	22	66
	FDA 2767	145	11.03	1,600	0.09	144
1020.20(c)(4)		1	1	1	1	1
1020.30(d), (d)(1), and (d)(2)	FDA 2579	2,345	8.96	21,000	0.30	6,300
1020.30(g)		200	1.33	265	35	9,275
1020.30(h)(1) through (h)(4),1020.32(a)(1) and (g)		200	1.33	265	35	9,275
1020.32(g) and 1020.33(c), (d), (g)(4), (j)(1), and (j)(2)		9	1	9	40	360
1020.40(c)(9)(i) and (c)(9)(ii)		8	1	8	40	320

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1030.10(c)(4)		41	1.61	66	20	1,320
1030.10(c)(5)(i) through (c)(5)(iv)		41	1.61	66	20	1,320
1030.10(c)(6)(iii) and (c)(6)(iv)		1	1	1	1	1
1040.10(a)(3)(i)		83	1	83	3	249
1040.10(h)(1)(i) through (h)(1)(vi)		805	1	805	8	6,440
1040.10(h)(2)(i) and (h)(2)(ii)		100	1	100	8	800
1040.11(a)(2)		190	1	190	10	1,900
1040.11(c)	FDA 3147	53	2.2	115	0.5	58
1040.20 (d), (e)(1), and (e)(2)		110	1	110	10	1,100
1040.30(c)(1)		1	1	1	1	1
1040.30(c)(2)		7	1	7	1	7
1050.10(f)(1) through (f)(2)(iii)		10	1	10	56	560
Total Annual Reporting Burden						89,278

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1002.30 and 1002.31(a)	1,150	1,655.5	1,903,825	198.7	228,505
1002.40 and 1002.41	2,950	49.2	145,140	2.4	7,080
1020.30(g)(2)	22	1	22	0.5	11
1040.10(a)(3)(ii)	83	1	83	1.0	83
Totals					235,679

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates were derived by consultation with FDA and industry personnel and actual data collected from industry over the past 3 years. An evaluation of the type and scope of information requested was also used to derive some time estimates. For example, disclosure information primarily requires time only to update and maintain existing manuals. Initial development of manuals has been performed except for new firms entering the industry. When information is generally provided to users, assemblers, or dealers in the same manual, they have been grouped together in table 1 of this document.

The following information collection requirements are not subject to review by OMB because they do not constitute a ''collection of information'' under the PRA: Sections 1002.31(c); 1003.10(a), (b), and (c); 1003.11(a)(3) and (b); 1003.20(a) through (h); 1003.21(a) through (d); 1003.22(a) and (b); 1003.30(a) and (b); 1003.31(a) and (b); 1004.2(a) through (i); 1004.3(a) through (i); 1004.4(a) through (h); and 1005.21(a) through (c). These requirements ''apply to the collection of information during the conduct of general investigations or audits'' (5 CFR 1320.4(b)). According to 5 CFR 1320.3(c)(2), the following labeling requirements are also not subject to review under the PRA because they are a public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public: Sections 1020.10(c)(4), 1030.10(c)(6), 1040.10(g), 1040.30(c)(1), and 1050.10(d)(1).

Dated: September 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–25304 Filed 10–6–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0324]

Certain Antibiotic New Animal Drug Products and Use Combinations Subject to Listings in the New Animal Drug Regulations; Drug Efficacy Study Implementation; Notice of Opportunity for Hearing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice of opportunity for hearing that published in the **Federal Register** on August 8, 2003 (68 FR 47332). FDA is correcting a product name used by the current sponsor of NADA 141–137, the FR citation for a Drug Efficacy Study Implementation Program finding of effectiveness, and the column headings of six tables. These corrections are being made to improve the accuracy of the **Federal Register**. This notice also extends the deadline for parties who have requested a hearing to submit data and analysis upon which their request for a hearing relies. Other interested persons may submit comments on the notice of opportunity for hearing (NOOH) before the deadline.

DATES: Submit all written data and analysis upon which a request for a hearing relies and other written comments by November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–1), 7519 Standish Pl., Rockville, MD 20855, 301–827–2954, e–mail: *abeaulie@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 8, 2003 (68 FR 47332), FDA announced the effective conditions of use for some of the drug products and use combinations subject to the listings in §§ 510.515 and/or 558.15 (21 CFR 510.515 and/or 558.15), and proposed to withdraw the new animal drug applications (NADAs) for those products or use combinations lacking substantial evidence of effectiveness following a 90-day opportunity to supplement the NADAs with labeling conforming to the relevant findings of effectiveness. The Center for Veterinary Medicine (CVM) also provided an opportunity for hearing for applications proposed to be withdrawn. Interested persons were given until September 8, 2003, to submit written appearances and requests for a hearing; until October 7, 2003, to submit data and analysis upon which a request for a hearing relies; and until November 6, 2003, to submit supplemental NADAs. After publication of the NOOH, several errors were found by CVM and others. CVM is correcting these errors, but does not believe that these corrections alter the underlying basis of the NOOH.

II. Corrections

In FR Doc. 03–20241, published August 8, 2003 (68 FR 47332), the following corrections are made:

1. On page 47333, in the third column, under ''*A. Bacitracin Methylene Disalicylate Single-Ingredient Type A Medicated Articles,*'' the trade name following NADA 141–137, ''FORTRACIN'', is corrected to read ''PENNITRACIN''.

2. On pages 47335 in tables 2, 3, and 4, and on page 47336 in table 5, in the table heading ''Oxytetracycline'' is corrected to read ''Oxytetracycline[1]''with a footnote added to read ''[1]Expressed in terms of an equivalent amount of oxytetracycline hydrochloride'' and ''Neomycin'' is corrected to read ''Neomycin Sulfate''.

3. On pages 47335 in tables 2, 3, and 4, and on page 47336 in table 5 in the first column heading ''Oxytetracycline'' is corrected to read ''Oxytetracycline[1]'' and ''neomycin'' is corrected to read ''neomycin sulfate''.

4. On page 47336, in the first column, under ''*C. Combination Drug Type B and Type C Medicated Feeds for Poultry Containing Nicarbazin*,''the combination use following NADA 98–371 ''NICARBAZIN (nicarbazin), PENICILLIN G PROCAINE (procaine penicillin), and 3-NITRO (roxarsone)'' is corrected to read ''nicarbazin, procaine penicillin, and roxarsone''.

5. On page 47336, in the first column, under ''*C. Combination Drug Type B and Type C Medicated Feeds for Poultry Containing Nicarbazin*,'' the combination use following NADA 98–374 ''NICARBAZIN (nicarbazin) and PENICILLIN G PROCAINE (procaine penicillin)'' is corrected to read ''nicarbazin and procaine penicillin''.

6. On page 47336, in the second column, under ''*C. Combination Drug Type B and Type C Medicated Feeds for Poultry Containing Nicarbazin*,'' the combination use following NADA 100–853 ''NICARBAZIN (nicarbazin), BACIFERM (BMD), and 3-NITRO (roxarsone)'' is corrected to read ''nicarbazin, bacitracin methylene disalicylate, and roxarsone''.

7. On page 47336, in the third column, under ''*C. Combination Drug Type B and Type C Medicated Feeds for Poultry Containing Nicarbazin,*'' in the fourth line, ''bacitracin zinc'' is corrected to read ''bacitracin methylene disalicylate''.

8. On page 47336, in the third column, in the eighth and ninth lines, ''35 FR 12490, August 5, 1970 (bacitracin zinc)'' is corrected to read ''35 FR 11531, July 17, 1970, as corrected by 35 FR 15408, October 2, 1970 (bacitracin methylene disalicylate)''.

9. On page 47337 in table 6, and on page 47338 in table 7, in the first three column headings ''Type A article in g/ton'' is corrected to read ''Drug in g/ton''.

Dated: October 1, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–25343 Filed 10–6–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS' National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301–443–6014 (voice), 301–443–3031 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to

conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.).

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661 / 800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada TJ5 5E2, 780–451–3702 / 800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288 / 800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 1120 Stateline Rd. West, Southaven, MS 38671, 866–827–8042 / 800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734.

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.).

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250 / 800–350–3515.

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 S., Salt Lake City, UT 84124, 801–293–2300 / 800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).

One Source Toxicology Laboratory, Inc., 1705 Center St., Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991 / 800–541–7891x8991.

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 / 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750, (Formerly: Associated Pathologists Laboratories, Inc.).

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600 / 877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995 / 847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130.

Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register,** July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 22908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507 / 800–279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
Sure-Test Laboratories, Inc., 2900 Broad Ave., Memphis, TN 38112, 901–474–6026.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–25328 Filed 10–6–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Directorate of Information Analysis and Infrastructure Protection; National Infrastructure Advisory Council

Notice of Open Meeting

The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, October 14, 2003, from 2 p.m. until 4 p.m. EDT. The meeting, which will be held telephonically, will be open to the public via a ''listen only'' telephone bridge. The number of lines is limited and will be available on a ''first-come, first-served'' basis. Members of the public interested in attending by telephone should call (roll free) 1–877–888–4034 and notify the operator that they are calling for the NIAC conference.

The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services.

Summary of Agenda

At this meeting, the Council will receive the findings and propose recommendations developed by its working groups on Cross Sector Interdependencies and Risk Assessment Guidance and Regulatory Guidance, respectively. In addition, the Council will receive status briefings on the continuing activities of its working groups on Vulnerability Disclosure Guidelines and the Evaluation and Enhancement of Information Sharing and Analysis. Copies of briefing materials to be used during the meeting will be posted on the *Meeting information* section of the Council's Web site at *http://www.dhs.gov/dhspublic/display?theme=9&content=1795* in advance of the meeting.

Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Council members, the Council suggests that presenters forward the public presentation materials, ten days priors to the meeting date, to the following address: Mr. Eric T. Werner, Directorate of Information Analysis and Infrastructure Protection, U.S. Department of Homeland Security, 14th Street & Constitution Avenue, NW., Room 6703, Washington, DC 20230.

For more information about the NIAC or this meeting, please refer to the Council's web site or contact Eric Werner at (202) 482–7470.

Dated: September 29, 2003

Eric T. Werner,

Council Liaison Officer.

[FR Doc. 03–25516 Filed 10–3–03; 1:50 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1495–DR]

Delaware; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Delaware (FEMA–1495–DR), dated September 23, 2003, and related determinations.

EFFECTIVE DATE: September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Delaware resulting from Tropical Storm Henri on September 15, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Delaware.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Delaware to have been affected adversely by this declared major disaster:

New Castle County for Individual Assistance and Public Assistance.

All counties within the State of Delaware are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services

Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25348 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1494–DR]

Delaware; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Delaware (FEMA–1494–DR), dated September 20, 2003, and related determinations.

EFFECTIVE DATE: September 26, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Delaware is hereby amended to include the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20, 2003:

All counties in the State of Delaware are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25363 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1493–DR]

District of Columbia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the District of Columbia (FEMA–1493–DR), datedSeptember 20, 2003, and related determinations.

EFFECTIVE DATE: September 26, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the District of Columbia is hereby amended to include the Hazard Mitigation Grant Program for the District of Columbia determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20, 2003:

The District of Columbia is eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25347 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: September 24, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2003:

Madison County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25353 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3189–EM]

Michigan; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Michigan (FEMA–3189–EM), dated September 23, 2003, and related determinations.

EFFECTIVE DATE: September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 2003, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Michigan, resulting from a severe power outage on August 14–17, 2003, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Michigan.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B) under the Public Assistance program at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. However, pursuant to 42 U.S.C. 5193(b)(1), Federal assistance under this declaration will not exceed $5 million.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Ron Sherman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Michigan to have been affected adversely by this declared emergency:

Calhoun, Eaton, Genesee, Hillsdale, Ingham, Kalamazoo, Lapeer, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25352 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3188–EM]

New Jersey; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Jersey (FEMA–3188-EM), dated September 23, 2003, and related determinations.

EFFECTIVE DATE: September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 2003, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New Jersey, resulting from a power outage on August 14–16, 2003, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of New Jersey.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B) under the Public Assistance program at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. However, pursuant to 42 U.S.C. 5193 (b) (1), Federal assistance under this declaration will not exceed $5 million.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared emergency:

Bergen, Essex, Hudson, Passaic, and Union Counties for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-

Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25351 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1490–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1490–DR), dated September 18, 2003, and related determinations.

EFFECTIVE DATE: September 18, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 18, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from Hurricane Isabel on September 18, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Gracia Szczech of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

Individual Assistance, including direct Federal assistance is authorized for Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Jones, Martin, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Tyrrell and Washington Counties.

Debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program for Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Jones, Martin, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Tyrrell and Washington Counties.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25355 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1490–DR]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–1490–DR), dated September 18, 2003, and related determinations.

EFFECTIVE DATE: September 20, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2003:

All counties in the State of North Carolina and the Eastern Band of Cherokee Indians are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25356 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1490–DR]

North Carolina; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1490–DR), dated September 18, 2003, and related determinations.

EFFECTIVE DATE: September 26, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 26, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25357 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3187–EM]

Ohio; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Ohio (FEMA–3187-EM), dated September 23, 2003, and related determinations.

EFFECTIVE DATE: September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 2003, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Ohio, resulting from a severe, statewide power outage on August 14–17, 2003, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Ohio.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B) under the Public Assistance program at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. However, pursuant to 42 U.S.C. 5193 (b) (1), Federal assistance under this declaration will not exceed $5 million.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Ron Sherman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Ohio to have been affected adversely by this declared emergency:

Cuyahoga County for emergency protective measures (Category B) under the Public Assistance program.

The following (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25350 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1491–DR]

Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1491–DR), dated September 18, 2003, and related determinations.

EFFECTIVE DATE: September 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2003:

The Independent Cities of Bedford, Buena Vista, Charlottesville, Fredericksburg, Harrisonburg, Lynchburg, Manassas, Manassas Park, and Winchester, and the counties of Albemarle, Amelia, Amherst, Appomattox, Bedford, Buckingham, Campbell, Charlotte, Clarke, Culpeper, Cumberland, Dinwiddie, Fauquier, Frederick, Greene, Halifax, Hanover, King George, King William, King and Queen, Louisa, Loudoun, Lunenburg, Madison, Nelson, New Kent, Nottoway, Pittsylvania, Powhatan, Prince

Edward, Rappahannock, Rockingham, Shenandoah, and Warren for Individual Assistance, including direct Federal assistance, and debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program, including direct Federal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25358 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1491–DR]

Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1491–DR), dated September 18, 2003, and related determinations.

EFFECTIVE DATE: September 24, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include Categories C through G under the Public Assistance program and the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2003:

The Independent Cities of Hopewell, Norfolk, and Virginia Beach, and the counties of Charles City, Gloucester, Lancaster, Mathews, Middlesex, Northumberland, Prince George, Richmond, and Westmoreland for Categories C through G under the Public Assistance program (already designated for Categories A and B, including direct Federal assistance, and Individual Assistance, including direct Federal assistance.)

All Independent Cities and counties in the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25359 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1496–DR]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1496–DR), dated September 23, 2003, and related determinations.

EFFECTIVE DATE: September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of West Virginia, resulting from Hurricane Isabel on September 18, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act, additional categories of assistance under the Public Assistance program, and Hazard Mitigation are later requested and warranted, Federal funding under these programs will also be limited to 75 percent of total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

The counties of Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, Pendleton, Randolph, and Tucker for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–25349 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–39]

Notice of Proposed Information Collection: Comment Request;Single Family Premium Collection Subsystem-Upfront (SFPCS–U)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Managment and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: December 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne—Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Doretha S. Dabney, Branch Chief, Single Family Insurance Operations Branch, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1994 X3471 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposal information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also list the following information:

Title of Proposal: Single Family Premium Collection Subsystem-Upfront (SFPCS–U).

OMB Control Number, if applicable: 2502–0423.

Description of the need for the information and proposed use: The Single Family Premium Collection Subsystem-Upfront (SFPCS–U) allows the lenders to remit the Upfront Mortgage Insurance Premiums using funds obtained from the mortgagor during the closing of the mortgage transaction at settlement. The SFPCS–U strengthens HUD's ability to manage and process upfront single-family mortgage insurance premium collections and corrections to submitted data. It also improves data integrity for the Single Family Mortgage Insurance Program. Therefore, the FHA approved lenders use Automated Clearing House (ACH) and/or Electronic Data Interchange (EDI) applications for all transmissions with SFPCS–U. The authority for this collection of information is specified in 24 CFR 203.280 and 24 CFR 203.281. The collection of information is also used in calculating refunds due to former FHA mortgagors when they apply for homeowner refunds of the unearned portion of the mortgage insurance premium, 24 CFR 203.283, as appropriate. Without this information the premium collection/monitoring process would be severely impeded, and program data would be unreliable. In general, the lenders use the ACH and/or EDI applications to remit the upfront premium through SFPCS–U to obtain mortgage insurance for the homeowner.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The public reporting burden for this collection of information is estimated to average 5 minutes per response; the number of respondents is 9,939 generating approximately 1,349,281 annual responses; the frequency of response is on occasion; the estimated total number of burden hours needed to prepare the information collection is 71,790. The Lenders are able to key the information online or have their computer transmit the information. Since remittances are made through the ACH and/or EDI applications the upfront remittance is submitted electronically and their is no paperwork to complete and mail in.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 9, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–25321 Filed 10–6–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–79]

Notice of Submission of Proposed Information Collection to OMB: Multifamily Tenant Characteristics Family Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The subject information is collected to ascertain public housing tenant eligibility. HUD is seeking renewal of the approval for this information collection requirement.

DATES: *Comments Due Date:* November 6, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0083) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh

Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://mf.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Tenant Characteristics Family Report.

OMB Approval Number: 2577–0083.

Form Numbers: 50058, 50058–MTW.

Description of the Need for the Information and its Proposed Use: The Department of Housing and Urban Development (HUD) intends to revise Form HUD–50058 in a manner that will require changes to the Form HUD–50058 Module in the Public and Indian Housing Information Center (PIC), but will not require changes in software systems of public housing agencies or vendors supporting public housing agencies. HUD will maintain the current information collection burden until the changes in HUD's PIC system have been completed. Therefore, HUD seeks comments on the proposed revisions to the Form HUD–50058 and on the proposal to extend the existing Form HUD–50058 (6/2001) until the revisions are fully implemented.

The Form HUD–50058 collects demographic and income data on residents participating in PIH's Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificates, and Section 8 Moderate Rehabilitation programs. Public housing agencies will transmit the form electronically to HUD at least annually for each household.

The Department updated the currently approved Form HUD–50058 by removing obsolete and unnecessary data fields. These deletions will not require vendors to modify their software for reporting family data to the Public and Indian Housing Information Center (PIC)—the information system that collects electronic Form HUD–50058 data. Public housing agencies should not modify their software to reflect the deletions, but they are no longer required to send data in the fields that HUD has deleted. If public housing agencies submit data for the deleted fields using the file structure of the current form (Form HUD–50058 (6/2001)), the PIC system will ignore the data.

HUD seeks comments on the proposal to extend the existing Form HUD-50058 MTW (6/2001). The Form HUD–50058 MTW collects demographic and income data on residents participating in PIH's Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificates, and Section 8 Moderate Rehabilitation programs and whose public housing agencies participate in the Moving-to-Work (MTW) program. MTW–PHA (*i.e.*, public housing agencies participating in the Moving-to-Work demonstration program) will transmit the form electronically to HUD at least annually for each household.

Form HUD–50058 MTW addresses the particular reporting requirements and constraints for public housing agencies that participate in the Moving-to-Work (MTW) demonstration program mandated by Section 206 of the 1996 HUD Appropriations Act. This information collection effort supports MTW program monitoring and evaluation, as required by Congress.

MTW–PHA will use the Form HUD–50058 MTW to collect data on MTW-families only. MTW-families include families who participate in any component of the MTW program. This includes families who receive self-sufficiency support services but pay rent under conventional program rules. Non-MTW-families include families who reside in a MTW–PHA but do not participate in any component of the MTW program. MTW–PHA will continue to use the regular Form HUD–50058 for Non-MTW families.

Respondents: Public housing agencies, State and local governments, individuals and households.

Frequency of Submission: Quarterly, monthly, annually.

Reporting Burden: Number of Respondents 4,526; Average responses per respondent 1,077; Total annual responses 4,874,180.

Total Estimated Burden Hours: 1,624,727.

Status: Extension of a currently approved collection; HUD is seeking renewal of the approval for this information collection requirement.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 30, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–25322 Filed 10–6–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–80]

Notice of Submission of Proposed Information Collection to OMB: Mortgagees Annual Notification to Mortgagors

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Mortgagees are required to inform mortgagors of interest paid and taxes disbursed from escrow accounts for income tax purposes. Servicing lenders must maintain a toll free number, and servicing personnel for mortgagors' enquiries. Mortgagees must provide interest accounting in such a way as to allow the homeowner to easily identify the amount of any subsidy HUD paid on behalf of the homeowner. HUD is seeking renewal of the approval for this information collection requirement.

DATES: *Comments Due Date:* November 6, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0235) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building,

Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://mf.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information: *Title of Proposal:* Mortgagees Annual Notification to Mortgagors.

OMB Approval Number: 2502–0235.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Mortgagees are required to inform mortgagors of interest paid and taxes disbursed from escrow accounts for income tax purposes. Servicing lenders must maintain a toll free number, and servicing personnel for mortgagors' enquiries. Mortgagees must provide interest accounting in such a way as to allow the homeowner to easily identify the amount of any subsidy HUD paid on behalf of the homeowner.

Respondents: For-profit institutions.

Frequency of Submission: Annually.

Reporting Burden: Number of Respondents 1,622; Average responses per respondent 3,391; Total annual responses 5,499,507.

Total Estimated Burden Hours: 1,689.

Status: Extension of a currently approved collection; HUD is seeking renewal of the approval for this information collection requirement.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 30, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–25323 Filed 10–6–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4679–N–07]

Changes in Certain Multifamily Mortgage Insurance Premiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice reissues as final the notice published on July 1, 2003, for public comment. That notice lowered the mortgage insurance premiums (MIP) for certain Federal Housing Administration (FHA) insurance programs whose commitments will be issued in Fiscal Year (FY) 2004. HUD received no comments from the public on that notice.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, (202) 708–1142 (this is not a toll-free number). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 2003 (68 FR 12792), HUD published a final rule on ''Mortgage Insurance Premiums in Multifamily Housing Programs,'' which revised the regulatory system for establishing the MIP. Instead of setting the MIP at a specific rate, the Secretary is permitted to charge an MIP within the full range of HUD's statutory authority of one fourth of one percent to one percent through a notice, as provided in section 203(c)(1) of the National Housing Act (the Act) (12 U.S.C. 1709(c)(1)). The March 17, 2003, final rule stated that HUD would provide a 30-day period for public comment on future notices changing mortgage insurance premiums in multifamily insured housing programs.

Pursuant to that procedure, this notice lowers mortgage insurance premiums in FY 2004 to 50 basis points for multifamily programs authorized under Sections 207, 220, and 221(d)(4) of the Act without low-income housing tax credits, Section 231 of the Act, and insured programs with HOPE VI with or without low-income housing tax credits. The effective date of these changes is October 1, 2003. Multifamily programs under the following sections of the Act will remain at 80 basis points and will continue to require a credit subsidy obligation: Section 221(d)(3) for nonprofit and cooperatives for new construction or rehabilitation, Section 223(d) for operating loss loans for both apartments and health care facilities, and Section 241(a) for supplemental loans for additions or improvements to existing apartments. The MIP for sections 223(a)(7), and 207 pursuant to 223(f), 232, 232 pursuant to 223(f), 242, and 241(a) of the Act for health care facilities, Title XI, and low-income housing tax credit projects remain unchanged at 50 basis points.

The mortgage insurance premiums in effect for FHA firm commitments issued, amended, or reissued in FY 2004, are shown in the table below:

Fiscal Year 2004	
Multifamily loan program	Basis points
Section 207—Multifamily Housing—New Constr/Sub. Rehab	50
Section 207—Manufactured Home Parks	50
Section 220—Housing In Urban Renewal Areas	50
Section 221(d)(3)—Moderate Income Housing	80
Section 221(d)(4)—Moderate Income Housing	50
Section 223(a)(7)—Refinancing of Insured Multifamily Project	50
Section 223(d)—Operating Loss Loans	80
Section 207 pursuant to 223(f)—Purchase or Refinance Housing	*50
Section 213—Cooperatives	50
Section 231—Housing for the Elderly	50
Section 232—Health Care Facilities	50
Section 232 pursuant to Section 223(f)—Purchase or Refinance Health Care	*50
Section 234(d)—Condominium Housing	50
Section 241(a)—Additions & Improvements for Apartments	80

Fiscal Year 2004	
Multifamily loan program	Basis points
Section 241(a)—Additions & Improvements for Health Care Facilities	50
Section 242—Hospitals	50
Title XI—Group Practice	50

*First Year MIP for these programs remain at 100 basis points.

Applicable Mortgage Insurance Premium Procedures

The MIP regulations are found in 24 CFR part 207. This notice is published in accordance with the procedures stated in 24 CFR 207.252, 207.252(a), and 207.254.

Transition Guidelines

A. General

If a firm commitment has been issued at a higher MIP, and FHA has not initially endorsed the note, the lender may request the field office to reprocess the commitment at the lower MIP and reissue the commitment on or after October 1, 2003. If the initial endorsement has occurred the MIP cannot be changed.

B. Extension of Outstanding 57 and 61 Basis Points Firm Commitments

FHA may extend outstanding firm commitments when the Hub/Program Center determines that the underwriting conclusions (rents, expenses, construction costs, mortgage amount and case required to close) are still valid.

C. Reprocessing of Outstanding 57 and 61 Basis Points Firm Commitments

FHA will consider requests from mortgagees to reprocess outstanding firm commitments at the lower mortgage insurance premium once the new premiums become effective in FY 2004:

1. Outstanding commitments with initial 60-day expiration dates on or after the effective date of this MIP notice.

• FHA Multifamily Hub/Program Center staff will simply reprocess these cases to reflect the impact of the lower MIP and reissue commitments with a new date.

2. Outstanding commitments with initial expiration dates prior to the effective date of this MIP notice which have pending extension requests or have had extensions granted by FHA beyond the initial 60-day period.

• These cases will require more extensive reprocessing by FHA staff. Reprocessing will include an updated FHA field staff analysis and review of rents, expenses, construction costs, particularly considering any changes in Davis-Bacon wage rates, and cash required to close. (An updated appraisal may be required from the mortgagee depending on the age of the appraisal.) If reprocessing results in favorable underwriting conclusions, Hub/Program Center staff will reissue commitments with a new date at the new MIP.

D. Reopening of Expired 57 or 61 Basis Points Firm Commitments

FHA will consider requests from mortgagees, which may be either updated Traditional Application Processing (TAP) firm commitment applications or updated Multifamily Accelerated Processing (MAP) applications with updated exhibits, to reopen expired 57 or 61 basis points commitments on or after the effective date of the MIP notice, provided that the reopening requests are received within 90 days of the expiration of the commitments and include the $.50 per thousand of requested mortgage reopening fee. Reopening requests will be reprocessed by FHA field staff under the instructions in paragraph C.2 above.

After expiration of the 90-day reopening period, mortgagees are required to submit new applications with the $3 per thousand application fee (MAP applications must start at the pre-application stage).

Credit Subsidy

Mortgagee Letters will be issued from time to time to advise mortgagees of any requirements for credit subsidy and the availability of credit subsidy. In FY 2004, the same three programs will require credit subsidy as in FY 2003: Section 221(d)(3) for nonprofit and cooperatives for new construction or substantial rehabilitation, Section 223(d) for operating loss loans for both apartments and health care facilities, and Section 241(a) for supplemental loans for additions or improvements to existing apartments only. FHA will not issue amended commitments for increased mortgage amounts nor obligate additional credit subsidy for projects requiring credit subsidy in FY 2004.

Dated: September 25, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–25324 Filed 10–6–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of Federal Acknowledgment; Documented Petitions for Federal Acknowledgment as an Indian Tribe, Submission to OMB for Renewal

AGENCY: Office of Federal Acknowledgment, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request for Documented Petitions for Federal Acknowledgment as an Indian Tribe is submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget for extension.

DATES: Submit comments on or before November 6, 2003.

ADDRESSES: Send your written comments to Attention: Desk Officer for the Department of the Interior. You may fax comments to (202) 395–6566 or send an e-mail to *OIRA_DOCKET@omb.eop.gov.* Please send a duplicate copy to R. Lee Fleming, Director, Office of Federal Acknowledgment, Office of the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW., MS–4660 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection submission should be directed to R. Lee Fleming, Director, Office of Federal Acknowledgment, Office of the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW, MS–4660 MIB, Washington, DC 20240. You may also call (202) 208–3592.

SUPPLEMENTARY INFORMATION: A request for comments was published in the **Federal Register** on June 2, 2003 (68 FR 32765). No comments were received.

I. Abstract

The information collection is needed to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a sovereign-to-sovereign relationship with the United States. Federal acknowledgment makes the group eligible for benefits from the Federal Government.

II. Method of Collection

The Federal acknowledgment regulations at 25 CFR Part 83 contain seven criteria (§ 83.7) which groups seeking Federal acknowledgment as Indian tribes must demonstrate that they meet. Information collected from petitioning groups under these

regulations provide anthropological, genealogical and historical data used by the Assistant Secretary—Indian Affairs to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a sovereign-to-sovereign relationship with the United States. Respondents are not required to retain copies of information submitted to the Bureau of Indian Affairs, but will probably maintain copies for their own use. No periodic reports are required.

III. Data

Title: Collection of Information for Federal Acknowledgment Under 25 CFR Part 83.

OMB Control Number: 1076–0104.

Expiration Date: September 30, 2003.

Type of Review: Extension of a currently-approved collection.

Affected Entities: Groups petitioning for Federal acknowledgment as Indian tribes.

Response: Respondents are seeking to obtain the status of a tribal entity in order to be eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes.

Estimated Number of Petitioners: 10.

Estimated Time per Petition: 2,237.7 hours.

Estimated Total Annual Burden Hours: 22,377.

Estimated Annual Salary Costs: $895,080 (2,237.7 hours × $40.00 per hour × 10).

IV. Request for Comments

You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or the forms of information technology.

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; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, and other contact information (such as Internet address, fax, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

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 up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them closer to 30 days than 60 days.

Dated: September 26, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–25406 Filed 10–6–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Environmental Impact Statement for an Incidental Take Permit for the Western Riverside County Multiple Species Habitat Conservation Plan, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Pursuant to the National Environmental Policy Act, this notice advises the public of the availability of the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on the application by the County of Riverside, California Department of Transportation, California Department of Parks and Recreation and 14 cities (Applicants) in western Riverside County to incidentally take 83 animal species, including 69 unlisted species should any of them become listed, under the Endangered Species Act of 1973, as amended (Act), during the term of the proposed 75-year permit. The permit is needed to authorize take of listed animal species (including harm, injury and harassment) during urban and rural development in the approximately 1.2 million-acre (1,967 square-mile) Plan Area in western Riverside County, California. The U.S. Fish and Wildlife Service (Service) is publishing this notice to inform the public of the proposed action and to make available for review the Final EIS/EIR, which includes responses to public comments received on the Draft EIS/EIR. The Environmental Protection Agency (EPA) also is publishing a similar notice for this Final EIS/EIR.

DATES: A Record of Decision will occur no sooner than 30 days after the publication date of the EPA notice. Comments on the Final EIS/EIR must be received by the close of the comment period as indicated in the EPA notice.

ADDRESSES: Comments should be sent to Mr. James Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009; facsimile (760) 431–9624.

Copies of the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), Implementation Agreement, and Final EIS/EIR are available for review at the Riverside County Integrated Plan website (*http://www.rcip.org*) or at the following locations in California:

1. Carlsbad—U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road
2. Riverside—Riverside County Administrative Center, 4080 Lemon Street, 7th Floor; University of California, Riverside, Tomas Rivera Library, 900 University Avenue; and Riverside Public Library, 3581 Mission Inn Avenue
3. Murrieta—Murrieta Public Library, 39589 Los Alamos Road
4. Hemet—Riverside County Library, Hemet Branch, 25757 Fairview Avenue
5. Perris—Riverside County Library, Perris Branch, 163 E. San Jacinto.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (**SEE ADDRESSES**), telephone number (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

The Applicants seek an incidental take permit and assurances for 83 animal species (9 endangered, 5 threatened, and 69 unlisted), and assurances for 63 plant species (8 endangered, 3 threatened, and 52 unlisted). The animal species include 3 crustacean species (1 endangered, 1 threatened and 1 unlisted); 2 insect species (both endangered); 2 fish species (1 threatened and 1 unlisted); 5 amphibian species (2 endangered, 1 threatened, 2 unlisted); 12 reptile species (all unlisted); 45 bird species (2 endangered, 2 threatened, and 41 unlisted); and 14 mammal species (2 endangered and 12 unlisted). Collectively the 146 listed and unlisted species are referred to as Covered Species by the MSHCP. Twenty-eight of the Covered Species are identified as Covered Species for which adequate conservation has not been assured. These species would not be provided with incidental take under the permit until adequate conservation has been assured.

A permit is needed because section 9 of the Act and Federal regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take of listed animal species is defined under the Act to include kill, harm, or harass. Harm includes significant habitat modification or degradation that actually kills or injures listed animals by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Under limited circumstances, the Service may issue permits to authorize incidental take; *i.e.* take that is incidental to, and not the purpose of, otherwise lawful activity. Although take of plant species is not prohibited under the Act, and therefore cannot be authorized under an incidental take permit, plant species are proposed to be included on the permit in recognition of the conservation benefits provided to them under the MSHCP. Assurances of no additional mitigation requirements provided under the No Surprises Rule at 50 CFR 17.3, 17.22(b)(5), and 17.32(b)(5) would extend to all species named on the permit. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

The MSHCP is intended to protect viable populations of native plant and animal species and their habitats in perpetuity through the creation of a preserve system, while accommodating continued economic development and quality of life for residents of western Riverside County. In the year 2020, the Southern California Association of Governments estimates that Riverside County will be home to approximately 2.8 million people, who will occupy approximately 918,000 dwelling units. This represents a doubling of the County's present population and housing stock. Another study by the California Department of Finance estimates that the County will continue to grow to 3.5 million people by 2030 and 4.5 million people by 2040. These residents will be located within 24 incorporated cities, as well as within unincorporated areas.

The MSHCP is one part of Riverside County's Integrated Project, the purpose of which is to integrate and provide for future land use, transportation, and conservation needs in Riverside County. The MSHCP Plan Area encompasses 1.2 million acres in western Riverside County and includes the following 14 incorporated cities: Banning, Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto, and Temecula. The MSHCP is one of two large, multiple-jurisdictional habitat planning efforts in Riverside County, both of which are ''subregional'' plans under the State of California's Natural Community Conservation Planning Act of 1991.

In the MSHCP, the Applicants have proposed the conversion of approximately 800,000 acres from open space to non-open space uses during the 75-year permit, primarily by activities already planned for by the cities and County. These activities include residential, commercial, and industrial development; construction and maintenance of transportation facilities; construction and maintenance of flood control facilities, public utilities, and parks and trails; agricultural conversion of vegetation communities; management of reserves; and other anticipated projects.

Proposed covered activities which require discretionary action by a permittee, subject to consistency with MSHCP policies, include: two internal regional transportation facilities, maintenance of and safety improvements on existing roads, circulation element roads, single family homes on existing legal parcels, compatible uses in the reserve, and up to 10,000 new acres of agricultural activity within the Criteria Area (an area to be evaluated for inclusion in the reserve in accordance with the criteria guidelines). The MSHCP makes a provision for the inclusion of special districts and other non-permittee entities in the permit.

As described in Volumes I and II of the Public Review Draft MSHCP (November 2002) and the Draft EIS/EIR, the applicants propose to create a preserve system that protects and manages 153,000 acres of habitat for the Covered Species in addition to the identified existing 347,000 acres of Covered Species habitat in the Plan Area with conservation value in public or quasi-public ownership. The existing 347,000 acres would be monitored and managed in coordination with the 153,000 acres to achieve a conservation area of 500,000 acres. The County and cities are in the process of adopting a mitigation fee to acquire 97,000 acres as mitigation for private development in the Plan Area. The funding plan assumes that of the 97,000 acres, 41,000 acres would be conserved through the land use approval process. An additional 6,000 acres would be conserved as mitigation for State (California Department of Transportation and California Department of Recreation) projects. It is anticipated that the Service and the California Department of Fish and Game would provide an additional 50,000 acres to complement the 103,000 acres of mitigation identified in the MSHCP. The 153,000 acres of conservation area lie within a larger Criteria Area. The Criteria Area is divided into a grid consisting of 160-acre cells. Each cell or cell group has associated criteria that describe the conservation expected in that cell.

The MSHCP includes measures to avoid and minimize incidental take of the Covered Species, emphasizing project design modifications to protect both habitats and species' individuals. A monitoring and reporting plan would gauge the Plan's success based on achievement of biological species objectives and reserve design criteria, and would ensure that conservation keeps pace with open space conversion. The MSHCP also includes adaptive management which allows for changes in the conservation program if the biological species objectives are not met, or new information becomes available to improve the efficacy of the MSHCP's conservation strategy.

The MSHCP would be implemented by the permittees and the Regional Conservation Authority (RCA), a Joint Powers Authority. The RCA would be formed prior to our Record of Decision and permit decision. After the RCA is formed, it would apply to the Service for an incidental take permit to implement the MSHCP. We do not intend to notice the RCA's incidental take permit application in the **Federal Register** because the role of the RCA

was identified in the Draft MSHCP that was made available for public review with the **Federal Register** Notice of the incidental take permit applications from the other Applicants (67 FR 69236) and the RCA permit application would contain no new substantive information for the public to comment upon.

On November 15, 2002, the Service published a notice in the **Federal Register** (67 69236) announcing receipt of an application for an incidental take permit from Riverside County, the 14 cities and the other Applicants, and the availability of a Draft EIS/EIR for the application. The Draft EIS/EIR analyzed the potential environmental impacts that may result from the Federal action of authorizing incidental take anticipated to occur with implementation of the MSHCP, and identified various alternatives. We received a total of 110 comment letters on the Draft EIS/EIR. A response to each comment received in these letters has been included in Final EIS/EIR.

The Draft EIS/EIR considered four alternatives in addition to the preferred alternative/proposed project described above: (1) A listed, proposed and strong candidate species alternative; (2) a listed and proposed species alternative; (3) an existing reserves alternative; and (4) a no project alternative.

The listed, proposed and strong candidate species alternative focuses on the conservation of 29 state and/or federally listed species and seven unlisted species. This alternative would conserve approximately 119,300 acres of ''new'' lands (*i.e.*, acreage above and beyond what is already conserved through public or quasi-public land ownership and management).

The listed and proposed species alternative focuses on the conservation of 29 state and/or federally listed or proposed species. The proposed new conservation under this alternative is approximately 93,800 acres.

The existing reserves alternative would provide coverage for six State and/or federally listed or candidate species and some unlisted species depending on management regimes in the existing reserves. It would not provide any new conservation of land.

The analysis provided in the Final EIS/EIR is intended to accomplish the following: inform the public of the proposed action; address public comments received on the Draft EIS/EIR; disclose the direct, indirect, and cumulative environmental effects of the proposed action; and indicate any irreversible commitment of resources that would result from implementation of the proposed action. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Robert D. Williams,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–25313 Filed 10–6–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Skull Valley Goshute Tekoi Balefield Landfill Project, Tooele County, UT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs, in cooperation with the Skull Valley Band of Goshute Indians, will be gathering information needed for an Environmental Impact Statement (EIS). The information on the EIS will be used to support a lease to a private company to construct and operate a landfill and to develop the necessary infrastructure. The purpose of this project is to help provide an economic base for the tribe while helping the Salt Lake City area to dispose of non-hazardous wastes. We also are announcing public scoping meetings at this time.

DATES: Written comments on the scope and implementation of this proposal must arrive by November 5, 2003. The public scoping meetings will be held on October 21 and 22, 2003, from 6:30 p.m. to 8:30 p.m.

ADDRESSES: You may mail, hand carry or telefax written comments to either (1) Amy L. Heuslein, Regional Environmental Protection Officer, Bureau of Indian Affairs, Western Regional Office, P.O. Box 10, Phoenix, Arizona 85001, telefax (602) 379–3833; or (2) Chester Mills, Superintendent, Bureau of Indian Affairs, Uintah and Ouray Agency, P.O. Box 130, Fort Duchesne, Utah 84026, telefax (435) 722–2323.

The October 21, 2003, public scoping meeting will be held at the Utah State Extension Auditorium, 151 North Main Street, Tooele, Utah. The October 22, 2003, meeting will be held at the Little America Hotel, 500 South Main Street, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Amy Heuslein, (602) 379–6750, or Chester Mills, (435) 722–4300.

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of BIA approval of a proposed lease between the CR Group, the lessee, and the Skull Valley Band of Goshute Indians (Band), the lessor, of approximately 500 acres in the southwest Section 18, Range 8W, Township 5S, NAD 27, Tooele County, Utah. This section is approximately 2 miles west of Skull Valley Road on the reservation. The leased property will occupy the southwest 75 percent of the section. The property is located approximately 50 miles southwest of Salt Lake City, Utah. The CR Group intends to construct and operate a solid waste landfill on this property for a period of 25 years, with an option to renew the lease for another 25 years.

The proposed landfill will meet or exceed all applicable criteria of the Environmental Protection Agency (EPA) for such landfills, including, without limitation, the design criteria set forth in 40 CFR part 258. The landfill will be constructed with the appropriate impermeable lining material, and will only accept non-hazardous municipal and/or industrial solid waste. Limited ancillary facilities consisting of a truck scale, scale house and small administrative office will be constructed at the site, and an approximately 3-mile long road on the reservation constructed to provide access to and from the landfill.

The solid waste will be compressed, de-watered and baled before transportation to the landfill. The baled solid waste will be transported to the landfill in containers, using primarily flatbed trucks. It is anticipated that the majority of the waste will come from the Salt Lake City, Utah area. The transportation route is expected to be via Interstate 80 westward from the Salt Lake City area, then southward approximately 27 miles on Skull Valley Road to the proposed landfill site on the reservation.

The proposed landfill will consist of separate cells. The baled solid waste will be stacked in the cells. Separate cells will be used for municipal and industrial waste. As individual cells are filled and closed, they will be covered with lining and soil and re-vegetated consistent with EPA regulations and with BIA and tribal requirements. The CR Group will provide construction and reclamation bonds suitable to both the BIA and the Band.

Water for construction and operation of the landfill will be obtained from wells drilled on the reservation. These wells will be within 1 mile of the proposed site. Electricity will be generated using the collected landfill

gas in an internal combustion engine-generator set.

Significant issues to be covered during the scoping process may include, but not be limited to, air quality, geology and soils, surface and groundwater resources, biological resources, cultural resources, socioeconomic conditions, land use, aesthetics, environmental justice and Indian trust resources.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents who prefer confidentiality and wish to have their name and/or address withheld from public review or from disclosure under the Freedom of Information Act, must state this prominently at the beginning of their written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with § 1503.1 of the Council on Environmental Quality regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: September 26, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–25320 Filed 10–6–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1020–PK; HAG 04–0001]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Lakeview District.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will hold a conference call for all members on Wednesday, October 15, 2003 at 2 p.m. pacific standard time. The conference call is open to the public. Members of the public in the Lakeview area may attend the meeting in person in the Abert Rim Conference Room, Lakeview Interagency Office, 1301 South G Street, Lakeview, Oregon 97630. The meeting topics that may be discussed by the Council include a discussion of issues within Southeast Oregon related to: Birch Creek Recommendation, Sustainable Working Landscapes and Sage Grouse.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SEORAC conference call may be obtained from Pam Talbott, Contact Representative, Lakeview Interagency Office, 1301 South G Street, Lakeview, OR 97630 (541) 947–6107, or *ptalbott@or.blm.gov* and/or from the following Web site *http://www.or.blm.gov/SEOR–RAC.*

Dated: September 30, 2003.

M. Joe Tague,

Associate District Manager.

[FR Doc. 03–25329 Filed 10–06–03; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0047

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the permanent program performance standards—surface mining activities and underground mining activities at 30 CFR parts 816 and 817.

DATES: Comments on the proposed information collection must be received by December 8, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *Jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 816 and 817.

OSM has consolidated two information collections relating to coal mining performance standards, revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Permanent Program Performance Standards—Surface and Underground Mining Activities, 30 CFR parts 816 and 817.

OMB Control Number: 1029–0047.

Summary: Sections 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau Form Number: None.

Frequency of Collection: Once, on occasion, quarterly and annually.

Description of Respondents: Coal mining operators and State regulatory authorities.

Total Annual Responses: 186,341.

Total Annual Burden Hours: 870,333.

Dated: October 1, 2003.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 03–25299 Filed 10–6–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 1, 2003, Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihauna (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to manufacture small quantities of marijuana derivatives for research purpose.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration. Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than December 8, 2003.

Dated: September 17, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–25310 Filed 10–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 6, 2003, and published in the **Federal Register** on June 19, 2003, (68 FR 26841), AccusStandard Inc., 125 Market Street, New Haven, Connecticut 06513, made application by renewal and on May 7, 2003, by letter to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of Schedule I and II controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Fenethylline (1503)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Gamma hydroxybutyric acid (2010).	I
Methaqualone (2565)	I
Mecloqualone (2372)	I
Alpha-Ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxymphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,5-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenediocy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Befotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl) pyrrolidine (PCPY) (7458).	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Norpipanone (9636)	I
Phenadoxone (9637)	I
Phenampromide (9638)	I
Phenoperidine (9641)	I
Piritramide (9642)	I
Proheptazine (9643)	I
Properidine (9644)	I
Racemoramide (9645)	I
Trimeperidine (9646)	I
Phenomorphan (9647)	I
Propiram (9649)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
1- (2-Phenylethyl) -4-phenyl-4-acetoxypiperidine (9663).	I
Tilidine (9750)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-Methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Benzylfentanyl (9818)	I
Beta-Hydroxyfentanyl (9830)	I
Beta-Hydroxy-3-methylfentanyl (9831).	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thenylfentanyl (9834)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2250)	II
Nabilone (7379)	II
1-Phenylcylohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-. carbonitrile (8603)	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine HCL (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Metopon (9260)	II
Morphine (9300)	II
Thebaine (9333)	II
Dihydroetorphine (9334)	II
Opium, raw (9600)	II
Opium tincture (9630)	II
Opium powered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Piminodine (9730)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II
Alfentanil (9737)	II
Remifentanil (9739)	II

Drug	Schedule
Sufentanil (9740)	II
Carfentanil (9743)	II
Bezitramide (9800)	II
Fentanyl (9801)	II
Moramide-intermediate (9802)	II

The firm plans to manufacture small quantities of bulk material for use in reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of AccuStandard Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated AccuStandard Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: September 17, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–25308 Filed 10–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled substances; Notice of Registration

By Notice dated June 6, 2003, and published in the **Federal Register** on June 19, 2003, (68 FR 36843), CellTech Manufacturing CA., Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of Methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the controlled substance to make finished dosage forms for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of CellTech Manufacturing CA. Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated CellTech Manufacturing CA., Inc. to ensure that the company's registration is consistent with the public interest.

This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: September 17, 2003

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–25408 Filed 10–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 19, 2003, National Center for Natural Products Research—NIDA MProject, University of Mississippi, 135 Coy Waller Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to cultivate marijuana for the National Institute of Drug Abuse for research approved by the Department of Health and Human Services.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than December 8, 2003.

Dated: September 17, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–25309 Filed 10–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 16, 2003, and published in the **Federal Register** on June 11, 2003, (68 FR 35006), Noramco, Inc. (formerly Noramco of Delaware, Inc.), 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal and on December 4 and 26, 2002, by letters to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine-N-Oxide (9053)	I
Morphine-N-Oxide (9307)	I
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy

Assistant Administrator, Office of Diversion control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: September 17, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–25409 Filed 10–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 16, 2003, and published in the **Federal Register** on June 11, 2003, (68 FR 35006), Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexane-carbonitrile (8603)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture small quantities of controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Varian, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Varian, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: September 17, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–25407 Filed 10–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 12, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/ this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Indian and Native American Welfare-to-Work Program—Report forms and instructions.

OMB Number: 1205–0386.

Affected Public: State, local, or tribal govt.

Frequency: On occasion and quarterly.

Type of Response: Recordkeeping and reporting.

Number of Respondents: 40.

Information collection requirements	Annual responses	Frequency	Average response time (hours)	Annual burden hours
ETA 9069 (Participation and Characteristics Report).	160	Quarterly	9	1,440
ETA 9069–1 (Financial Status Report)	160	Quarterly	9	1,440
Recordkeeping	6,600	Occasion	3	19,800
Total	6,920			22,680

Total Annualized capital/startup costs: $0.

Total annual costs (operating/ maintenance systems or purchasing services): $396,000.

Description: This request is for reinstatement of a previously-approved reporting package that expired on 09/30/2001. The period available for expenditure of INA WtW funds has been extended by statute for an additional two years, so that the last possible report(s) submitted would be for the period (quarter) ending 09/30/2004. The proposed changes to section II of ETA 9069 are indicated in statute by the 1999 Amendments.

Other than the accompanying changes to the instructions, there are otherwise no changes to the previously-approved package.

Ira L, Mills,

Departmental Clearance Officer.

[FR Doc. 03–25377 Filed 10–6–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed consolidation and renewal of Job Corps applicant forms. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 8, 2003.

ADDRESSES: Gayle Cody, Office of Job Corps, 200 Constitution Avenue NW., Room N–4507, Washington, DC 20210. E-Mail Internet address: *cody.gayle@dol.gov;* Telephone number: (202) 693–3105. (This is not a toll-free number); Fax number: (202) 693–3113 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Job Corps program authorized by the Workforce Investment Act (WIA) of 1998, is designed to serve low-income young women and men, 16 through 24, who are in need of additional vocational, educational and social skills training, and other support services in order to gain meaningful employment, return to school or enter the Armed Forces. Job Corps is operated by the Department of Labor through a nationwide network of 118 Job Corps centers. The program is primarily a residential program operating 24 hours per day, 7 days per week, with non-resident enrollees limited by legislation to 20 percent of national enrollment. These centers presently accommodate more than 40,000 students. To ensure that the centers are filled with youth who are low-income, as well as capable of and committed to doing the work necessary to achieve the benefits of Job Corps, certain eligibility requirements have been established by the legislation.

The purpose of this collection is to gather information from applicants to determine their eligibility for Job Corps. These forms are critical to the screening process. They are the initial forms completed by the Job Corps admissions counselors for each applicant.

The ETA 652, Job Corps Data Sheet, is used to obtain information for screening and enrollment purposes to determine eligibility for the Job Corps program in accordance with the requirements of the Workforce Investment Act (§ 145 Recruitment, Screening, Selection and Assignment of Enrollees). It is prepared electronically by an admissions counselor for each applicant. It also provides demographic characteristics for program reporting purposes. Data for the forms are collected by interview. The information collected determines eligibility in regard to age, legal U.S. residency, family income/welfare status, school status, behavioral problems (if any), parental consent, and child care needs of each applicant.

The ETA 655, Statement from Court or Other Agency, and ETA 655A, Statement from Institution, collect essential information for determining an applicant's eligibility. They are used to document past behavior problems for all applicants, as well as provide a basis for projecting future behavior. If this information were not obtained, serious problems could result from enrolling potentially harmful or disruptive individuals in Job Corps, which is a residential program. This could have legal implications for the Federal government.

The ETA 682, Child Care Certification, is used to certify an applicant's arrangements for care of a dependent child(ren) while the applicant is in Job Corps.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Data previously collected on the following Job Corps application forms are now being collected from data input screens that electronically transmit data to a Center Information System (CIS). Job Corps has continued to collect application data because it was necessary to the application process that youth receiving training on Job Corps centers be eligible for the benefits provided.

Job Corps has now implemented electronic collection of data during the Job Corps application process and the changes required by the WIA have been incorporated in the collection. We request that the following data used in the application process be extended under OMB 1205–0025:

ETA 652, Job Corps Data Sheet,

ETA 655, Statement from Court or Other Agency, and ETA 682, Child Care Certification.

The deletion of these forms and electronic collection of the information will result in a reduction in paperwork burden hours and a streamlined electronic application.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Application Data Collection.

OMB Number: 1205–0025.

Agency Numbers: ETA 652, ETA 655, and ETA 682.

Recordkeeping: The applicant is not required to retain records; admissions counselors or contractor main offices are required to retain records of applicants

who enroll in the program for 3 years from the date of application.

Affected Public: Individuals; business or other for-profit/not-for-profit institutions; State, Local or Tribal Government.

Title	Total respondents	Frequency	Average time per respondent	Burden hours
Job Corps Application: ETA 652	102,833	1/person	10 minutes	17,139
Statement from Court or Other Agency: ETA 655	102,833	1/person	1 minute	1,714
Child Care Certification: ETA 682	4,886	On occasion	30 seconds	41
Total Burden Hours				18,894

Total Burden Cost (capital/startup): When the electronic system was initially piloted and implemented in 1996, the start-up costs totaled $2,680,000, including $2,000,000 for 925 computer workstations, $480,000 for training Job Corps admissions counselors and center staff and, in 1997, $200,000 for replacements and memory upgrades. These were one-time-only costs.

Total Burden Cost (operating/maintaining): Operating and maintenance services associated with this data collection are contracted yearly by the Federal government with outreach and admissions contractors, according to designated recruiting areas. This is one of the many functions the contractors perform for which precise costs cannot be identified. Based on past experience of recruitment contractors, however, the annual cost for contractor staff and related costs is estimated to be about $821,399. An additional cost of $29,191 is added for the value of applicant time, making a total cost of $850,590. For the approximately 70 percent of Job Corps applicants who have never worked, no value is determined. For the remaining 30 percent of applicants who have been in the work force previously for any length of time, whether full-time or less, the current minimum wage of $5.15 is used to determine the value of applicant time (ETA 652: $26,480, ETA 655: $2,648, and ETA 682: $63).

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

David Dye,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. 03–25376 Filed 10–6–03; 8:45 am]

BILLING CODE 4510–23–M

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. Tito Coal

[Docket No. M–2003–062–C]

Tito Coal, 118 Fairview Lane, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1002–1 (now 75.1002) (Installation of electric equipment and conductors; permissibility) to its White Vein Slope (MSHA I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner requests a modification in the application of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Canyon Fuel Company, LLC

[Docket No. M–2003–063–C]

Canyon Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its Dugout Canyon Mine (MSHA I.D. No. 42–01890) located in Carbon County, Utah. The petitioner requests that its previous petition for modification, docket number M–2000–171–C, be amended to remove the following language in Paragraph V.(C): ''must include a means, maintained in operating condition, to maintain the surface temperature of the exhaust system of diesel equipment below 302 degrees Fahrenheit'', and to replace Paragraph V.(C) as follows: ''In addition to the requirements of V.(B), diesel-powered equipment classified as heavy-duty under 30 CFR 75–1908(a), must include a means, maintained in operating condition, to prevent the spray from ruptured diesel fuel, hydraulic oil, and lubricating oil lines from being ignited by contact with engine exhaust system component surfaces such as shielding, conduit, non-absorbent insulating materials, or other similar means.'' The petitioner asserts that covering the exhaust systems would present a diminution of safety to the miners due to the possibility that combustible material can accumulate under the insulating material often creating a potential fire hazard.

3. Eastern Associated Coal Corp.

[Docket No. M–2003–064–C]

Eastern Associated Coal Corp., 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.1108(Flame-resistant conveyor belts) to its Matewan Tunnel Mine (MSHA I.D. No. 46–08610) located in Boone County, West Virginia. The petitioner proposes to use approximately 10,000 feet of the total 26,000 feet of belt in a specific location and application with safeguards in place that would guarantee and provide no less than the same degree of safety as the existing standard, in lieu of using underground belting that meets the requirements for flame-resistant conveyor belts. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. D & D Coal Co.

[Docket No. M–2003–065–C)

D & D Coal Co., 320 East Main Street, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.333(e)(1)(ii) (Ventilation controls) to its Primrose Slope Mine (MSHA I.D. No. 36–08341) located in Schuylkill County, Pennsylvania. The

petitioner requests a modification of the existing standard to permit the use of a 2 x 3 foot diameter fiberglass overcast in the intake slope that is 20 feet in length. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Little Eagle Coal Company

[Docket No. M–2003–066–C]

Little Eagle Coal Company, Route 16 Fola Road, Bickmore, West Virginia 25019 has filed a petition to modify the application of 30 CFR 75.900 (Low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Little Eagle Mine (MSHA I.D. No. 46–08560) located in Clay County, West Virginia. The petitioner proposes to use a vacuum contactor in series with the circuit breaker to perform tripping tasks normally associated with the circuit breaker. The petitioner has listed in this petition for modification specific procedures that would be followed when using vacuum contactors. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Canyon Fuel Company, LLC

[Docket No. M–2003–067–C]

Canyon Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its Dugout Canyon Mine (MSHA I.D. No. 42–01890) located in Carbon County, Utah. The petitioner requests that its previous petition for modification, docket number M–2000–171–C, be amended, as it relates to two-entry longwall retreat mining, to add the following paragraph: ''In the event hydrogen sulfide is encountered during the development phase of a longwall panel, the petitioner shall have the option of utilizing the conveyor belt entry as a neutral split of air during retreat mining operations. The belt air shall be coursed away from the longwall section, in lieu of 'point feeding' the intake air at the mouth of the section.'' The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Dynatec Mining Corporation

[Docket No. M–2003–004–M]

Dynatec Mining Corporation, 2200 South 4000 West, Salt Lake City, Utah 84120 has filed a petition to modify the application of 30 CFR 57.22606(a) and (c) (Explosive materials and blasting units (III mines)) to its FMC No. 9 Ventilation Shaft Project (MSHA I.D. No 48–00152) located in Sweetwater County, Wyoming. The petitioner proposes to use electric detonators to initiate blasts but requests a modification of the existing standard to allow the use of nonel detonators to detonate the explosives in the blast holes. The petitioner asserts that the proposed alternative method 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 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before November 6, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 29th day of September, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–25410 Filed 10–6–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: 8:30 a.m.–5 p.m., November 22, 2003; 8:30 a.m.–12 p.m., November 23, 2003

PLACE: Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington Virginia

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Executive Session, Unfinished Business, New Business, Announcements, Adjournment

PORTIONS OPEN TO THE PUBLIC: Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Unfinished Business, New Business, Announcements, Adjournment

PORTIONS CLOSED TO THE PUBLIC: Executive Session

CONTACT PERSON FOR MORE INFORMATION: Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW, Suite 850, Washington, D.C. 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *mquigley@ncd.gov* (E-mail)

AGENCY MISSION: The National Council on Disability (NCD) is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week before this meeting.

LANGUAGE TRANSLATION: In accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week before this meeting.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: October 2, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–25498 Filed 10–3–03; 11:06 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts 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 Combined Arts Advisory Panel, Arts Education section (Learning in the Arts for Children and Youth category) to the National Council on the Arts will be held on October 27–31, 2003 in Room 716 at the Nancy Hanks Center, 1100

Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting, from 12:30 p.m. to 1:30 p.m. on October 31st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on October 27th—30th, and from 9 a.m. to 12:30 p.m. and 1:30 p.m. to 3:30 p.m. on October 31st, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

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.

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: October 2, 2003.

Kathy Plowitz-Worden, Panel Coordinator,

Panel Operations, National Endowment for the Arts.

[FR Doc. 03–25332 Filed 10–6–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70(C) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following request to amend an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning this amendment request follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application number, docket number	Description of material		End use	Country of origin
	Material type	Total qty		
Philotechnics, Ltd., June 17, 2003, June 24, 2003, IW010/01, 11005216.	Class A radiocative waste, as DU aircraft counterweights.	50,000.00 kgs DU metal, aircraft counterweights.	Amend to increase quantity, extend expiration date, add intermediate US consignee and update licensee address. Counterweights to be recycled; if disposal necessary services to be provided by Waste Control Specialists, L.L.C., Andrews County, TX.	United Kingdom.

For the Nuclear Regulatory Commission.

Dated this 30 day of September, 2003, at Rockville Maryland.

Edward T. Baker,

Deputy Director, Office of International Programs.

[FR Doc. 03–25365 Filed 10–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of October 6, 13, 20, 27, November 3, 10, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of October 6, 2003

Tuesday, October 7, 2003

9:30 a.m. Briefing on Decommissioning Activities and Status (Public Meeting) (Contact: Claudia Craig, 301–415–7276)

This meeting will be webcast live at the Web address—*http//www.nrc.gov.*

1:30 p.m. Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of October 13, 2003—Tentative

Wednesday, October 15, 2003

1:30 p.m. Briefing on License Renewal Program, Power Uprate Activities, and High Priority Activities (Public Meeting) (Contact: Jimi Yerokun, 301–415–2292)

This meeting will be webcast live at the Web address—*http//www.nrc.gov.*

Week of October 20, 2003—Tentative

Thursday, October 23, 2003

10 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*http//www.nrc.gov*

Week of October 27, 2003—Tentative

Wednesday, October 29, 2003

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

Week of November 3, 2003—Tentative

There are no meetings scheduled for the Week of November 3, 2003.

Week of November 10, 2003—Tentative

There are no meetings scheduled for the Week of November 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: October 2, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–25489 Filed 10–3–03; 10:47 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

October 23 Public Hearing; Sunshine Act

TIME AND DATE: 2 p.m., Thursday, October 23, 2003.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing open to the Public at 2 p.m.

PURPOSE: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Monday, October 20, 2003. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Monday, October 20, 2003. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

FOR FURTHER INFORMATION CONTACT: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov*.

Dated: October 2, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–25554 Filed 10–3–03; 2:22 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form S–2, OMB Control No. 3235–0072, SEC File No. 270–060.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for an extension of the previously approved collection of information discussed below.

Form S–2 (OMB Control No. 3235–0072; SEC File No. 270–060) is used by certain issuers to register securities under the Securities Act of 1933. The Form S–2 provides investors with the necessary information to make investment decisions regarding securities offered to the public. The likely respondents will be public companies. The information collected must be filed with the Commission and is publicly available. Form S–2 takes approximately 470 burden hours to prepare and is filed by 101 respondents for a total of 47,470 burden hours. It is estimated that 25% of the 47,470 total burden hours (11,868 hours) is prepared by the company. The remaining 75% of burden hours is attributed to outside cost.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–25314 Filed 10–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11a-2, SEC File No. 270–267, OMB Control No. 3235–0272.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for an extension of the

previously approved collection of information discussed below.

The title for the collection of information is ''Rule 11a–2 Under the Investment Company Act of 1940: Offers of Exchange by Certain Registered Separate Accounts or Others the Terms of Which Do Not Require Prior Commission Approval.''

Rule 11a–2 [17 CFR 270.11a–2] permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. Rule 11a-2 requires disclosure, in certain registration statements filed pursuant to the 1933 Act, of any administrative fee or sales load imposed in connection with an exchange offer.

There are currently 711 registrants governed by Rule 11a–2. The Commission includes the estimated burden of complying with the information collection required by Rule 11a–2 in the total number of burden hours estimated for completing the relevant registration statements and reports the burden of Rule 11a–2 in the separate PRA submissions for those registration statements (*see* the separate PRA submissions for Form N–3 [17 CFR 274.11b], Form N–4 [17 CFR 274.11c] and Form N–6 [17 CFR 274.11d]). The Commission is requesting a burden of one hour for Rule 11a–2 for administrative purposes.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. With regard to Rule 11a–2, the Commission includes the estimate of burden hours in the total number of burden hours estimated for completing the relevant registration statements and reported on the separate PRA submissions for those statements (*see* the separate PRA submissions for Form N–3, Form N–4 and Form N–6).

The information collection requirements imposed by Rule 11a–2 are mandatory. Responses to the collection of information will not be kept confidential. 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–25315 Filed 10–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 6c–7, SEC File No. 270–269, OMB Control No. 3235–0276.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*,) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 6c–7 [17 CFR 270.6c–7] under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''1940 Act'') provides exemption from certain provisions of Sections 22(e) and 27 of the 1940 Act for registered separate accounts offering variable annuity contracts to certain employees of Texas institutions of higher education participating in the Texas Option Retirement Program. There are approximately 80 registrants governed by Rule 6c–7. The burden of compliance with Rule 6c–7, in connection with the registrants obtaining from a purchaser, prior to or at the time of purchase, a signed document acknowledging the restrictions on redeemability imposed by Texas law, is estimated to be approximately 3 minutes per response for each of 2,600 purchasers annually (at an estimated $70 per hour), for a total annual burden of 130 hours (at a total annual cost of $9,100). Rule 6c–7 requires that the separate account's Registration Statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) include a representation that Rule 6c–7 is being relied upon and is being complied with. This requirement enhances the Commission's ability to monitor utilization of and compliance with the rule. There are no recordkeeping requirements with respect to Rule 6c–7.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. The Commission does not include in the estimate of average burden hours the time preparing registration statements and sales literature disclosure regarding the restrictions on redeemability imposed by Texas law. The estimate of burden hours for completing the relevant registration statements are reported on the separate PRA submissions for those statements. (See the separate PRA submissions for Form N–3 [17 CFR 274.11b] and Form N–4 [17 CFR 274.11c].)

Complying with the collection of information requirements of the rules is necessary to obtain a benefit. 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 26, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–25316 Filed 10–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0004.

Extension:

Rule 27f–1 and Form N–27F–1, SEC File No. 270–487, OMB Control No. 3235–0546.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 27f–1 [17 CFR 270.27f–1] is entitled ''Notice of Right of Withdrawal Required To Be Mailed to Periodic Payment Plan Certificate Holders and Exemption from Section 27(f) for Certain Periodic Payment Plan Certificates.'' Form N–27F–1 is entitled ''Notice to Periodic Payment Plan Certificate Holders of 45 Day Withdrawal Right with Respect to Periodic Payment Plan Certificates.'' Form N–27F–1, which is prescribed by rule 27f–1, is used to notify recent purchasers of periodic payment plan certificates of their right under section 27(f) of the Act to return the certificates within a specified period for a full refund. The Form N–27F–1 notice, which is sent directly to holders of periodic payment plan certificates, serves to alert purchasers of periodic payment plans of their rights in connection with their plan certificates.

Commission staff estimates that three issuers of periodic payment plan certificates are affected by rule 27f–1. The frequency with which each of these issuers or their representatives must file Form N–27F–1 notices varies with the number of periodic payment plans sold. The Commission estimates, however, that approximately 5,907 Form N–27F–1 notices are sent out annually. The Commission estimates that all the issuers that send Form N–27F–1 notices use outside contractors to print and distribute the notices, and incur no hourly burden. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.[1]

Complying with the collection of information requirements of rule 27f–1 is mandatory for custodian banks of periodic payment plans for which the sales load deducted from any payment exceeds 9 percent of the payment.[2] The information provided pursuant to rule 27f–1 will be provided to third parties and, therefore, will not be kept confidential. The Commission is seeking OMB approval, because 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0004. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–25317 Filed 10–6–03; 8:45 am]

BILLING CODE 8010–01–M

[1] This estimate is based on informal conversations between the Commission staff and representatives of periodic payment plan issuers.

[2] The rule permits the issuer, the principal underwriter for, or the depositor of, the issuer or a record-keeping agent for the issuer to mail the notice if the custodian bank has delegated the mailing of the notice to any of them or if the issuer has been permitted to operate without a custodian bank by Commission order. *See* 17 CFR 270.27f–1.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26200; 812–12863]

Putnam American Government Income Fund, et al., Notice of Application

October 1, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: The applicants request an order that would permit (a) certain registered management investment companies to invest uninvested cash and cash collateral in (i) affiliated money market funds and/or short-term bond funds or (ii) one or more affiliated entities that operate as cash management investment vehicles and that rely on section 3(c)(1) or 3(c)(7) of the Act, and (b) the registered investment companies and the affiliated entities to continue to engage in purchase and sale transactions involving portfolio securities in reliance on rule 17a–7 under the Act.

APPLICANTS: Putnam American Government Income Fund, Putnam Arizona Tax Exempt Income Fund, Putnam Asset Allocation Funds, Putnam California Tax Exempt Income Fund, Putnam Capital Appreciation Fund, Putnam Classic Equity Fund, Putnam Convertible Income-Growth Trust, Putnam Discovery Growth Fund, Putnam Diversified Growth Fund, Putnam Diversified Income Trust, Putnam Equity Income Fund, Putnam Europe Equity Fund, Putnam Florida Tax Exempt Income Fund, Putnam Funds Trust, The George Putnam Fund Of Boston, Putnam Global Equity Fund, Putnam Global Income Trust, Putnam Global Natural Resources Fund, The Putnam Fund For Growth And Income, Putnam Health Sciences Trust, Putnam High Yield Advantage Fund, Putnam High Yield Trust, Putnam Income Fund, Putnam Intermediate U.S. Government Income Fund, Putnam International Equity Fund, Putnam Investment Funds, Putnam Investors Fund, Putnam Massachusetts Tax Exempt Income Fund, Putnam Michigan Tax Exempt Income Fund, Putnam Minnesota Tax Exempt Income Fund, Putnam Money Market Fund, Putnam Municipal Income Fund, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Tax Exempt Income Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund, Putnam OTC & Emerging Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, Putnam Tax Exempt Income Fund, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free Income Trust, Putnam Tax Smart Funds Trust, Putnam U.S. Government Income Trust, Putnam Utilities Growth And Income Fund, Putnam Variable Trust, Putnam Vista Fund, Putnam Voyager Fund, Putnam California Investment Grade Municipal Trust, Putnam High Income Opportunities Trust, Putnam High Income Bond Fund, Putnam High Yield Municipal Trust, Putnam Investment Grade Municipal Trust, Putnam Managed High Yield Trust, Putnam Managed Municipal Income Trust, Putnam Master Income Trust, Putnam Master Intermediate Income Trust, Putnam Municipal Bond Fund, Putnam Municipal Opportunities Trust, Putnam New York Investment Grade Municipal Trust, Putnam Premier Income Trust, and Putnam Tax-Free Health Care Fund (each a ''Fund,'' collectively the ''Funds''), and Putnam Investment Management, LLC (together with any entity controlling, controlled

by or under common control with Putnam Investment Management, LLC, the ''Adviser'').

Filing Dates: The application was filed on July 26, 2002, and amended on September 25, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 24, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, One Post Office Square, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634 or Todd Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Funds are Massachusetts business trusts and are registered under the Act as open-end or closed-end management investment companies. The Adviser is an investment adviser registered under the Investment Advisers Act of 1940 and serves as investment adviser to each Fund.

2. Certain Funds, including money market Funds that comply with rule 2a–7 under the Act, (each, a ''Participating Fund'') have or may be expected to have cash that has not been invested in portfolio securities (''Uninvested Cash''). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments or money from investors. Certain Participating Funds also may participate in a securities lending program (''Securities Lending Program'') under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are secured by collateral, including cash collateral (''Cash Collateral'' and together with Uninvested Cash, ''Cash Balances''), equal at all times to at least the market value of the securities loaned. Currently, the Adviser can invest Cash Balances directly in money market instruments or other short-term debt obligations. All or a portion of certain Funds' Cash Balances may be managed by a sub-adviser to a Fund (''Sub-Adviser'').

3. Applicants request an order to permit: (i) The Participating Funds to use their Cash Balances to purchase shares of one or more of the open-end Funds that are money market funds or short-term bond funds (the ''Registered Central Funds'') or private investment companies that serve as cash management vehicles, are advised by the Adviser, and rely on section 3(c)(1) or 3(c)(7) of the Act (the ''Private Central Funds'') (the Registered Central Funds and the Private Central Funds, collectively, the ''Central Funds''); (ii) the Central Funds to sell their shares to and redeem such shares from the Participating Funds; (iii) the Participating Funds and the Private Central Funds to engage in interfund purchase and sale transactions in securities (''Interfund Transactions''); and (iv) the Adviser or a Sub-Adviser to effect the above transactions.[1]

4. The investment by each Participating Fund in shares of the Central Funds will be in accordance with that Participating Fund's investment policies and restrictions as set forth in its registration statement.[2] The Registered Central Funds are or will be taxable or tax-exempt money market funds that comply with rule 2a–7 under the Act or short-term bond funds that maintain a dollar-weighted average portfolio maturity of three years or less. Certain Private Central Funds will comply with rule 2a–7 under the Act. Other Private Central Funds will invest in high quality securities with relatively short maturities.[3]

Applicants' Legal Analysis

I. Investment of Cash Balances by the Participating Funds in the Central Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no investment company may acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Participating Funds to use their Cash Balances to acquire shares of the Registered Central Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases a Participating Fund's aggregate investment of Uninvested Cash in shares of the Central Funds will not exceed the greater of 25% of the Participating Fund's total assets or $10 million. Applicants also request relief to permit the Registered Central Funds to sell their securities to the Participating Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that the proposed arrangement will not result in inappropriate layering of fees and that a Participating Fund's shareholders will not be subject to the

[1] Applicants request that any relief granted also apply to any other registered management investment company or series thereof now existing or established in the future, for which the Adviser serves as investment adviser (included in the term ''Funds''). All Funds that currently intend to rely on the requested order are named as applicants. Any future Fund will rely on the order only in accordance with the terms and conditions of the application.

[2] A Participating Fund that is a money market Fund will not invest in a Central Fund that does not comply with rule 2a–7 under the Act.

[3] A Private Central Fund that does not comply with rule 2a–7 may accept investments of Cash Collateral from Participating Funds (other than money market Funds), but will not accept investments from Participating Funds investing Uninvested Cash.

imposition of double investment advisory fees. If a Central Fund offers more than one class of shares in which a Participating Fund may invest, the Participating Fund will invest its Cash Balances only in the class with the lowest expense ratio at the time of investment. Applicants also state that no front-end sales charge, contingent deferred sales charge, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act (''Rule 12b–1 Fee'') or service fee will be charged in connection with the purchase and sale of shares of the Central Funds. In addition, if the Adviser collects a fee from a Central Fund for acting as its investment adviser with respect to assets invested by a Participating Fund, when approving an investment advisory or sub-advisory contract under section 15 of the Act for the Participating Fund, the board of trustees of each Participating Fund (''Board''), including a majority of trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), will consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser or Sub-Adviser should be reduced to account for reduced services provided to the Participating Fund as a result of the investment of Uninvested Cash in the Central Fund. Applicants represent that no Central Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote by the other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to the investment company. Because the Funds have the Adviser as investment adviser, they may be deemed to be under common control and thus affiliated persons of each other. In addition, if a Participating Fund purchases more than 5% of the voting securities of a Central Fund, the Central Fund and the Participating Fund may be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of Central Funds to the Participating Funds, and the redemption of the shares by the Participating Funds.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Central Funds by the Participating Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Central Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Participating Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they can achieve a higher return or for any other reason. Applicants state that a Registered Central Fund has the right to discontinue selling shares to any of the Participating Funds if the Registered Central Fund's Board or the Adviser determines that such sale would adversely affect the Registered Central Fund's portfolio management and operations.

C. Section 17(d) of the Act and Rule 17d–1 under the Act

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has approved the joint arrangement. Applicants state that the Participating Funds, by purchasing shares of the Central Funds, the Adviser, and any Sub-Adviser, by managing the assets of the Participating Funds invested in the Central Funds, and each of the Central Funds, by selling Shares to and redeeming them from the Participating Funds could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

2. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the registered investment company's participation in the joint transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants state that the investment by the Participating Funds in shares of the Central Funds would be on the same basis and no different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet the standards for an order under rule 17d–1.

II. Interfund Transactions

1. Applicants state that certain Funds and Private Central Funds currently rely on rule 17a–7 under the Act to conduct Interfund Transactions. Rule 17a–7 under the Act provides an exemption from section 17(a) for a purchase or sale of certain securities between a registered investment company and an affiliated person (or an affiliated person of an affiliated person), provided that certain conditions are met, including that the affiliation between the registered investment company and the affiliated person (or an affiliated person of the affiliated person) must exist solely by reason of having a common investment adviser, common directors and/or common officers. Applicants state that the Participating Funds and Private Central Funds may not be able to rely on rule 17a–7 when purchasing or selling portfolio securities to each other, because some of the Participating Funds may own 5% or more of the outstanding voting securities of a Private Central Fund and, therefore, an affiliation would not exist solely by reason of such Participating Fund and such Private Central Fund having a common investment adviser, common directors and/or common officers.

2. Applicants request relief under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the Funds and the Private Central

Funds will comply with rule 17a–7(a) through (g) under the Act. Applicants state that the additional affiliation created under sections 2(a)(3)(A) and (B) does not affect the other protections provided by rule 17a–7, including the integrity of the pricing mechanism employed and oversight by each Fund's Board.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The shares of the Central Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, Rule 12b–1 Fee, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

2. If the Adviser collects a fee from a Central Fund for acting as investment adviser with respect to assets invested by a Participating Fund, the Adviser or Sub-Adviser to a Participating Fund will provide the Board of the Participating Fund, before its next meeting that is held for the purpose of voting on an advisory or sub-advisory contract under section 15 of the Act, with specific information regarding the approximate cost to the Adviser or Sub-Adviser for, or portion of the advisory or sub-advisory fee under the existing advisory or sub-advisory fee attributable to, managing the Uninvested Cash of the Participating Fund that can be expected to be invested in the Central Funds. Before approving any advisory or sub-advisory contract under section 15 for a Participating Fund, the Board of the Participating Fund, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory or sub-advisory fees charged to the Participating Fund by the Adviser or Sub-Adviser should be reduced to account for reduced services provided to the Participating Fund by the Adviser or Sub-Adviser as a result of investment of Uninvested Cash in the Central Funds. The minute books of the Participating Fund will record fully the Board's consideration in approving the investment advisory or sub-advisory contact, including the consideration relating to fees referred to above.

3. Each of the Participating Funds may invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Participating Fund's aggregate investment of Uninvested Cash in the Central Funds does not exceed the greater of 25% of the Participating Fund's total assets or $10 million. For purposes of this limitation, each Participating Fund or series thereof will be treated as a separate investment company.

4. Investments by a Participating Fund in shares of the Central Funds will be in accordance with each Participating Fund's respective investment restrictions and will be consistent with such Participating Fund's investment objectives and policies as set forth in its prospectus and statement of additional information. A Participating Fund that complies with rule 2a–7 under the Act will not invest its Cash Balances in a Central Fund that does not comply with rule 2a–7. A Participating Fund's Cash Collateral will be invested in a particular Central Fund only if that Central Fund has been approved for investment by the Participating Fund and if that Central Fund invests in the types of instruments that the Participating Fund has authorized for the investment of its Cash Collateral.

5. Each Participating Fund and Central Fund that may rely on the order shall be advised by the Adviser.

6. No Central Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except as permitted by a Commission order governing interfund loans.

7. Before a Participating Fund may participate in a Securities Lending Program, a majority of the Board, including a majority of the Independent Trustees, will approve the Participating Fund's participation in the Securities Lending Program. The Board will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Central Funds is in the best interest of the Participating Fund.

8. The Securities Lending Program of each Participating Fund will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

9. To engage in Interfund Transactions, the Participating Funds and the Private Central Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers and/or common trustees, solely because a Participating Fund and a Private Central Fund might become affiliated persons of each other within the meaning of sections 2(a)(3)(A) and (B) of the Act.

Operation of the Private Central Funds

10. Each Private Central Fund will comply with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Private Central Fund were a registered open-end investment company. With respect to all redemption requests made by a Participating Fund, a Private Central Fund will comply with section 22(e) of the Act. The Adviser will adopt procedures designed to ensure that each Private Central Fund complies with sections 17(a), (d), and (e), 18 and 22(e) of the Act. The Adviser will also periodically review and update, as appropriate, the procedures, and will maintain books and records describing the procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

11. The net asset value per share with respect to shares of the Private Central Funds will be determined separately for each Private Central Fund by dividing the value of the assets belonging to that Private Central Fund, less the liabilities of that Private Central Fund, by the number of shares outstanding with respect to that Private Central Fund.

12. Each Participating Fund will purchase and redeem shares of a Private Central Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Private Central Fund. A separate account will be established in the shareholder records of each Private Central Fund for the account of each Participating Fund that invests in such Private Central Fund.

13. Each Private Central Fund that operates as a money market fund and uses the amortized cost method valuation, as defined in rule 2a–7 under the Act, will comply with rule 2a–7 as though it were a registered investment company. Each such Private Central Fund will adopt the procedures described in rule 2a–7(c)(7) and the Adviser will comply with these procedures and take any other actions as are required to be taken pursuant to these procedures. A Participating Fund may only purchase shares of such a Private Central Fund if the Adviser

determines on an ongoing basis that the Private Central Fund is operating as a money market fund and is in compliance with rule 2a–7. The Adviser will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and the staff.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–25337 Filed 10–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26199; 812–12988]

WNC Housing Tax Credit Fund VI, L.P., Series 11 and Series 12, and WNC National Partners, LLC; Notice of Application

October 1, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting relief from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

APPLICANTS: WNC Housing Tax Credit Fund VI, L.P., Series 11 and WNC Housing Tax Credit Fund VI, L.P., Series 12 (each a ''Series,'' and collectively, the ''Fund''), and WNC National Partners, LLC (the ''General Partner'').

SUMMARY OF THE APPLICATION: Applicants request an order to permit each Series to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATE: The application was filed on July 23, 2003. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 24, 2003, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street NW, Washington, DC 20549–0609. Applicants, 17782 Skypark Circle, Irvine, California 92614.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, (202) 942–0634, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Each Series was formed in 2003 as a California limited partnership. Each Series will operate as a ''two-tier'' partnership, *i.e.*, each Series will invest as a limited partner in other limited partnerships (''Local Limited Partnerships''). The Local Limited Partnerships in turn will engage in the ownership and operation of apartment complexes expected to be qualified for low income housing tax credit under the Internal Revenue Code of 1986, as amended. The General Partner is a California limited liability company whose sole member is WNC & Associates, Inc. (''WNC & Associates''), a California corporation.

2. The objectives of each Series are (a) to provide current tax benefits primarily in the form of low income housing credits which investors may use to offset their Federal income tax liabilities, (b) to preserve and protect capital, and (c) to provide cash distributions from sale or refinancing transactions.

3. On July 21, 2003, the Fund filed a registration statement under the Securities Act of 1933, pursuant to which the Fund intends to offer publicly, in two series of offerings, 25,000 units of limited partnership interest (''Units'') at $1,000 per unit. The minimum investment will be five Units for most investors, although employees of the General Partner and/or its affiliates and/or investors in syndications previously sponsored by the General Partner and/or its affiliates may purchase a minimum of two Units. Purchasers of the Units will become limited partners (''Limited Partners'') of the Series offering the Units.

4. A Series will not accept any subscriptions for Units until the requested exemptive order is granted or the Series receives an opinion of counsel that it is exempt from registration under the Act. Subscriptions for Units must be approved by the General Partner. Such approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in a Series is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings, and automobiles), of at least $35,000 and an annual gross income of at least $35,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings, and automobiles) of at least $75,000. Units will be sold only to investors who meet these suitability standards, or such more restrictive suitability standards as may be established by certain states for purchasers of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed on the transferor Limited Partner.

5. Although a Series' direct control over the management of each apartment complex will be limited, the Series' ownership of interests in Local Limited Partnerships will, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. A Series normally will acquire at least a 90% interest in the profits, losses, and tax credits of the Local Limited Partnerships. However, in certain cases, the Series may acquire a lesser interest in such partnerships. Each Local Limited Partnership's partnership agreement will provide that distributions of proceeds from a sale or refinancing of an apartment complex will be paid to a Series in the range of from 10% to 50%.

6. Each Series will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partner on the basis of performance, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local

Limited Partnership agreement materially and adversely affecting the Series' investment.

7. Each Series will be controlled by the General Partner, pursuant to a partnership agreement (the ''Partnership Agreement''). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Series. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement, and to dissolve the Series. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Series.

8. Applicants state that the Partnership Agreement and prospectus of the Series contain provisions designed to ensure fair dealing by the General Partner with the Limited Partners. Applicants also state that all compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus. Applicants believe that the fees and other forms of compensation that will be paid to the General Partner and its affiliates are fair and on terms no less favorable to the Series than would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, WNC Capital Corporation, an affiliate of the General Partner, will receive a dealer-manager fee and a nonaccountable underwriting expense allowance in amounts equal to 2% and 1%, respectively, of capital contributions. The General Partner or an affiliate will receive a nonaccountable organizational and offering expense reimbursement in an amount equal to 3% of capital contributions. The General Partner has agreed to pay all organizational and offering expenses (excluding selling commissions, the dealer-manager fee, the nonaccountable underwriting expense allowance and the nonaccountable expense reimbursement).

10. During the acquisition phase, each Series will pay WNC & Associates a fee equal to 7% of capital contributions for analyzing and evaluating potential investments in Local Limited Partnerships and for various other services. WNC & Associates will receive a nonaccountable acquisition expense reimbursement equal to 2% of capital contributions in consideration of which WNC & Associates will pay all acquisition expenses of each Series. Aggregate fees and expenses paid in connection with the organization of each Series, the offering of Units, and the acquisition of Local Limited Partnership interests by each Series will be limited by the Partnership Agreement and will comply with guidelines published by the North American Securities Administrators Association. These guidelines require that a specified percentage (generally 80%, but subject to reduction) of the aggregate Limited Partners' capital contributions to the Fund be committed to Local Limited Partnership interests.

11. During the operating phase, the General Partner will receive 0.1% of any cash available for distribution, and each Series may pay certain fees and reimbursements to the General Partner or its affiliates. An asset management fee will be payable for services related to the administration of the affairs of each Series and ongoing management of each Series. Other fees may be paid in consideration of property management services provided by the General Partner or its affiliates as the management and leasing agents for some of the apartment complexes. In addition, the General Partner and its affiliates generally will be allocated 0.1% of profits and losses of each Series for tax purposes and tax credits.

12. During the liquidation phase, and subject to certain prior payments to the Limited Partners, each Series will pay the General Partner or its affiliates a fee equal to 1% of the sales price of the apartment complexes sold in which the General Partner or its affiliates have provided a substantial amount of services. The General Partner also will receive 10% of any additional sale or refinancing proceeds.

13. All proceeds from a Series' public offering of Units initially will be placed in an escrow account with USbank (''Escrow Agent''). Pending release of offering proceeds to the Series, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a Series, funds in escrow will be released to the Series and held by it pending investment in Local Limited Partnerships.

14. If more than one entity that the General Partner or its affiliates advises or manages may invest in a particular investment opportunity, the decision as to the entity that will be allocated the investment will be based upon such factors as the effect of the acquisition on diversification of each entity's portfolio, the estimated income tax effects of the purchase on each entity, the amount of funds of each entity available for investment, and the length of time such funds have been available for investment. Priority generally will be given to the entity having uninvested funds for the longest period of time. However, any entity that was formed to invest primarily in apartment complexes eligible for state low income housing tax credits (''state tax credits'') as well as for Federal low income housing tax credits will be given priority with respect to any investment that is eligible for state tax credits over entities which are not seeking to provide state tax credits.

Applicants' Legal Analysis

1. Applicants believe that the Fund and its Series will not be ''investment companies'' under sections 3(a)(1)(A) or 3(a)(1)(C) of the Act. If the Fund and its Series are deemed to be investment companies, however, applicants request an exemption under section 6(c) and 6(e) of the Act from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

2. Section 3(a)(1)(A) of the Act provides that an issuer is an ''investment company'' if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants believe that the Fund will not be an investment company under section 3(a)(1)(A) because the Fund will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. Section 3(a)(1)(C) of the Act provides that an issuer is an ''investment company'' if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire ''investment securities'' having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Applicants state that although the Local Limited Partnership interests may be deemed ''investment securities,'' they are not readily marketable, cannot be sold without severe adverse tax consequences, and have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships.

4. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the Commission's release concerning two-tier real estate partnerships (the

''Release'').[1] The Release states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c). Section 6(c) provides that the Commission may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) permits the Commission to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company.

5. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interest.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–25338 Filed 10–6–03; 8:45 am]

BILLING CODE 8010–01–P

[1] Investment Company Act Release No. 8465 (Aug. 9, 1974).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48577; File No. SR–Amex–2003–80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Pilot Program for Marketing Fee Procedures

September 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Commentary .11 to Amex Rule 958 specifying the procedures by which specialists and registered options traders (''ROTs'') may determine whether to continue to participate in the marketing fee program recently established by the Exchange. The Exchange proposes to institute these procedures on a six-month pilot basis. The text of the proposed rule change is below. Proposed new language is *italicized.*

* * * * *

Rule 958. Options Transactions of Registered Traders

(a) through (h) No Change

Commentary

.01 through .10 No Change

.11 Marketing Fee Program Voting Procedures. The following procedures specify how a specialist and Registered Trader determine whether to participate or not to participate in the Exchange's marketing fee program. These procedures will expire six (6) months from the date of effectiveness unless extended, or adopted on a permanent basis.

(a) Eligible Voters

(i) Eligible Registered Traders. For option classes traded by an individual specialist, Registered Traders to be eligible to participate in the vote must have transacted at least 80% of their contracts and transactions in each of the three immediately preceding calendar months in one or more option classes traded by that specialist. For cases when one specialist trades a single option class or multiple specialists trade a single option class, Registered Traders to be eligible to participate in the vote must have transacted at least 80% of their contracts and transactions in each of the three immediately preceding calendar months in that option class. Registered Traders are required to continue to trade the particular option class at the time of the vote. Eligible Registered Traders and the specialist shall each have one vote.

(b) Requesting a Vote. After the marketing fee initially has been in effect for three consecutive calendar months with respect to the option classes of an individual specialist, any eligible Registered Trader and specialist can request that a vote be held to determine whether or not the Registered Trader and specialist should continue to participate in the marketing fee program by submitting a written request to that effect to the Secretary of the Exchange. The Exchange shall post a notice of the time and date of any vote to be taken at least 10 calendar days prior to the time of the vote. The Marketing Fee Program Committee shall determine all other administrative procedures pertaining to the vote.

(c) Participation in the Marketing Fee Program. The Registered Traders and specialist shall be deemed to have indicated that they desire to participate in the Exchange's marketing fee program if a majority of those eligible Registered Traders participate in the vote and if a majority of the total votes cast are in favor of participating in the marketing fee program. Conversely, the eligible Registered Traders and the specialist shall be deemed to have indicated that they do not desire to participate in the Exchange's marketing fee program if a majority of those eligible Registered Traders participate in the vote and if a majority of the total votes cast are against participating in the marketing fee program.

(i) Frequency of Vote. Once eligible Registered Traders and the specialist vote to participate in the marketing fee program, subsequent votes to determine whether to continue participation may be held only once every three calendar months. Once eligible Registered Traders and the specialist vote not to participate in the marketing fee program, subsequent votes to determine whether to participate in the marketing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

fee program may be held only once every thirty days.

(ii) Tie Votes. If a vote conducted in accordance with this Commentary results in a tie, the status quo for the specialist and Registered Traders of the particular option class shall remain in effect. Accordingly, if the specialist and Registered Traders currently participate in the marketing fee program and a tie vote occurs, the marketing fee program will remain in effect for that specialist and Registered Traders. If the specialist and Registered Traders do not participate in the marketing fee at the time the tie vote occurs, the marketing fee will not be implemented for the specialist and Registered Traders at that time.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In July 2000, the Amex imposed a marketing fee of $0.40 per contract on the transactions of specialists and Registered Options Traders (''ROTs'') in individual equity options. The Exchange collected the fees and distributed the funds to the specialists, who then used the funds to pay broker-dealers for orders they directed to the Amex. In August 2001, the Exchange suspended the collection of the fee. In June 2003, the Amex re-instated an equity option marketing fee on those specialist and ROT transactions resulting from orders from customers of payment accepting firms with whom the specialist has negotiated a payment for order flow arrangement.[3]

In conjunction with the re-instatement of the marketing fee program, the Amex now proposes to adopt Commentary .11 to Amex Rule 958 for the purpose of establishing procedures for specialists and ROTs to determine whether to continue participation in the Exchange's marketing fee program. The Amex proposes to institute their procedures on a six-month pilot basis. In connection with the adoption of the procedures included in new Commentary .11 to Amex Rule 958, the Amex would establish a Marketing Fee Program Committee (''Committee'') to determine and administer the procedures for conducting the required vote. The Committee would be comprised of the Amex's Vice Chairman, two options specialists designated by the Chairman of the Specialists' Association and two ROTs designated by the Chairman of the Options Market Maker Association.

The proposed new Commentary .11 to Amex Rule 958 would identify which ROTs are eligible to vote for particular option classes. In connection with a required vote, the specialist and each eligible ROT would be entitled to one vote. Any decision to discontinue participation in the Amex's marketing fee program would be on a specialist-by-specialist basis, unless more than one specialist trades a single option class, in which case, the determination would be made on an option-class basis.[4] ROTs may choose to trade one or all of the option classes traded by a specialist.

The proposed voting procedures provide that a ROT would be eligible to vote on continued participation in the marketing fee program with respect to the option classes traded by an individual specialist provided that the ROT has at least 80% of its registered trader activity in each of the three immediately preceding calendar months (measured in terms of both contract volume and transactions) in one or more of the options traded by that specialist.[5] When one specialist trades a single option class or multiple specialists trade a single option class, ROTs would need to have at least 80% of their registered trader activity in each of the three immediately preceding calendar months (measured in terms of both contract volume and transactions) in that option class to be eligible to vote on whether to continue with the marketing fee program. In addition, the ROT would need to continue to trade the option class or classes at the time of the vote. The Exchange believes that these requirements assure that only those ROTs who have concentrated their activity in one or more option classes traded by a specialist over the last three months would be eligible to participate in the vote.

Process to Request a Vote. After the program has been in effect for the initial three calendar month period, the specialist or any eligible ROT could request that a vote be held by submitting a written request to the Secretary of the Exchange. The Amex would provide at least 10 calendar days' posted notice to the specialist and other ROTs of the time and date of the vote. The Exchange would verify that the member requesting a vote is an eligible ROT and would keep the identity of such individual confidential.

Specialist and ROTs Participating in the Marketing Fee Program. The specialist and ROTs could cease to participate in the marketing fee program after the initial three-month period has expired. In order to opt out of the marketing fee program, the following actions must occur: (i) The question must be presented for a vote of the specialist[6] and eligible ROTs; (ii) a majority of the eligible ROTs must participate in the vote; and (iii) a majority of the votes cast must be in favor of not continuing to participate in the marketing fee program. In the event that the vote is tied, the marketing fee program would remain in effect in those option classes for the next three consecutive months.

Specialist and ROTs Not Participating in the Marketing Fee Program. The proposed voting procedure set forth in Commentary .11 provides that twenty days after the specialist and eligible ROTs vote to discontinue participation in the marketing fee program, the specialist and any eligible ROT may request that another vote be held to determine whether the trading crowd should again participate in the marketing fee program.[7] In this case, if a majority of the votes cast are in favor of again participating in the marketing fee program, the program would be in effect in those option classes for the next three consecutive months. In the event that the vote is tied, the specialist and ROTs would be deemed to have indicated that they do not wish to

[3] *See* Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR–Amex–2003–50).

[4] The Amex notes that most specialists trade two or more option classes, some specialists trade only one active option class, and some actively traded option classes have two or more specialists.

[5] The Amex notes that this 80% trading activity requirement pertains to the trading activity of an individual ROT, and not to the aggregate trading activities of any group of ROTs. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Ian K. Patel, Attorney, Division of Market Regulation, Commission, on September 26, 2003.

[6] The specialist may (but is not required to) participate in the vote.

[7] The Exchange notes that actual votes may only be held once every thirty days. Because there is a ten-calendar day notice period prior to a vote, however, the specialist and any eligible ROT may request a vote twenty days after the preceding vote.

participate in the marketing fee program.

If a payment-accepting firm were to materially change its execution status or a specialist transfers its options classes to a separate organization, any eligible ROT could request that a vote be held pursuant to procedures set forth above to determine whether those option classes should continue to participate in the marketing fee program.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act [8] in general and furthers the objectives of section 6(b)(5) of the Act [9] in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Amex neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A)(iii)[10] of the Act and Rule 19b-4(f)(6)[11] under the Act because it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Amex has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

The Exchange has requested that the Commission waive the usual pre-operative waiting period, so that it may immediately begin implementing the proposed procedures in connection with the marketing fee program. The Exchange notes that acceleration of the operative date of the proposed rule is appropriate, given that substantially similar procedures have been adopted by the Chicago Board Options Exchange, Inc. (''CBOE'') and approved by the Commission.[12]

The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date of the proposal.[13] The Commission notes that it has approved a substantially similar proposal filed by the CBOE. For this reason, the Commission designates that the proposal become operative immediately. At any time within sixty days after the filing of the proposed rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-2003–80 and should be submitted by October 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25339 Filed 10–6–03; 8:45 am]

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. Section 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* Securities Exchange Act Release No. 47957 (May 30, 2003), 68 FR 35035 (June 11, 2003) (SR–CBOE–2003–20).

[13] For purposes of accelerating the operative date of the proposed rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48581; File No. SR–NASD–2003–111]

Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, and 5 Thereto by the National Association of Securities Dealers, Inc., Relating to Charges for ViewSuite Services Set Forth in NASD Rule 7010(q)

October 1, 2003.

On July 17, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-6 thereunder,[2] a proposed rule change to institute a pilot program for a one-year period to simplify the structure of the fees assessed for the ViewSuite products under NASD Rule 7010(q), by combining the current DepthView, PowerView, and TotalView products into one single entitlement package. On August 11, 2003, Nasdaq filed Amendment No. 1 that entirely replaced the original rule filing.[3]

The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on August 21, 2003.[4] The Commission received no comments on the proposal. On September 22, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.[5] On September 24, 2003, Nasdaq filed Amendment No.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–6.

[3] *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 8, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 48358 (August 15, 2003), 68 FR 50566 (August 21, 2003).

[5] *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 17, 2003 (''Amendment No. 2''). In Amendment No. 2, Nasdaq stated that it was changing the starting date of the proposed pilot to October 1, 2003. This is a technical amendment and is not subject to notice and comment.

3 to the proposed rule change.[6] On September 26, 2003, Nasdaq filed Amendment No. 4.[7] On September 29, 2003, Nasdaq filed Amendment No. 5.[8]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[9] The Commission finds that the proposal is consistent with Section 15A of the Act[10] in general, and with Section 15A(b)(5) of the Act,[11] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls. The Commission notes that the pilot ViewSuite entitlement program is available to all subscribers of the ViewSuite products. All subscribers would pay a single price for the entitlement package. Thus, for most of ViewSuite's current subscribers, the ViewSuite monthly controlled device fees would be lower than what they are currently paying. The only exception would be for current DepthView professional subscribers, whose fees would increase $20 per month. The increased monthly fee for DepthView professional subscribers, however, is due to the fact that the new single ViewSuite entitlement includes NQDS data, which cannot be discounted by Nasdaq.[12]

[6] *See* Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 24, 2003 (''Amendment No. 3''). In Amendment No. 3, Nasdaq amended the rule text of the proposal to clarify that the starting date of the proposed pilot is October 1, 2003.

[7] *See* Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 25, 2003 (''Amendment No. 4''). Nasdaq filed Amendment No. 4 to correct typographical errors made in Amendment No. 3. Amendment No. 4 completely replaced and superseded Amendment No. 3.

[8] *See* Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 29, 2003 (''Amendment No. 5''). Nasdaq filed Amendment No. 5 to correct typographical errors made in Amendment No. 4. Amendment No. 5 completely replaced and superseded Amendment Nos. 3 and 4. This is a technical amendment and is not subject to notice and comment.

[9] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(b)(5).

[12] Nasdaq has represented that the increase in Depth View pricing reflects the addition of NQDS, which cannot be discounted because it is part of the Nasdaq UTP Plan. *See* Securities Exchange Act Release No. 48358 (August 15, 2003), 68 FR 50566 (August 21, 2003).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–NASD–2003–111), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25340 Filed 10–6–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48576; File No. SR–NASD–2003–142]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend a Pilot Amendment to NASD Rule 7010(s) Regarding Nasdaq PostData and the Associated Fees Assessed

September 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend a pilot amendment to NASD Rule 7010(s) regarding Nasdaq PostData and the associated fees assessed. The purpose of this filing is to extend the pilot through March 31, 2004. Nasdaq is making no substantive changes to the pilot, other than to extend its operation through March 31, 2004. There is no new proposed rule language.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–(f)(6).

[5] Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com Web site.[6] Nasdaq extended that pilot through February 28, 2003,[7] then through March 31, 2003,[8] and, finally, through September 30, 2003.[9] Nasdaq hereby proposes to extend the pilot period for PostData through March 31, 2004.

Background. PostData originally consisted of three reports provided in a single package: (1) Daily Share Volume Report, which provide subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) Daily Issue Data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (*e.g.* block or

[6] *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR–NASD–99–12).

[7] *See* Securities Exchange Act Release No. 47210 (January 17, 2003), 68 FR 3912 (January 27, 2003)(SR–NASD–2003–02).

[8] *See* Securities Exchange Act Release No. 47503 (March 14, 2003), 68 F.R. 13745 (March 20, 2003)(SR–NASD–2003–35).

[9] *See* Securities Exchange Act Release No. 47634 (April 4, 2003), 68 FR 17714 (April 10, 2003)(SR–NASD–2003–60).

total). Nasdaq launched PostData on March 18, 2002.

On August 5, 2002, Nasdaq expanded the information made available to PostData subscribers to include four additional reports: Buy Volume Report, Sell Volume Report, Crossed Volume Report, and Consolidated Activity Volume Report.[10] Each report offers information regarding total Nasdaq reported buy (or sell, or cross, or consolidated) volume in the security, as well as rankings of registered market makers based upon various aspects of their activity in Nasdaq. The reports also provide recipients with information about the number and character of each market maker's trades. Finally, the reports provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest.

Extension of the Pilot. The PostData pilot program is scheduled to expire on September 30, 2003. Nasdaq plans to request permanent approval of PostData in the coming months. Additional time is needed, however, to finalize the details of PostData as a permanent product and to fully analyze PostData fees. Nasdaq is therefore requesting an extension of the PostData pilot through March 31, 2004.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[11] and 15A(b)(6)[12] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed RuleChange Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[13] and rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Such waivers will allow the pilot to operate without interruption through March 31, 2004. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–142 and should be submitted by October 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25342 Filed 10–6–03; 8:45 am]

BILLING CODE 8010–01–P

[10] *See* Securities Exchange Act Release No. 46316 (August 6, 2002), 67 FR 52504 (August 12, 2002)(SR–NASD–2002–90).

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48579; File No. SR–NYSE–2003–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., To Amend an Interpretation of NYSE Rule 345 to Provide for the Elimination of ''Registered Representative-In-Charge'' as a Category Precluded From Being an Independent Contractor

October 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 3, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NYSE.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commission staff made non-substantive changes to the description of the proposed rule change and the format of this Notice with the permission of the Exchange. Telephone conversations between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, September 12 and 16, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend its *Interpretation Handbook* by eliminating, from an existing Interpretation of NYSE Rule 345, a prohibition on persons designated as ''Registered-Representative-In-Charge'' from associating with members and member organizations as independent contractors. Below is the text of the proposed rule change. Proposed new language is italicized. Proposed deletions are in [brackets].

* * * * *

Rule 345 Employees—Registration, Approval, Records

(a) Registration

/01 Exceptions

No change.

/02 ''Independent Contractors''

The Exchange will not object to the assertion by a natural person registered representative of ''independent contractor'' status if such status will not preclude his or her characterization and treatment as an ''employee'' for purposes of the Constitution and Rules of the Exchange. Such salesperson and the member organization must agree that the natural person is subject to the organization's direct, detailed supervision, control and discipline and is covered by its fidelity bond.

Once a member organization approves a registered representative's status of ''independent contractor'' the following conditions must be met:

1. No change.
2. No change.
3. No change.
4. No change.

Written notification of the cessation of ''independent contractor'' status is to be given to the Qualifications and Registrations Department of the Exchange.

This interpretation does not apply to persons delegated supervisory functions (*e.g.*, Branch Office Manager[, Registered Representative-In-Charge]), pursuant to Rule 342(b)(1) nor does it permit the incorporation of registered representatives. (*See* Interpretation Memo No. 78–7 dated December 27, 1978.)

This interpretation does not preclude a registered representative who is the sole employee in a small office (*e.g.*, a residence office) *or a registered representative who is designated as ''in-charge'' pursuant to Rule 342.15, provided such person has not been assigned or delegated supervisory duties,* from asserting and obtaining approval for independent contractor status.

A registered representative who is designated as ''in-charge'' and who seeks status as an independent contractor must submit all of the documentation required in items 1 through 4, above, as well as a written statement by the member or member organization that it has not assigned or delegated any supervisory responsibilities to the registered representative-in-charge.

(Also see Rule 342.15/02, page 3414.)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 342 (''Offices ''Approval, Supervision and Control'') requires, in part, that each office of a member or member organization shall be under the supervision and control of the member or member organization establishing it and of the person delegated such authority and responsibility. Further, the structure and administration of Exchange rules mandate that all employees of members and member organizations, including registered representatives, be subject to the direct and ongoing supervision and control of their member organization employer.

In addition, Rule 342.15 provides that small offices (those with three or fewer registered representatives) may be in the charge of a qualified principal or manager who is either resident or non-resident in that location. Interpretation /02 to Rule 342.15 provides that where a qualified supervisor is not on the premises of a small office, a resident registered representative is to be designated as ''in charge.'' However, it is still required that all supervisory functions (*e.g.*, approval of accounts, review of account activity and correspondence, etc.) are to be conducted by qualified supervisors.

Interpretation /02 to Rule 345(a) permits a registered representative to be associated with a member or member organization as an ''independent contractor'' provided such status does not preclude the independent contractor's characterization and treatment as an employee for purposes of the Constitution and Rules of the Exchange (*e.g.*, registration, qualification, supervision by the member or member organization, and being subject to the Exchange's jurisdiction). However, Interpretation /02 to Rule 345(a) prohibits persons delegated supervisory responsibilities including persons designated as ''registered representative-in-charge,'' from claiming the status of independent contractor.

The Exchange believes that persons delegated supervisory responsibilities for members and member organizations generally must be full-time employees (the Exchange has exemption authority under Rule 346(e)).

Member organizations have stated that the prohibition against a registered representative-in-charge from being an independent contractor is creating unnecessary burdens in small offices with two or three registered representatives, all of whom may wish to be independent contractors. Typically, the type of office that would have independent contractors is one with limited securities sales activities, *e.g.*, the registered representatives work part-time for their member or member organizations and part-time selling products or services for affiliated or non-affiliated companies, such as banking, tax preparation, or accounting services. These individuals usually are employed by the non-member organization and conduct their limited securities activities through an independent contractor relationship with the member or member organization.

The Exchange proposes the elimination of ''registered representative-in-charge'' as a category of registered person precluded from being an independent contractor under this interpretation. In this regard, the Exchange has determined that members and member organizations generally assign administrative as opposed to supervisory functions to persons they designate as registered representatives-in-charge. Pursuant to an existing written interpretation (Rule 342.15/02), primary supervision is carried out by qualified branch managers, (persons who have passed the General Securities Sales Supervisor Qualification

Examination, Series 9 and 10) at designated parent branch offices or the main office of the member or member organization in accordance with its overall written plan of supervision.

Accordingly, Interpretation /02 to Rule 345(a) will be amended to permit registered representatives-in-charge to associate with members and member organizations as independent contractors provided that the member or member organization neither assigns nor delegates supervisory responsibilities to such persons. Further, in addition to the documents already required to be submitted under this Interpretation in seeking approval of independent contractor status (*e.g.*, Employment Agreement, Consent to Jurisdiction Form, written assurances that the member or member organization will supervise and control all activities of the independent contractor the same as it regulates the activities of all other registered representatives), (*see* NYSE Interpretation 345(a) /02), the member or member organization would be required to submit a written statement confirming that it has not assigned or delegated any supervisory responsibilities to such person.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5)[4] of the Exchange Act, which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to File No. SR–NYSE–2003–26 and should be submitted by October 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25341 Filed 10–6–03; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3548]

District of Columbia (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 29, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 29, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 19, 2003, and for economic injury the deadline is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–25371 Filed 10–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3547]

State of Maryland (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 29, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 29, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 18, 2003, and for economic injury the deadline is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–25370 Filed 10–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3545]

State of North Carolina (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 26, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 26, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 2003, and for economic injury the deadline is June 18, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 30, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–25369 Filed 10–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3552]

Commonwealth of Pennsylvania

As a result of the President's major disaster declaration on September 26, 2003, I find that Chester County in the Commonwealth of Pennsylvania constitutes a disaster area due to damages caused by Tropical Storms Henri and Isabel, and related severe storms and flooding occurring on September 15 through September 23, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 25, 2003 and for economic injury until the close of business on June 28, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Berks, Delaware, Lancaster and Montgomery in the Commonwealth of Pennsylvania; New Castle County in the State of Delaware; and Cecil County in the State of Maryland.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.125
Homeowners without credit available elsewhere	2.562
Businesses with credit available elsewhere	6.199
Businesses and non-profit organizations without credit available elsewhere	3.100
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.100

The number assigned to this disaster for physical damage is 355208. For economic injury the number is 9X2100 for Pennsylvania; 9X2200 for Delaware; and 9X2300 for Maryland.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 29, 2003

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–25368 Filed 10–6–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Supplemental Security Income (SSI), Youth Transition Process Demonstration (YTPD)

AGENCY: Social Security Administration.

ACTION: Notice of youth demonstration and SSI waivers.

SUMMARY: The Commissioner of Social Security announces the following demonstration project relating to the Supplemental Security Income (SSI) program under title XVI of the Social Security Act. Under this project, the Social Security Administration (SSA) will test the effectiveness of altering certain SSI program rules as an incentive to encourage SSI recipients with disabilities or blindness to work or increase their work activity and earnings. This project, called the Youth Transition Process Demonstration (YTPD), is being conducted under the authority of section 1110 of the Act. SSA is conducting this project in six states for the purpose of helping youth with disabilities maximize their economic self-sufficiency as they transition from school to work. The projects will work with youth aged 14–25 who receive SSI, Social Security Disability Insurance (SSDI), or Childhood Disability Benefits (CDB) and those at risk of receiving such benefits, including those who have a progressive disability, who have a prognosis for decreased functioning, or who have existing disabling conditions prior to age 18 that would render them eligible except for deemed parental income. SSA is publishing this notice in accordance with 20 CFR 416.250(e).

DATES: The demonstration project will begin with cooperative agreement awards on September 30, 2003. Subject to the availability of funds, the demonstration project will end September 29, 2008.

FOR FURTHER INFORMATION CONTACT: Leola Brooks, Social Security Administration, Office of Program Development and Research, 6401 Security Blvd, 3673 Annex, Baltimore, MD 21235–6401; Phone (410) 965–2219 or through E-mail to *leola.brooks@ssa.gov.*

SUPPLEMENTARY INFORMATION:

Background

SSI is a federal program administered by SSA. The program is financed from general federal revenue and provides monthly benefit payments to aged, blind, and individuals with disabilities who have limited resources and income. In 2003, the federal benefit rate for an individual is $552 per month and $829 per month for a couple. In addition, many states supplement the federal benefit. The supplementary benefit amounts and the categories of persons eligible for these benefits vary from state to state. In most states, eligibility for SSI means eligibility for Medicaid; the extent of the Medicaid coverage package varies by state. SSI recipients may also be eligible to receive Food Stamps in all states but California and Wisconsin, where the state's supplementary payments are considered to include the value of Food Stamps.

To be eligible, a person must be age 65 or older, or have a severe disability and have limited resources and income, and meet certain other requirements. A person is considered to have a disability if a physical or mental impairment or combination of impairments prevents the person from doing any substantial gainful work and is expected to last for at least 12 months or to result in death. Children, as well as adults, may be eligible. SSA works cooperatively with the states, who are responsible for making disability and blindness determinations through their disability determination services (DDS). SSA takes a detailed medical history from the applicant during the initial interview and sends that information to the DDS. The DDS then secures medical records and, if needed, arranges an additional medical examination. Based upon this evidence, a disability or blindness determination is made.

In addition to age, disability or blindness, an individual or couple must meet resource, income, and residency requirements. In 2003, the resource limits are $2,000 for an individual and $3,000 for a couple. However, not everything that a person owns is counted.

An individual or couple may have earned or unearned income and still may be eligible for the SSI program. A certain amount of income is disregarded in determining eligibility and computing the SSI benefit amount. People who live in a state that supplements the federal payment may

have higher amounts of income and still may qualify for some benefits.

To be eligible for SSI, a person must reside in the U.S. or the Northern Mariana Islands and be a U.S. citizen, an alien lawfully admitted for permanent residence, or an alien permanently residing in the U.S. under ''color of law'' (PRUCOL). PRUCOL is defined in the Code of Federal Regulations at 20 CFR 416.1618.

Description of the YTPD Projects

To further the President's New Freedom Initiative goal of increasing employment of individuals with disabilities, we are conducting a demonstration project, called the Youth Transition Process Demonstration (YTPD), under the authority of section 1110 of the Act. SSA is awarding cooperative agreements to state agencies and universities in six states for five years, subject to the availability of funds, for the purpose of helping youth with disabilities maximize their economic self-sufficiency as they transition from school to work. These projects will focus on youth ages 14–25 who receive SSI, Social Security Disability Insurance (SSDI), Childhood Disability Benefits (CDB), and youth who are at risk of receiving such benefits. The projects are designed to collaborate among federal, state, and local agencies to develop and implement sustainable improvements in the delivery of transition services and supports. The projects will test ways to remove other barriers to employment and economic self-sufficiency.

YTPD Project Sites

SSA is conducting seven YTPD projects in six states. The state, title, description and project sites for each project follow.

California

Title: The Bridges to Youth Self Sufficiency Project (Bridges).

Awardee: State of California Health and Human Services Agency Department of Rehabilitation.

Summary: The Bridges to Youth Self Sufficiency Project (Bridges) will serve youth ages 14–25 who receive SSI, SSDI, or CDB or youth at risk of receiving such benefits. Benefits planning and intensive service coordination are the main services provided by this project. Other specific program components are benefits training and education, outreach to specialized populations, early intervention, local partnering, youth incentives, local and state oversight bodies, and a data driven research study. The categories of outcomes to be measured are employment, education, level of independence, service participation, and quality of life.

Project Sites:

1. Riverside County Office of Education
2. Whittier Union High School District
3. Vallejo City Unified School Districts
4. Capistrano Unified School District/ Saddleback Valley Unified School District Consortium
5. Irvine Unified School District/ Newport-Mesa Unified School District Consortium

Colorado

Title: Colorado Youth Work Incentive Network of Supports (WINS).

Awardee: JFK Partners of the University of Colorado Health Sciences Center.

Summary: Colorado Youth Work Incentive Network of Supports (WINS) overarching goal is to assist youth, aged 14–25, who are currently receiving or are likely to receive SSI, SSDI, or CDB benefits to maximize their economic self-sufficiency and career advancement. Participants will work with a Transition Team (made up of a Consumer Navigator, Benefits Planner, and a Career Counselor) located in each selected community. The Transition Team, housed at local Workforce Centers, will provide specialized and intensive transition services to youth and their families. This project is designed to ensure that the same Transition Team members will work with youth and their families during high school and after the youth has left high school and entered the workforce. This project will collect comparison data from additional youth to determine the impact the intensive transition services and waivers have on Colorado Youth WINS participants. Comparisons will be made between participants and the control group using both direct collect and administrative data.

Project Sites: Larimer, El Paso/Teller and Pueblo Counties.

Iowa

Title: Smart Start.

Awardee: University of Iowa's Center for Disability and Development, Employment Policy Group.

Summary: Smart Start focuses on supporting the successful transition of students with disabilities from school to employment and economic self-sufficiency by addressing deficiencies and inefficiencies that exist across the system. The project concentrates on coordinating and integrating existing resources (services and benefits) available through local, state, and federal programs including Individuals with Disabilities Education Act (IDEA), Medicaid, Workforce Investment Act, Vocational Rehabilitation, SSI, and Ticket to Work. The purpose of Smart Start is to design and set into motion a system of individualized, comprehensive, and navigable transition-related services that adequately respond to the needs and aspirations of young people with disabilities. By removing customary bureaucratic constraints that impede individual choice and empowerment, Smart Start enables coordination and integration of transition services across multiple agencies by creating a service delivery system that is market driven. This effort presents an opportunity for local, state, and federal agencies to meaningfully engage in cross-departmental risk-sharing efforts. Project participants are students with disabilities enrolled in public schools and young adults with disabilities, formerly enrolled in public schools, who are unemployed (or who are employed but seeking jobs), starting with youth ages 14–25 years old who receive SSI.

Project Sites: Mason City and Waterloo Community School Districts.

Maryland

Title: The Maryland State Department of Education Youth Demonstration Project.

Awardee: Maryland State Department of Education.

Summary: The Maryland State Department of Education Youth Demonstration Project will have dedicated staff to assist the student participants and their families in the development of services and training that leads to employability and the building of a safety net for independence. In each service site there will be a dedicated Department of Rehabilitation Services Counselor, a Consumer Navigator, and a Family Support and Benefits Coordinator. Areas to be addressed include transportation, independent living, health care, and benefits planning before exiting school. The partnership with the One Stop will allow students, with the guidance of the Consumer Navigator, to develop those life skills needed for employment. As a result of participation in this project, students with disabilities will be better prepared for life choices at the completion of their public school educational program. Participating students will be more prepared for adulthood by obtaining the skills and the service agency linkages to move from dependence to independence. All

participating students will receive the benefits of earlier involvement with the Division of Rehabilitation Services (DORS) and other employment support services.

Project Sites:

Maryland Schools for the Blind, Baltimore County, Wicomico County

Mississippi

Title: The Mississippi Youth Transition Innovations Project (MYTI).

Awardee: Mississippi Department of Rehabilitation Services (MDRS).

Summary: The Mississippi Youth Transition Innovations Project (MYTI) will serve youth ages 10–25 who receive SSI, SSDI, CDB, or youth at risk of receiving such benefits. MYTI will address the following issues: (a) The need for development of a model transition process that will facilitate optimal passage from school to work; (b) The elimination of barriers when feasible to effect transition at the local, state, and federal levels through interagency collaboration and elimination of policies, procedures, regulations, and statutory requirements that impede progress; and, (c) The development of natural and new/innovative supports at all levels as needed. The MYTI Project will be based upon individual person-centered planning, including the use of individual training accounts involving prospective employer buy-in to pre-career development, such as training opportunities required to earn an Occupational Diploma. As issues arise that impede the ability to accomplish this, local-level Transition Specialists will address these on an individualized basis and, if necessary, bring them to the state-level Coordination Council to facilitate barrier removal. In the final year in the local school system, participants will be referred to the appropriate MDRS program for vocational rehabilitation, supported employment, and independent living services. The program will be evaluated in terms of progress and outcome variables. Participation analysis will compare the experiences of the project group with a similar group of students with disabilities who did not receive project services.

Project Sites: Gulfport City and Harrison County Schools in years 1–3 and then add the Durant Public School in year 4.

New York

Title: Transition WORKS.

Awardee: Erie 1 Board of Cooperative Educational Services (BOCES) with the Office of Vocational and Educational Services for Individuals with Disabilities, New York State Department of Education.

Summary: Transition WORKS project is designed to increase the post-school transition success experienced by youth and young adults ages 14–25 who receive SSI, SSDI or CDB or youth at risk of receiving such benefits. Transition WORKS proposes to provide a comprehensive, collaborative transition planning and services model comprised of the most effective, research-based transition practices. A research design will test the efficacy of the component services and statistically test several hypotheses regarding transition services. The project will provide student- and family-centered planning for all participants (in and out-of-school), coordination of services, parent and family education and support, benefits advisement and work incentives advisement in addition to waivers of SSA regulations, and participation in career exploration activities as well as community-based work experiences. Youth with potential for postsecondary education will receive assistance to plan for and to enter and participate successfully in postsecondary education.

Project Site: Erie County.

Title: CUNY's Youth Transition Demonstration Project.

Awardee: City University of New York.

Summary: CUNY's Youth Transition Demonstration Project is designed to prepare youth aged 16–19, who receive SSI benefits, to achieve economic self-sufficiency. The project plans to increase coordination among public agencies and private organizations that have resources, funding, and a mandate to provide transition services. As a forum to deliver transition services, integrate systems and tap resources, the project will convene an annual, four-week, Summer Institute for participating youth. There will be a variety of workshops, information sessions, and professional development seminars to support transition. All students will be trained in self-determination skills. Tutoring in basic skills, vocational assessments, benefits counseling, and work-based learning will also be provided. College students with disabilities will serve as peer mentors. Year round activities will include student self-advocacy groups, parent support groups, and a four-course, twelve-credit Certificate in Transition Services for school personnel, staff at public and private agencies, as well as parents and CUNY students. The project will be evaluated by comparing the progress the experimental group makes, versus the control group, in completing specific and objective milestones in the transition process.

Project Site: Bronx County.

Alternative SSI Program Rules that Apply to Participants in the YTPD

Section 1110(b) of the Act authorizes the Commissioner of Social Security to waive any requirements of title XVI of the Act necessary to carry out demonstrations that, in the Commissioner's judgment, are likely to promote the objectives or facilitate the administration of the SSI program.

The following alternative SSI program rules will apply to certain project participants who receive SSI benefits or a combination of SSI and SSDI benefits.

1. Despite the finding of a continuing disability review conducted in accordance with section 221(i) or section 1614(a)(3)(H) of the Act or an age-18 medical redetermination conducted in accordance with section 1614(a)(3)(I) of the Act that an individual is no longer eligible for benefits, SSA will continue paying benefits for as long as the individual continues to be a YTPD participant.

2. The student earned-income exclusion (section 1612(b)(1) of the Act), which normally applies only to students who are age 21 or younger and neither married nor the head of a household (20 CFR 416.1866) will apply to all participants who meet school attendance requirements, without regard to their age or whether they are married or the head of a household.

3. The general earned-income exclusion (section 1612(b)(4)) normally permits the exclusion of $65 plus half of what an individual earns in excess of $65. For the YTPD, SSA will exclude the first $65 plus three-fourths of any additional earnings.

4. SSA will extend the SSI program's treatment of federally supported individual development accounts (IDAs) (section 404(h) of the Act) to IDAs that do not involve federal funds.

An IDA is a trust-like savings account. Except for certain emergencies, funds in a federally supported IDA can be used only for going to college, buying a first home, or starting a business. The individual makes deposits from his or her earned income. The individual's contributions are matched, at rates that can vary from 1:1 to 8:1, usually depending on the availability of funding.

Social Security excludes federally-supported IDAs when it determines whether someone's resources exceed the SSI limit. It also excludes matching contributions when it determines countable income. Further, Social Security deducts the beneficiary's own

deposits from countable income, so that SSI benefits replace the amount deposited. As a result, an SSI beneficiary does not have to divert scarce resources from living expenses in order to save.

Nonfederally supported IDA or ''IDA-like'' programs have emerged in a number of states. These programs usually permit an individual to save for one or more purposes in addition to the three mentioned above, such as transportation. The exclusions that apply to federally-supported IDAs normally do not extend to these programs.

5. Ordinarily, a plan for achieving self-support (PASS) must specify an employment goal (section 1633(d) of the Act), which refers to getting a particular kind of job or starting a particular business. For the YTPD, SSA will approve an otherwise satisfactory PASS that has either career exploration or postsecondary education as its goal. If the goal is postsecondary education, the PASS must provide for developing a work goal at least one year prior to completion of the degree requirements.

Income that an individual uses for PASS expenses does not count when SSA determines SSI eligibility and payment amount. Assets that an individual uses for PASS expenses do not count as resources when SSA determines SSI eligibility.

Evaluation

The seven YTPD projects will collect data for each participant regarding identifying information, educational and vocational background, services provided, education/work attempts, and outcomes and use of the alternative SSI program rules. Each YTPD project will use the data to evaluate the effectiveness of alternative SSI program rules. In addition, SSA will award a separate contract to evaluate the overall success of the YTPD, aid YTPD projects in their evaluation activities, conduct a process evaluation, and assess cost-effectiveness. The evaluation contractor is to conduct a net-outcomes and process evaluation which will provide information on the effectiveness of interventions, including the effectiveness of alternative SSI program rules, and the feasibility of using different types of comparison groups. It also will collect the project-level data and prepare methodology for measuring transition services and adult outcomes for youth with disabilities.

Dated: September 25, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–25194 Filed 10–6–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 29, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Office, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 6, 2003 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0004.

Form Number: FinCEN 104 (Formerly Customs Form 4789).

Type of Review: Revision.

Title: Currency Transaction Reports.

Description: Financial institutions file Form 104 for currency transactions in excess of $10,000 a day pursuant to 31 U.S.C. 5313(a) and 31 CFR 103.22(a)(b). The form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes.

Respondents: Business or other for-profit, not-for-profit institutions, Federal Government.

Estimated Number of Respondents/Recordkeeping: 119,000.

Estimated Burden Hours Per Respondent/Recordkeeping: 24 minutes.

Frequency of Response: Other (as required).

Estimated Total Reporting/Recordingkeeping Burden: 4,960,000 hours.

Clearance Officer: Steve Rudzinski (703) 905–3845, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–25379 Filed 10–6–03; 8:45 am]

BILLING CODE 4810–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–A, United States Additional Estate Tax Return.

DATES: Written comments should be received on or before December 8, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: United States Additional Estate Tax Return.

OMB Number: 1545–0016.

Form Number: 706–A.

Abstract: Form 706–A is used by individuals to compute and pay the additional estate taxes due under Internal Revenue Code section 2032A(c) for an early disposition of specially valued property or for an early cessation of a qualified use of such property. The IRS uses the information to determine that the taxes have been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 180.

Estimated Time Per Respondent: 8 hours, 11 minutes.

Estimated Total Annual Burden Hours: 1,475.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 30, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–25391 Filed 10–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–109481–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–109481–99 (TD 9076), Special Rules Under Section 417(a)(7) for Written Explanation Provided by Qualified Retirement Plan After Annuity Starting Dates (§ 1.417(e)–1).

DATES: Written comments should be received on or before December 8, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Special Rules Under Section 417(a)(7) for Written Explanation Provided by Qualified Retirement Plan After Annuity Starting Dates.

OMB Number: 1545–1724.

Regulation Project Number: REG–109481–99.

Abstract: The collection of information requirement in section 1.417(e)–1(b)(3)(iv)(B) and 1.417(e)–1(b)(3)(v)(A) is required to ensure that a participant and the participant's spouse consent to a form of distribution from a qualified plan that may result in reduced periodic payments.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 12,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 30, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–25392 Filed 10–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–46 and Revenue Procedure 97–44

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–46 and Revenue Procedure 97–44, LIFO Conformity Requirement.

DATES: Written comments should be received on or before December 8, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedures should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: LIFO Conformity Requirement.

OMB Number: 1545–1559.

Revenue Procedure Number: Revenue Procedure 98–46 and Revenue Procedure 97–44.

Abstract: Revenue Procedure 97–44 permits automobile dealers that comply with the terms of the revenue procedure to continue using the LIFO inventory method despite previous violations of the LIFO conformity requirements of Internal Revenue Code section 472(c) or (e)(2). Revenue Procedure 98–46 modified Revenue Procedure 97–44 by allowing medium-and heavy-duty truck dealers to take advantage of the favorable relief provided in Revenue Procedure 97–44.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 100,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 30, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–25393 Filed 10–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0646]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information necessary for VA to fill prescriptions written by non-VA physicians.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 8, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–0646'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Medication Prescribed by Non-VA Physicians; VA Transitional Pharmacy Benefit, VA Form 10–0411.

OMB Control Number: 2900–0646.

Type of Review: Extension of a currently approved collection.

Abstract: Under existing law and regulations, a veteran desiring medical care from VA must enroll in VA's health care system. When a veteran first enrolls in the VA system, and requests an appointment for care, VA schedules an appointment for a visit with a primary care physician. The primary care physician generally learns from the veteran what medication the veteran is taking, if any, assesses the need for the medication and writes prescriptions for any needed medication. Those prescriptions written by the VA physician are filled by a VA pharmacy. In recent years, there has been an increased in the enrollment of veterans into the health care system to obtain pharmacy benefits at no cost or at a reasonable cost. With the dramatically increased enrollment, VA has been unable to provide all enrolled veterans with health care services in a timely manner. Many of those veterans have prescriptions, written by non-VA physicians, that VA primary care physicians may subsequently confirm and renew when the veterans are able to have initial primary care visits. In an effort to ease financial burden on enrolled veterans currently waiting

lengthy periods of time for their initial primary care visits, VA will provide these veterans with medication prior to their initial primary care visits at VA if these veterans present valid prescriptions from the non-VA physicians. VA will fill prescriptions written by non-VA physicians only for a period of time such veterans are awaiting a scheduled appointment with a VA health care provider. VA Form 10–0411, VA Transitional Pharmacy Benefit will be used to collect the data necessary to safely administer these medications.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 30,287 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 363,446.

Estimated Total Annual Responses: 181,723.

Dated: September 25, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–25331 Filed 10–6–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 194

Tuesday, October 7, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 1987F–0179]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Olestra

Correction

In rule document 03–19509 beginning on page 46363 in the issue of Tuesday, August 5, 2003, make the following corrections:

1. On page 46405, footnote 9 should read as follows: ''[9] CSPI also relies on its White Paper (CSPI exh. 1) and exhibits 3 through 7 to the White Paper. Although this reference is quite lengthy (approximately 230 pages total), CSPI fails to specify the information or data in these documents that support its assertion that FDA's position on carotenoids is a minority view. In such circumstances, reliance on the White Paper (CSPI exh. 1) and exhibits 3 through 7 cannot justify a hearing because a hearing will not be granted in the absence of available and specifically identified reliable evidence to support the factual issue asserted (§ 12.24(b)(2)).''.

2. On page 46408, footnote 33 should read as follows: ''[33] Elsewhere in this issue of the **Federal Register**, FDA has concluded, based upon a subsequent food additive petition submitted by P&G containing new data and information, that olestra-containing foods need not bear the information statement required by the original final rule. FDA has concluded that most of the information statement is no longer required to ensure that olestra-containing products are not misbranded. The olestra regulation, § 172.867, as revised in response to P&G's petition, requires that an asterisk appear in the ingredient list beside the added vitamins A, D, E, and K. The asterisk will reference the statement, ''Dietarily insignificant.'' The purpose of such labeling is to inform consumers that their vitamin status will not change as a result of consuming olestra-containing products. Accordingly, CSPI's objections to the olestra label statement imposed by the 1996 final rule are arguably moot.''.

3. On page 46409, in the first column, the paragraph preceding footnote 36, ''First, CSPI's first objection challenges FDA's finding that olestra is safe for use in savory snacks.[37] As noted, resolving the question of olestra's safety requires the application of the legal standard (''safe'') as defined by FDA's regulations (''reasonable certainty of no harm'') to a set of facts. As such, the question of whether olestra is safe for its intended use is a question of law, not fact. Accordingly, FDA is denying CSPI's first objection because a hearing will not be granted on issues of policy or law (§ 12.24(b)(1)).'' should be inserted in the first column, as the second full paragraph.

4. On the same page, footnote 44 should read as follows: ''[44] Olestra is not digested and thus will add to the weight of the stools of olestra consumers (61 FR 3118 at 3158). Thus, mere increase in stool weight of olestra consumers is not itself evidence of harm.''.

[FR Doc. C3–19509 Filed 10–6–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
October 7, 2003

Part II

Small Business Administration

13 CFR Part 120

Development Company Loan (504) Program Changes; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AE41

Development Company Loan (504) Program Changes

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (''SBA'' or ''the Agency'') is amending the Certified Development Company (''CDC'') Loan Program (the ''CDC Program'' or the ''504 Program'') in order to improve delivery of the 504 Program to small businesses. The most significant regulations changed are those governing a CDC's area of operations; a CDC's organizational structure; the requirements for a new CDC or a CDC requesting to expand its territory; the ''adequately served'' standard; and whether a CDC may participate in other SBA loan programs. Also, to allow for greater delegation of authority to CDCs, the rule includes expanded sections on the Accredited Lender Program (''ALP''), the Premier Certified Lender Program (''PCLP'') and a simplification and clarification of the enforcement provisions for CDCs. The amendments also clarify the regulations governing fees that a small business may and may not be charged.

DATES: This rule is effective November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Gail H. Hepler, Chief, 504 Loan Policy Branch, (202) 205–7530 or, by email, at *gail.hepler@sba.gov*.

SUPPLEMENTARY INFORMATION:

Rulemaking History

On July 8, 2003, SBA published in the **Federal Register** a proposed rule (68 FR 40553). The proposed rule took into consideration and was based in part on over 1,900 comments SBA received in response to an Advanced Notice of Proposed Rulemaking (''ANPRM'') published in the **Federal Register** by SBA on December 6, 2002. SBA received over 70 comments in response to the proposed rule.

Statutory Basis of the 504 Program

The 504 Program, Title V of the Small Business Investment Act (''Act''), 15 U.S.C. 695, was established by Public Law 85–699 on August 21, 1958. A ''development company'' was defined as an enterprise formed for the purpose of furthering economic development of its community and environs, and with authority to promote and assist the growth and development of small business concerns in the areas covered by their operations. The law further stated that a local development company is a corporation chartered under any applicable State corporation law to operate in a specified area within a State and be composed of, and controlled by, persons residing or doing business in the locality. The program was amended in 1980 due to changing business conditions for small businesses. During the late 1970s and early 1980s, the prime interest rate and unemployment rate reached historically high levels. It was generally believed that long-term, fixed-rate money was not available at a reasonable cost to small businesses because of these high prevailing rates and that this was hindering job creation. Congress enacted section 503 of the Act in 1980. The 503 and 504 Programs were intended to provide long-term, fixed-rate financing to small businesses at favorable terms that were unavailable in the commercial marketplace. Congress specified in the Act that this program ''foster economic development and create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns * * *'' The statute authorizes SBA to guarantee debentures backing long-term, fixed-asset loans (''504 Loans'') made by CDCs. It also authorizes SBA to pool the guarantees and sell interests in the pools to investors.

Overview of the Changes to the 504 Regulations

SBA believes the regulatory changes will improve 504 Program delivery to small business customers by increasing customer choice of service; increase third-party lender choice of CDCs; facilitate the formation of new CDCs; facilitate the expansion of existing CDCs; and increase the number of CDCs able to take advantage of special initiatives for rural areas. By allowing market-driven forces to determine availability of 504 Program service, small businesses will have greater opportunity to negotiate the best total financing package including fees, as well as receive increased service by CDCs. In addition, the 504 Program will be more responsive to changes in market conditions.

To allow for greater delegation of authority to CDCs, this final rule includes expanded sections on the ALP and the PCLP. This final rule also simplifies and clarifies the enforcement provisions for CDCs. In addition, SBA is amending the regulations governing ''job opportunity average'' to permit more flexibility to adjust the average in response to increased costs as reflected by such measures as the consumer price index. This change will permit CDCs to approve more projects that do not meet the job creation criteria but do meet other statutory goals such as increasing manufacturers' productivity and competitiveness through re-tooling, robotics or modernization. The final rule also clarifies the regulations governing fees that a small business may and may not be charged. The regulations covered by the final rule are 13 CFR, Subpart A, § 120.102 and § 120.140, and Subpart H, §§ 120.800 through 120.984.

The 504 Program from 1986 to 2002 has created or retained more than 1.5 million jobs, averaging approximately $13,600 of debenture per job. However, the 504 Program has not used all of its available budgetary authority for many years. The 504 Program's authorization level for fiscal year 2002, for example, was $4.5 billion compared to the total approval level of $2.5 billion.

SBA has decided to take steps to increase the availability of the long-term, fixed-rate financing offered by the 504 Program that is vital for our nation's small business community. This final rule begins this process by establishing the State in which a CDC is incorporated as the CDC's minimum area of operations. Currently, each CDC is assigned a specific, local area, typically several counties. Only one CDC per State is permitted to be a statewide CDC. In some cases, there are geographic areas that do not have CDC coverage. Although CDCs' areas of operations often overlap, SBA believes that establishing statewide areas of operations for all CDCs will increase the availability of 504 Program assistance to small businesses. SBA also believes that it is empowering the CDCs' boards to determine what is the optimal area of operations within the State for the CDC to market and service effectively.

Next, SBA is eliminating the ''adequately served'' standard. Currently, a county meets the standard of ''adequately served'' when the CDC that includes the county in its area of operations averages at least one 504 loan approval in that county per 100,000 population per year averaged over two years. In such cases, the county is unavailable both to an existing CDC applying to expand its operations to include that county and to a new CDC applying to include that county in its proposed area of operations. In addition, the regulations currently do not permit a new CDC, or a CDC applying to expand its area of operations, to apply for a particular county if that county has become part of another CDC's area of

operations within the previous 24 months. Eliminating this standard will encourage new CDC applications and existing CDCs to expand their operations within their state of incorporation without first having to go through a lengthy expansion application process. SBA is allowing the marketplace to determine the maximum number of CDCs that can co-exist within a State. With these changes SBA anticipates that small businesses, as well as lenders, will have greater choice in, and access to, capital.

To facilitate these changes, SBA is streamlining CDC organizational structure by modifying the CDCs' general membership requirements. Currently, a CDC is required to have a general membership that covers the CDC's entire area of operations. In the final rule, SBA will no longer require that a CDC's membership cover the entire area of operations, but rather will require that the CDC's members each actively support economic development within all or some portion of the CDC's area of operations. The CDC's board of directors would make the decision on how widely disbursed the CDC's general membership needs to be to meet the objective of local economic development. The result of this change and others will be that CDCs will be empowered to determine in which areas within their state of incorporation they wish to engage in 504 Program activities; they will not be required to serve the entire state but may do so if they choose. SBA also is modifying the regulations governing contracting for staff to facilitate a CDC's contracting for ''back office'' work with a contractor located outside of the CDC's area of operations. SBA believes that this will permit certain economies of scale by providing additional sources of expertise in 504 packaging, processing, servicing and liquidation.

For CDCs that apply to cross State lines as a multi-state CDC, the CDC also will be able to determine the geographic coverage of its general membership in the new State. Also for multi-state CDCs, SBA is relaxing the requirements for board representation from the new State by eliminating the current requirement that at least three of the CDC's board members must come from the new State. In addition, SBA is allowing a CDC that currently has ALP or PCLP authority in its State of incorporation to use that authority in its expanded area. To ensure that only those CDCs with demonstrated proficiency in the 504 Program are permitted to expand beyond their State of incorporation, SBA is requiring applicants for multi-state CDC and local economic area expansion to be ALP-qualified, among other things. Taken together, SBA believes that these changes in a CDC's area of operations, elimination of the concept of ''adequately served,'' elimination of the requirement that a CDC's membership cover the entire area of operations, the clarification of contracting requirements, and the changes in the expansion requirements for CDCs will result in the 504 Program becoming more relevant in today's dynamic financial services marketplace.

The final rule prohibits a CDC from investing in or being affiliated with a 7(a) lender. This rule was developed after reviewing the comments on this issue received in response to the ANPRM. The majority of those commenting on this issue, as well as those that commented on the proposed rule, stated that the 504 Program should remain separate from the 7(a) Program.

The concept of permitting a CDC to invest in a Small Business Investment Company (''SBIC'') generally was supported by the commenters to the ANPRM. Many writers viewed such an investment as economic development as long as the SBIC and the CDC were not affiliates. However, SBA's current regulations prohibit a CDC from owning an equity interest in a business that has received or is applying to receive SBA financing (§ 120.140). Since SBICs typically have an ownership interest in the businesses that they assist, a CDC that has invested in an SBIC also would have an ownership interest in the small business receiving financing from the SBIC and could potentially violate this regulation by providing financing directly to that small business. In addition, SBA's regulations state that a CDC must operate in its area of operations. SBA interprets this requirement to apply to all CDC activities that use funds generated from the 504 Program. In light of these concerns, at this time, SBA is prohibiting a CDC from investing in an SBIC.

Section-by-Section Analysis

SBA is adding a definition of ''SOP'' to § 120.102, the definitions section applicable to the entire part 120. SBA's SOPs are available at any SBA office (see 13 CFR 102.2 and are generally available in SBA's reading room on its Web site (*http://www.SBA.GOV*).

SBA is amending § 120.140 to delete references to Associate Development Companies (''ADC'') (see discussion of § 120.850).

SBA is changing the headings for § 120.800 and § 120.801 to make them consistent with the other section headings in Subpart H.

In § 120.802 the definition of ''Area of Operations'' is modified to define the minimum area of operations for a CDC as the State in which the CDC is incorporated. As stated in the proposed rule, SBA has decided to take steps to increase the availability of the long-term, fixed-rate financing offered by the 504 Program that is vital for our nation's small business community. Currently, each CDC is assigned a specific, local area, typically several counties. Only one CDC per State is permitted to be a statewide CDC. In some cases, there are geographic areas that do not have CDC coverage. Although CDCs' areas of operations often overlap, SBA believes that establishing statewide areas of operations for all CDCs will increase the availability of 504 Program assistance to small businesses. Most of the comments SBA received concerned the proposed change to the CDC's minimum area of operations. Several comments were opposed to the proposed change based on concerns that the changes would dilute a CDC's role in community and economic development as well as a concern that rural areas would be neglected. Some commenters also were concerned that a CDC could not provide adequate servicing to much larger geographic areas. SBA also received several comments supporting the change as proposed. One such comment explained that it would eliminate monopolies that some CDCs currently have. Another stated that competition will result in the CDC working harder to distinguish itself by attempting to provide better service at the lowest possible cost. Other commenters supported expansion of a CDC's minimum area of operations but wanted the SBA district offices' geographic jurisdiction to define the minimum area, not the State.

With regard to the concern about whether CDCs will be able to adequately provide 504 Program service to the much larger geographic area of the State in which it is incorporated, SBA did not propose to require that a CDC must serve the entire State in which it is incorporated when it proposed to change the ''area of operations'' definition to provide for a minimum of the State in which the CDC is incorporated. A CDC will continue to be free to concentrate its 504 Program activities in whatever portions of its State it believes it can operate effectively as a CDC.

As to the issue of the specific geographic limit of the area of operations (*i.e.*, Statewide, as proposed; district-wide, as favored by several

commenters; or some even smaller geographic area), SBA is implementing the Statewide minimum. First, SBA does not believe that this necessarily will result in rural areas being neglected, as several commenters suggested. Under the current regulations many such areas are being neglected now, and SBA believes that increased competition among CDCs within a State may result in bringing additional access to capital to those areas, as CDCs focus their efforts on places where they have a competitive advantage.

SBA also does not believe that changing the minimum area of operations to statewide necessarily will result in a dilution of a CDC's role in community and economic development. A CDC will have the discretion to determine over what geographic areas within its State it has the ability, based on its membership, board, and staff, to provide economic development. Local economic development remains one of the goals of projects financed by 504 loans, pursuant to section 502(d)(2) of the Act and § 120.862(a). However, SBA does not believe that a CDC necessarily must operate only in a small geographic area in order to meet the local economic development needs of that area. In addition, the purpose of the 504 Program is not only to foster local economic development, but to meet other goals, such as the public policy goals listed in section 501(d)(3) of the Act and § 120.862(b) which are not dependent on a CDC having a local presence, are even less dependent on a CDC having a local presence.

While SBA agrees that the Agency could introduce competition to the 504 Program within smaller geographic areas than a State, the Statewide minimum will allow SBA to administer the 504 Program more efficiently, given its increasingly limited staff resources. A district-wide minimum area of operations standard would produce a double standard between the 43 States in which all CDCs would be Statewide, by virtue of the fact that there is only one district office in each of those States, and the remaining seven States with multiple districts, which would require additional monitoring by SBA. An even smaller geographic area of operations standard would require an even greater expenditure of SBA's resources to oversee and administer. For these reasons, the final rule publishes the area of operations definition in § 120.802 as proposed.

The definition of ''Local Economic Area'' also is revised slightly to make it consistent with the revised, statewide ''Area of Operations'' definition. SBA received several comments that suggested confusion on the part of the commenters in interpreting what was being changed in the definition. SBA had proposed changes only to the first sentence of the definition. Specifically, SBA did not propose to delete the reference to a ''metropolitan statistical area'' as an example of a local economic area and, therefore, that reference will continue to be part of the regulation.

SBA received several comments that suggested that SBA did not adequately address whether the revised definition of area of operations would mean that local economic areas adjacent to a CDC's State of incorporation would be included in a CDC's minimum area of operations. SBA did not propose a change to the concept of a local economic area, and the proposed rule expressly states that a CDC must apply to SBA to expand its area of operations into a local economic area (see § 120.835). Some comments were in favor of revising the definition of local economic area or area of operations in ways that would remove or create exceptions to the requirement that a CDC apply to SBA to serve a local economic area; one comment proposed that a CDC's minimum area of operations include all local economic areas adjacent to a CDC's state of incorporation. SBA did not propose to change the definition of local economic area in this way and considers to be beyond the scope of this rulemaking the requirement that a CDC apply to SBA to cover such areas.

The definition for ''Associate Development Company'' is deleted. This change is discussed in the analysis of revisions for § 120.850. SBA received several comments in support of the proposed change.

Other regulations in Subpart H of part 120 use the terms ''Designated Attorney,'' ''Lead SBA Office'' and ''Priority CDC.'' For clarification, SBA is adding definitions for those terms. Comments received supported these additional definitions. SBA did not receive any comments objecting to these new definitions.

In § 120.810, application for certification as a CDC, SBA is changing the policies governing new CDC applications to reflect the change in the definition of a CDC's ''Area of Operations'' to a minimum of statewide. Additionally, it deletes the current restrictions that permit existing CDCs to exclude geographic areas from being considered for a new CDC. SBA is permitting the marketplace to determine the optimum number of CDCs that may be supported. In this section and in several others (for example, § 120.812(d) and § 120.837), SBA proposed to add the phrase ''The procedures of §§ 120.855 through 120.857 do not apply'' to the specific action described in the proposed regulation section. Several commenters expressed confusion as to whether SBA was proposing to change existing rights or add new rights to reconsideration or appeal from the SBA action addressed in that regulation. Several commenters also requested that SBA expand these sections further to specifically provide CDCs a right of administrative appeal to SBA's Office of Hearings and Appeals (OHA), under part 134 of SBA's regulations, for each such action.

By adding this phrase to this section and others, SBA did not intend and did not propose to add any new administrative appeal rights to these sections. On the contrary, SBA was attempting to clarify that the expanded SBA enforcement and CDC administrative appeal rights proposed in §§ 120.855 through 120.857 for actions described in § 120.854 specifically would not apply to the sections in which the phrase would appear. Because this appears to have caused confusion rather than provide clarification, SBA's final rule deletes the phrase beginning with ''The procedures of §§ 120.855 through 120.857* * *'' wherever it appeared in the proposed rule. This results in the preservation of the procedures that currently exist under SBA regulations in subpart H of this part and in §§ 134.102(d) and (f) of this chapter, namely that only in cases in which a right of administrative appeal to OHA is specifically set forth by regulation does such a right exist. As discussed below regarding § 120.856, SBA has added § 120.856(f) clarifying that the procedures in § 120.856 only apply to actions taken by SBA pursuant to § 120.855.

Also, SBA is adding a clarification that an applicant CDC must demonstrate financial capability to meet the upfront costs of the program until the CDC's operations meet the breakeven point. This is to ensure that the CDC will be staffed sufficiently to meet the requirements of marketing, processing, closing, and servicing 504 loans. The added requirement that an applicant must demonstrate financial capability to meet the upfront costs of the 504 Program until the CDC's operations meet the breakeven point should assist in attracting only those applicants committed to devoting adequate resources (refer to § 120.802 discussion on the comments regarding changes to CDC area of operations). Several commenters objected to the proposed rule on the basis that the current ''adequately served'' concept applicable

to new applicants, which limits the geographic areas that are available for new CDCs, assists in minimizing the number of processing and closing problems from inexperienced CDCs. SBA considered these concerns but continues to believe that the marketplace should determine the maximum number of CDCs that may be supported by 504 loan activity within a State.

SBA received several comments about the proposed deletion of the requirement in § 120.811 for public notice as well as direct notice to existing CDCs for new CDC applications (as well as in § 120.836 for CDC expansion requests). Several commenters were concerned that the deletion of the requirement for notice to the public and to existing CDCs would not give existing CDCs with knowledge of the community an opportunity to express their opinion about a new CDC application request or a CDC expansion request. SBA considered this concern but decided not to modify the proposed rule.

In SBA's experience, most of the comments received in response to such notice to CDCs and the public have been from existing CDCs concerned about ''ruinous competition'' that would result from CDC expansion; SBA has received very few comments concerning new CDC applications that have resulted in information that SBA had not already discovered in its own review process. With the new emphasis on competition in the 504 Program as a result of this final rule, the issue of competition resulting from a CDC's expansion will no longer be relevant to SBA's decision.

With regard to decisions on new CDC applications, SBA has an established, effective process for screening and conducting appropriate due diligence and character determinations on the officers, directors, and key staff of an applicant for certification as a CDC. SBA's current process addresses all comments SBA may receive concerning such applicant or any individual associated with the applicant. Eliminating the public notice requirement will not change that process or eliminate SBA's consideration of any comments it may receive. In addition, all new CDCs are subject to a two year probationary period (pursuant to § 120.812), during which time significant, adverse character or other issues relating to the new CDC may come to light (through comments by members of the public or otherwise).

Finally, SBA believes that elimination of the notice requirement will streamline the application process for both new CDCs and for CDC expansions and decrease the cost and time necessary for a CDC to pursue either type of application. For all of these reasons, the final rule deletes § 120.811.

Section 120.812, probationary period for newly certified CDCs, is revised to clarify how SBA will process a CDC's petition for permanent CDC status, and that the probationary period commences on the date of certification. Also SBA is deleting all references to ADCs in connection with the elimination of the ADC program (see discussion under § 120.850). In this final rule, SBA also eliminates the last sentence in this regulation that the procedures in §§ 120.855 through 120.857 do not apply, for the same reasons discussed above for § 120.810.

In § 120.820, CDC non-profit status, SBA describes what the Agency means by the term ''good standing.'' While this is a term that has been used over the years in administering the 504 Program, SBA has not fully defined it previously. Several comments expressed concern about SBA's ability to analyze a CDC's compliance with laws, including taxation requirements. The comments seem to suggest that SBA should not have the right to consider a CDC's compliance with other laws that govern the CDC when considering whether the CDC is in good standing. SBA disagrees and continues to believe that a CDC's compliance with all laws governing a CDC should be a part of SBA's analysis, as the regulator overseeing CDCs, of whether a CDC is in good standing. SBA has no intention of ensuring that CDCs comply with all laws, but it has the means (through publicly available information, for example) to ascertain when a CDC is not in compliance with tax and other legal requirements. Therefore, SBA adopts § 120.820 as it was published in the proposed rule.

Section 120.821, CDC Area of Operations, is revised to delete the limitation of one statewide CDC since all CDCs' areas of operations will be at least statewide (see discussion of definition of the ''Area of Operations'' under § 120.802).

Section 120.822, CDC membership, is revised to streamline CDC membership qualifications by deleting the requirement that a CDC's membership must be representative of its entire area of operations. Currently, a CDC must have representation from each of the four groups (*i.e.*, government organizations, financial institutions, community organizations, and businesses) for its entire area of operations. With this change, SBA will still require that each of the four groups be represented in the membership, but will no longer require that such members represent the entire area of operations. SBA also is eliminating the requirement that SBA pre-approve the CDC's members representing government organizations, and is adding small business development companies (''SBDCs'') and other types of community organizations that may be a source of members for a CDC. It will be up to the CDC's board to determine how broadly-based geographically the membership needs to be to meet the CDC's economic development objectives. The CDC's board may choose to have a membership that represents only a county, or some counties, while another CDC's board may choose to have a membership that represents the entire State.

Several comments suggested that the regulation may need some clarifying language by stating specifically that the membership groups need not have members that do not represent the entire area of operations. SBA considered these comments but disagrees that further clarification is required. Section 120.822(b) as proposed specifically states that ''Members must be responsible for actively supporting economic development in the Area of Operations,'' and the preamble to the proposed rule SBA clarified that ''With this change, SBA still would require that each of the four groups be represented in the membership, but would no longer require that such members represent the entire area of operations.'' SBA is publishing § 120.822 as proposed.

Other comments suggested that a CDC should be able to use CDC employees in meeting the membership requirements. SBA considered these comments but disagrees. The membership requirement is designed to be filled by local community leaders volunteering to assist in providing economic development in their communities through the formation of a CDC. The membership elects the CDC's board from among its members. The board, in turn, hires paid professional staff to operate the CDC on a daily basis. SBA believes that this will preserve objectivity between the CDC's membership, its board, and its staff. Therefore, SBA is publishing in the final rule § 120.822 as it was published in the proposed rule.

Section 120.823, CDC board of directors, is revised to delete the requirement that a CDC that is approved as a multi-state CDC meet the CDC board requirements for each State. SBA did not propose this specific change to § 120.823(b) in the proposed rule. However, SBA did discuss in the preamble to the proposed rule SBA's

intent to change the requirement currently in § 120.823(b) that a multi-state CDC must meet the board requirements set forth in § 120.823 for each State in which it is authorized to operate (see preamble discussion, ''Overview of Proposed Changes to the 504 Regulations,'' last full paragraph, column one, 68 FR 40556). In addition, this change is consistent with the changes SBA did specifically propose to § 120.835(c) concerning a CDC requesting a multi-state expansion. SBA also received several comments in support of this change. Because this change is consistent with SBA's intent as expressed in the proposed rule and with other changes specifically proposed and is supported by the public, SBA revises § 120.823(b) in this final rule. With this change and the change to § 120.835, a multi-state CDC will be required to meet the loan committee (§ 120.823(b)) and membership (§ 120.822(b)) requirements for each State in which it operates as a CDC, and the CDC's board would need to establish a loan committee in each such State, but would not need to meet the other board requirements (§ 120.823) for each such State.

Section 120.824, professional management and staff, is revised to modify the requirements for when and under what circumstances a CDC can contract for management services. The change clarifies the requirements regarding CDC staff provided under contract including deleting the requirement that a contractor must live or do business in the CDC's area of operations. SBA believes that a CDC may wish to contract for certain services, such as ''back office'' staff support, with individuals or organizations that are outside of the CDC's area of operations.

The comments were generally supportive of this change but several expressed concerns regarding SBA's current requirement that a CDC's manager must be employed directly unless contributed by a non-profit affiliate of that CDC that has the economic development of the CDC's area of operations as one of its principal activities. This is a requirement currently in § 120.824(a)(2) and SBA did not propose to change this requirement; therefore, these comments are beyond the scope of this rulemaking.

Several commenters also objected to SBA's proposed deletion of the exception in the current § 120.824(a)(1) concerning the circumstances under which a rural CDC may contract with another CDC for management services, on the basis that the exception for small rural CDCs is specified by the Act. SBA recognizes that section 503(e)(2) of the Act allows a rural CDC a waiver if it contracts with another CDC covering the same area. In SBA's experience this waiver provision has never been used. However, SBA will process all rural CDC waivers in accordance with the Act. Therefore, SBA added back to § 120.824 as proposed, a paragraph (a)(2) specifically addressing rural CDCs, to clarify that there is no change to the status quo regarding such waivers for rural CDCs.

SBA also received some comments on the changes to the proposed clarified options of the CDC board's role in hiring and terminating the CDC's manager, either as a direct employee or through a contract when provided by a non-profit affiliate. The comments suggested that there may be other ways that a CDC's manager may be hired or terminated. However, the board of a CDC bears the ultimate responsibility for the CDC and its management and SBA believes it is appropriate to expect the CDC's board to control these decisions. Except for the change discussed, SBA is publishing in the final rule § 120.824 as proposed.

As set forth in the proposed rule, § 120.826, basic requirements for operating a CDC, is slightly reworded for clarity. As also proposed, the responsibilities currently described in § 120.827(a) are moved to this section because SBA considers them to be basic requirements for operating a CDC. In addition, SBA is clarifying that all CDCs must comply with all of the 504 Program requirements imposed by statute, regulation, SOP, policy and procedural notice, loan authorization, debenture, or any agreement between SBA and the CDC. Comments generally were supportive of the changes. Therefore, SBA is adopting § 120.826, basic requirements for operating a CDC, as it was proposed.

Section 120.827, other services a CDC may provide to small businesses, is revised to focus this section only on, and clarify what is meant by, ''other services'' that a CDC may provide to a small business, as well as describe the regulations to which the CDC will be subject if it does provide such other services. Comments generally were supportive of the changes although a few expressed concern regarding the deletion of the current regulation § 120.827(c) which provides that a CDC may lend to a borrower the amount of the required borrower contribution. SBA had proposed to delete § 120.827(c) because that provision is already included in § 120.912, which is not being amended in this rule and, therefore, is redundant in this section. Therefore, SBA is adopting the final rule § 120.827 as proposed.

Section 120.828, minimum level of 504 loan activity and restrictions on portfolio concentrations, is reworded to clarify the minimum level of 504 loan activity a CDC must maintain. In addition, this section covers the requirement concerning portfolio concentrations currently contained in § 120.827(a) and the heading to the section is revised accordingly. Comments were generally supportive of the proposed changes, although some expressed concern that CDCs with small portfolios may not be able to meet the portfolio concentration requirements. SBA considered this concern but was not persuaded since this requirement already exists in § 120.827(a) and SBA knows of no CDC that has not met this requirement. Therefore, SBA is adopting the final rule § 120.828 as proposed.

Section 120.829, job opportunity average a CDC must maintain, modifies the job opportunity average a CDC must currently maintain by changing it to an amount specified by SBA by means of a notice published in the **Federal Register**. Currently, the average stated in § 120.829(a) is preventing many CDCs from accepting 504 loan applications from small businesses for loans that would not create jobs but would meet other statutory 504 Program objectives, such as loans to increase business efficiency through technology. In addition, the present ratio has been in effect since 1990 and does not take into account the inflationary factors in the cost of land, real estate acquisition, construction, and machinery and equipment since that time. Finally, SBA is clarifying that a new CDC is permitted two years from the date it is certified to meet the job portfolio requirement. Several commenters were concerned that the change would not give SBA enough flexibility and would eliminate the special circumstances under which a CDC's portfolio could average a higher job per dollar ratio. SBA considered these comments but believes that the rule as proposed does permit flexibility. In addition, the rule has not eliminated the special exceptions. The only thing that will change is the means by which SBA changes the job opportunity average. SBA will revise the average periodically, based on appropriate economic factors, and will publish the revised average in the **Federal Register** as a notice, rather than as a regulatory change. Therefore, SBA has adopted § 120.829 in the final rule as proposed.

Section 120.830, reports a CDC must submit, is revised to change the submission requirement for CDC annual reports to 180 days after the end of the

CDC's fiscal year to permit CDCs more time to provide financial statements with the required level of review. The final rule also clarifies the requirement by adding that the annual report must include financial statements of any affiliate or subsidiary of the CDC. In addition, it adds some clarifying language regarding the submission requirements for changes to directors or staff. Several comments requested that the submission requirement be increased further than the 120 days SBA had proposed, to 180 days, due to the complicated nature of some audits. SBA considered these concerns and agrees that a longer timeframe may be necessary. Part of the reason to increase the timeframe is that SBA is requiring the financial statements of any affiliates of the CDC. Therefore, to accommodate the more complicated audits, the final rule provides for 180 days.

Several commenters also expressed concern about SBA's proposed change that the financial statement submission includes any affiliates of the CDC. The current regulations define concerns as affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both (see § 121.103(a) of this chapter). SBA is the agency that certifies CDCs and is their sole regulatory oversight agency. As part of its oversight responsibilities, SBA believes that it should review the financial statements of those affiliates that the CDC controls or that may control the CDC, because such affiliates may have some control over the CDC's 504 Program activities even though they may not be involved directly in conducting those activities, or because such affiliates may present issues of potential conflicts of interest with or financial harm to the CDC. Therefore, the final rule concerning financial statement submission requirements adopts the rule as proposed.

Several commenters also expressed concern about SBA's proposed requirements for a statement of personal history and other information to be submitted for new associates. The commenters appeared to suggest—incorrectly—that this is a new requirement. Section 120.830 currently requires CDCs to submit to SBA for review and approval the ''resumes for all new Associates and staff.'' SBA's longstanding procedure has been to require statements of personal history, fingerprint cards, and resumes for all such individuals, just as SBA requires for all individuals identified in the CDC's initial application for certification. (See SBA standard operating procedures 50–10(4), subpart H, chapter 4, paragraph 5(d)(1).) As the sole regulatory oversight agency for CDCs, SBA is responsible for performing the necessary due diligence to assure that new associates and staff meet certain ethical and experience standards. Therefore, in order to make the rule reflective of SBA's longstanding practice, SBA is publishing in the final rule § 120.830 as proposed.

Section 120.835, application to expand an area of operations, is revised. Currently, most of the applications SBA receives are for expansions of a CDC's area of operations within its State of incorporation. The expansion request usually is for several counties in which there currently are one or more CDCs that include those counties in their areas of operations. Because the final rule establishes the State of incorporation as the minimum area of operations for all CDCs and because SBA is allowing the marketplace to determine the optimum number of CDCs, these types of expansion requests no longer will be necessary and much of the current regulatory language is no longer required (refer to discussion of changes to § 120.802 and § 120.810). Therefore, SBA has modified the regulation to limit SBA's consideration of applications for expansion to only those requests by a CDC to expand beyond the CDC's State of incorporation either to a local economic area contiguous to the State in which the CDC is incorporated, or to an entire State contiguous to such State.

SBA also has added the requirement that CDCs must be ALP-qualified before they can request either type of expansion. Several commenters expressed concern that this new requirement will make it more difficult for a CDC to expand beyond its area of operations. SBA reiterates that with the minimum area of operations being Statewide, there will be far less need for CDCs to request the right to expand because SBA believes that the majority of CDCs will not wish to expand beyond their own State. For a CDC that wishes to expand into local economic areas or entire States outside its State of incorporation, however, it is important that such CDC be of a sufficient size and at a sufficient level of proficiency in the 504 Program to be able to adequately cover territory beyond its State. SBA is concerned about, among other things, the CDC's portfolio size and currency, performance as a CDC, and whether the CDC has sufficient proficiency with loan closing (*i.e.*, has a designated attorney and the necessary insurance coverage to be able to participate in SBA's expedited loan closing process) and that the CDC is knowledgeable of applicable law in other States, to be able to handle the additional territory without presenting an undue risk to SBA's overall 504 loan portfolio. For these reasons, the final rule requires a CDC requesting expansion of its territory beyond its State of incorporation to be ALP-qualified, as proposed.

To further streamline the application process for multi-state expansion, SBA is deleting the requirement that a multi-state CDC have at least three members from each State on its board. SBA believes that the general membership requirements (see § 120.822) and loan committee requirements (see § 120.823) for the State into which it is expanding are sufficient to demonstrate the CDC's commitment to local economic development in that State. (To be consistent with this deletion in § 120.835 regarding the board requirements, SBA also is modifying § 120.823(b).) A discussion of the comments received regarding the minimum area of operations and local economic areas may be found under § 120.802. SBA also received comments regarding multi-state CDC requirements that were not proposed for change, including membership and loan committee requirements, and were, therefore, beyond the scope of this rulemaking. They may be considered as part of a proposed rule at some future date. Therefore, SBA is publishing in the final rule § 120.835 as proposed.

Section 120.836, public notice, and opportunity for response, is deleted. SBA believes that the requirement is no longer needed for the same reasons discussed regarding § 120.811. The final rule deletes § 120.836 as proposed.

Section 120.837, SBA decision on application for a new CDC or for an existing CDC to expand an area of operations, streamlines the process by changing the paragraph on a multi-state CDC to permit any unilateral authority that a CDC has in its State of incorporation to be carried over into the additional State in which it is approved to operate as a multi-state CDC and clarifying SBA's decision process. Comments received generally were in support of the proposed changes. However, several commenters suggested that the proposed changes seemed to have deleted the decision process for new CDCs and CDCs expanding into local economic areas. After reviewing the proposed rule, including the summary which stated that the regulation was to continue to cover both new CDCs and expanding CDCs, SBA agreed with the commenters and has modified the rule. SBA reviewed the proposed rule and determined that

while SBA had stated in the preamble that the regulation was to continue to cover SBA's decision with respect to new CDCs, CDCs expanding into local economic areas, and CDCs becoming multi-state CDCs, the proposed revision to the heading of the section was misleading. SBA therefore makes clarifying changes to both the heading and to § 120.837(b). Also the commenters found the reference to the enforcement regulations not applying in these cases to be confusing. SBA has deleted the reference to the enforcement regulations, §§ 120.855 through 120.857, for the same reasons discussed regarding § 120.810.

Section 120.838, expiration of existing, temporary expansions, was a short-term regulation to manage the conversion of existing temporary expansions into permanent expansions by March 1, 1996, and is no longer required. Comments received generally supported the proposed deletion of this regulation. Therefore, the final rule adopts the deletion of the regulation as was proposed.

Section 120.839, case-by-case extensions, gives a district office the authority to make all decisions concerning whether SBA will allow a CDC to make a 504 Loan outside of its area of operations (other than multi-state or local economic area expansions), and adds, as a new basis for such decision, the situation in which a State may not have a CDC. (For example, currently Alaska has no CDC.) In addition, SBA is deleting as a basis for such decision, the situation in which specific circumstances exist that prevent an existing CDC serving that area from adequately assisting the business (see § 120.839(a)(2)), because the exception has never been used and SBA's experience indicates that it is unnecessary. Comments received by SBA generally supported the proposed changes. Some commenters wanted the regulation to emphasize that the applicant CDC must demonstrate that it can properly service the 504 loan it wishes to make outside its area of operations, in addition to fulfilling its other 504 Program responsibilities for the 504 loan. Section 120.839(b) currently has this specific requirement, although SBA had proposed to expand this beyond just servicing. SBA agrees with this concern and is adding language back to the final rule that emphasizes a CDC's servicing responsibilities regarding the loan. Other commenters expressed concern that a small business may be prevented from receiving a 504 loan if CDCs covering the area are not willing to consider an application from such a business and, therefore, urged SBA to preserve existing § 120.839(a)(2). However, as SBA explained in the proposed rule, SBA's experience indicates that this provision is unnecessary since it has never been used. In addition, the change in the minimum area of operations will vastly increase many CDC's area of operations, resulting in less need for case-by-case exceptions in general since small businesses will have expanded access to and choices among CDCs. Therefore, § 120.839 is adopted as proposed except for the modifications discussed.

SBA substantially revises § 120.840, accredited lenders program to describe the ALP, the benefits a CDC will receive through the ALP, how to apply for the ALP, and how SBA will process the application. Comments received generally were supportive of the proposed change, although several expressed concern that the section does not specifically state that a CDC may seek renewal of its ALP status every two years. Even though in SBA's experience CDCs have routinely been renewed for consecutive two-year periods, SBA is modifying the regulation to state ''periods'' rather than the singular ''period''. In addition, SBA has deleted the reference to the enforcement regulations, §§ 120.855 through 120.857, for the same reasons discussed regarding § 120.810. This rule adopts § 120.840 as proposed except for the modifications discussed.

In § 120.841, SBA is establishing more detailed qualifications for the ALP. The standards are consistent with section 507 of the Act and coordinate with eligibility requirements for CDC participation in the PCLP (see § 120.845 discussion below). These changes will make it easier for SBA to provide consistent and objective evaluation of a CDC application to participate in the ALP.

Several commenters asked for additional clarity regarding the qualification requirements of the CDC's staff. In light of those comments, SBA reviewed the proposed rule and agreed there should not be two sections on CDC staff qualification requirements. Accordingly, SBA has consolidated the two paragraphs regarding staff experience into one paragraph as well as added some clarifying language.

SBA received several comments pointing out that the PCLP regulations permit some flexibility in SBA's determination of whether a CDC is in compliance with 504 Program requirements by introducing the concept of ''substantially,'' whereas the ALP regulations do not. Since one of the requirements to be a PCLP CDC is to qualify as an ALP CDC, it would be inconsistent to not permit the same flexibility in the ALP regulations. Therefore, SBA has modified this section to apply the concept of ''substantially'' to compliance with ALP requirements as well.

SBA received several comments regarding proposed § 120.841(d) which indicated that a CDC must meet SBA's CDC portfolio benchmarks. The comments raised concerns regarding the accuracy of the benchmarks and alleged that the benchmarks were not developed through a public comment process. Several comments also stated that use of the benchmarks would not be fair, to the extent that a CDC's default rate was derived from loans that are approved by SBA or to the extent that a CDC's loss rate was derived from liquidation and debt-collection litigation that was handled by SBA or the Department of Justice. Since these actions were not subject to the control of the CDC, the comments contended, it would be unfair for SBA to consider the CDC to be not in compliance with 504 Program requirements based on the relevant benchmark score. These comments recommended that SBA either delete or modify the language regarding the portfolio benchmarks in § 120.841(d). Several commenters questioned SBA's authority to establish portfolio performance benchmarks in the first instance.

SBA strongly disagrees with those comments. SBA has responsibility, as 100% guarantor of each debenture issued by CDCs and as the sole regulatory oversight agency for CDCs, to protect the safety and soundness of the 504 Program. CDCs are established by SBA, with the responsibility to identify and approve only those 504 loans that are eligible, creditworthy, sufficiently collateralized, and have a reasonable expectation, based on the CDC's thorough financial analysis, of timely repayment. CDCs also are required to close 504 loans in compliance with SBA's loan authorization and other requirements. CDCs also must adequately service loans. While SBA may retain the right to review some aspects of the CDC's approval, closing, and servicing activities (depending on the status of the CDC), this review does not negate the CDC's responsibility to comply with 504 Program requirements and act in a prudent, commercially reasonable manner with respect to these activities. SBA may have a greater degree of control over 504 loan liquidation activities, depending on the status of the CDC, but the amount of loan recoveries during liquidation depends to a great degree on the initial

underwriting and subsequent servicing decisions made by the CDC.

In order to more effectively fulfill SBA's responsibility to monitor and oversee CDCs' activities, several years ago SBA established a means of collecting 504 loan performance information for each CDC, in five areas: Currency, delinquency, default, liquidation, and loss. SBA then used this information to determine the level (benchmark) of performance that SBA considers to present an acceptable level of risk to SBA's overall 504 loan portfolio for each of the five areas. Beginning in 1999, SBA issued a series of notices informing CDCs about this CDC performance information system, identified where the information regarding each CDC's performance was available, and advising CDCs that SBA would be using the system to evaluate each CDC. In addition to the notices, SBA explained to the CDC community the system and the sources of information used in the system, at several national conferences as well as by providing information on SBA's internet website. Thus, the proposed rule was not the first time CDCs received notice about the benchmarks. SBA believes that evaluating the performance of each CDC is an essential part of SBA's overall responsibility to manage the 504 Program so as to minimize the financial risk to the taxpayers.

Several comments attempted to show that the benchmarks were not accurate, relying on the argument that SBA has altered its measure of the 504 Program subsidy rate over the past decade (although the comments did not clarify how this measure has any direct application to the benchmark scores). However, SBA finds it highly significant that not one comment identified a specific case where the portfolio performance scores for a particular CDC were found to be inaccurate. SBA provides CDCs with their benchmark scores on a monthly basis (the scores soon will be available to CDCs directly through the Internet rather than through their district offices), and in those few cases where CDCs have brought to SBA's attention concerns about the accuracy of a particular benchmark score SBA has consistently worked with the CDC to understand the basis for the concern and make any necessary corrections. Thus, SBA believes the benchmarks overall are accurate and are a reliable means of measuring a CDC's performance, particularly because all CDCs are subject to the same criteria and because individual CDCs are measured against other CDCs in their tier with similar portfolio sizes.

In the context of a specific finding by SBA, relying on a CDC's portfolio benchmark score as evidence that the CDC was not in compliance with 504 Program requirements, the CDC, having access to its score and having its own information about the performance of its loan portfolio, would be able to present to SBA its arguments that the benchmark score was inaccurate and SBA would carefully consider those comments before proceeding to take any action using the score as evidence in support of such action.

SBA has considered the comments concerning the portfolio benchmarks in § 120.841(d) in the proposed rule, and in the final rule modifies this section so it will be consistent with § 120.854(d), which addresses a CDC's failure to meet one or more portfolio benchmarks as evidence of its failure to perform underwriting, closing, servicing, liquidation, litigation, or other actions with respect to 504 loans in a commercially unreasonable or imprudent manner. As a result of this change, SBA will consider a CDC's performance on the portfolio benchmarks to be a measure, indicator, or evidence of how the CDC is complying with various 504 Program requirements.

This final rule adopts § 120.841 as proposed except as discussed.

Section 120.845, premier certified lenders program, is implemented as proposed except for one change. SBA added the word ''substantially'' to § 120.845(c)(1) for the reasons discussed for § 120.841.

The PCLP is now a permanent program pursuant to section 508 of the Act. SBA is adding considerably more detail to § 120.845 and moving some of its revised and expanded provisions to new §§ 120.846–120.848. Since CDCs participating in the PCLP must be approved to participate under the ALP or be ''ALP qualified,'' SBA is adding some of the PCLP requirements to § 120.841.

The PCLP is designed to take advantage of the proven loan processing and servicing skills of SBA's most proficient and most active CDCs. It is a relatively new program (started in 1994 as a pilot program) with a somewhat limited operating history. Because SBA transfers substantial additional authority to CDCs, the PCLP carries potentially significant risk to SBA and the 504 Program. Therefore, SBA intends to closely monitor and control program implementation and expansion. With respect to SBA's prior review of a 504 Loan at the loan approval stage, SBA is interested in limiting/minimizing its involvement in reviewing 504 Loans made by PCLP CDCs. While, initially, SBA expects to continue to review loan eligibility while delegating virtually all credit decisions to PCLP CDCs, SBA will consider expanding or reducing that authority as warranted by the results of the program.

Participation in the PCLP, pursuant to section 508(b) of the Act, is limited to those CDCs that are active in the 504 Program; are in good standing with SBA; have demonstrated the ability to properly analyze, close and service 504 Loans; and have been active as ALP CDCs. Section 508(b)(2)(A) of the Act allows SBA to waive the requirement for those non-ALP CDCs that meet the ALP participation criteria. However, rather than developing a waiver process, SBA is incorporating the ALP participation criteria into the PCLP participation criteria (see § 120.845(c)(1)).

Based on the guidance in the statute, and following extensive discussion with the CDC industry, SBA developed more specific factors to be used in evaluating a CDC's level of activity; ability to properly analyze, close, service and liquidate 504 Loans; and good standing. Each factor represents a major and essential CDC function, and each carries significant risk to SBA and the 504 Program. Because SBA delegates substantial authority and autonomy to PCLP CDCs, it considers each factor important, and a substantive deficiency in any one may preclude participation in the PCLP. SBA will use information from onsite compliance reviews, operational reviews and other program management and oversight activities to make the determination regarding eligibility for PCLP status.

Congress, SBA and the CDC industry recognize that the success of the PCLP is highly dependent on the extent to which PCLP CDCs are familiar with SBA's credit and eligibility standards and its loan processing, closing, servicing and liquidation policies and procedures. These policies and procedures are highly complex and require processing a substantial volume of 504 Loans over an extended period of time to remain proficient. Also, SBA needs access to a significant number of a CDC's loans to evaluate its proficiency. SBA notes that ALP its participants must have processed at least twenty 504 Loans in the most recent three years (see § 120.841(b)). When considering the minimum 504 Loan volume requirement for participation in the PCLP, SBA considered the concern of smaller and rural CDCs that a high minimum 504 Loan volume requirement could exclude them from being a PCLP CDC. SBA discussed those concerns with the CDC

industry and concluded that proficiency in 504 Loan policies and procedures can only be developed and maintained from regularly processing a significant number of 504 Loans. In addition, one of the main purposes of the PCLP was to improve the efficiency and expedite the loan processing of higher volume CDCs, which were being disproportionately impacted by the longer turn-around time in SBA's district offices. Also, for low volume CDCs, any potential efficiency benefits from participating in the PCLP would more than likely be offset by the cost and effort required to develop and maintain the high level of 504 Loan proficiency required in a staff that rarely processes an SBA 504 Loan. (About half of all CDCs process less than six 504 Loan applications per year.) After considering these issues, SBA proposes to require that ALP and PCLP applicants must have received approval for at least 20 504 loans in the most recent three years and have a portfolio of at least 30 active 504 loans. (SBA defines an ''active'' 504 Loan as a loan that was approved and closed by the CDC and has a status of either current, delinquent, or in liquidation.)

To assist in determining the proficiency of a PCLP applicant to effectively process and administer 504 Loans, SBA is requiring that SBA-conducted oversight reviews of a PCLP applicant must have found the applicant to be substantially in compliance with SBA's regulations, policies and procedures. In addition, SBA will need to assess the applicant's current proficiency, so these reviews must be relatively recent (within the past 12 months). While SBA has policy and procedural guidance in place generally requiring annual SBA oversight review, CDCs may occasionally request a postponement of those reviews. Applicants to the PCLP must recognize the need for current SBA review data and coordinate with their Lead SBA Office to ensure that the CDC is available and prepared for any required oversight reviews.

SBA has developed comprehensive management information systems to timely track and analyze the performance of a CDC's 504 Loan portfolio. As a result of an extensive examination and analysis of these performance data, SBA has determined that portfolio currency, delinquency, default, liquidation and loss rates are important measures of the quality of a CDC's portfolio and the effectiveness and diligence of its loan analysis, closing and servicing. Therefore, SBA has established benchmarks for each of these measures and SBA will use such portfolio benchmarks as an indication or measure of the CDC's compliance with 504 program requirements.

SBA and the CDC industry recognize that the training and experience of the PCLP applicant's staff are critical determinants of the quality and effectiveness of its 504 Loan program administration as well as its diligence in applying SBA's 504 Loan credit and eligibility standards. As a result, the CDC industry has developed appropriate credit, packaging, loan closing and loan servicing training programs, which the staff of many CDCs attend. As a result, SBA is requiring that the principal staff of PCLP applicants possess adequate 504 Loan training and experience.

Under the PCLP, SBA delegates authority and a certain level of autonomy to PCLP CDCs to process, close and service 504 Loans with only limited prior SBA review. As a result, SBA is requiring that applicants to the PCLP must demonstrate a particularly thorough understanding of and an applied diligence to SBA's 504 Loan credit and eligibility standards and its 504 Loan processing, closing and servicing policies and procedures. A failure to consistently apply appropriate credit analyses and standards and loan processing, closing and servicing policies or procedures exposes SBA and the taxpayer to excessive risk of loss and negatively impacts the availability of SBA financing to the small business community. A CDC's failure to adequately apply SBA's 504 Loan eligibility standards could result in 504 Loan approvals to small businesses that are expressly prohibited by statute or regulation from receiving SBA loans.

Section 508(b)(2)(A) requires that PCLP CDCs be in good standing with SBA. SBA interprets that requirement to mean both in good standing with the State in which the CDC is incorporated (as discussed in § 120.820), and in substantial compliance with the 504 Program requirements imposed by statute, regulation, SOP, policy and procedural notice, loan authorization, debenture, or any agreement between SBA and the CDC. Under the PCLP, due to the higher level of authority delegated to the PCLP CDCs and the potential risk to the Agency, SBA expects a significantly higher level of compliance with both of these requirements by PCLP CDCs.

The Lead SBA Office will consider the CDC's initial application to the PCLP, and will forward the application package, including a recommendation regarding the applicant's qualifications, to SBA's PCLP Processing Center, which then will forward the package with its recommendation to the AA/FA for final action. PCLP applicants are expected to coordinate with their Lead SBA Office early in their consideration of the PCLP to realistically assess its program requirements and their prospects for admission. When officially applying for the PCLP, an applicant will need to provide certain essential information and documentation to assist SBA in ascertaining its qualifications, including a resolution from its Boards of Directors; resumes on key staff for 504 Loan processing, servicing, liquidation, and litigation; documentation of any required insurance; and information about the qualifications of its closing attorney. While SBA will generally confer PCLP status for a period of two years, under appropriate conditions SBA may approve a lesser period.

Section 120.846, requirements for maintaining and renewing PCLP status, is added. Pursuant to section 508(b)(3) of the Act, in order to retain its PCLP status, a PCLP CDC must continue to meet the eligibility requirements of the PCLP, as described in § 120.845. While level of activity is one of those criteria, section 508(i) of the Act requires that PCLP CDCs establish a goal of processing a minimum of 50 percent of their 504 Loan applications using PCLP procedures. SBA considered establishing a requirement that PCLP CDCs process at least 30 percent of their 504 Loans using PCLP procedures immediately after becoming a PCLP CDC and gradually increasing that requirement as the PCLP CDC matures. However, following discussions with the CDC industry, SBA determined that immediately establishing such an absolute minimum could discourage participation in what is a developing program with a variety of relatively new concepts and procedures. Nevertheless, SBA recognizes that the legislation authorizing PCLP mandates that PCLP CDCs be active CDC lenders and establish a goal of processing a minimum of 50 percent of their 504 Loans using PCLP procedures. As a result, while SBA still expects PCLP CDCs to process a substantial proportion of their 504 Loans using PCLP procedures and strive to reach their 50 percent goal as mandated by statute, SBA is not immediately requiring an absolute minimum. Thus, as the PCLP matures, SBA intends to publish procedural guidance gradually incorporating and increasing the minimum number and percent of 504 Loans that PCLP CDCs must process using PCLP procedures.

Due to the delegation of authority under the PCLP, and the associated risk of loss, SBA expects PCLP CDCs to

develop, implement and actively monitor effective internal control systems and processes that will ensure continued conformance with the requirements of the PCLP. These systems should provide PCLP CDCs with early information on their performance. SBA also has developed management control systems to monitor individual PCLP CDCs, specifically the portfolio benchmark data and the management oversight reviews, and SBA provides this information to PCLP CDCs. With these internal and external control systems, SBA expects PCLP CDCs to constantly monitor their performance as a CDC and as a PCLP CDC and to be in a position to take appropriate and timely corrective action when necessary. Due to the risk inherent in the delegation of authority under the PCLP, SBA will move to timely suspend, terminate or decline to renew the PCLP status of PCLP CDCs that do not comply with the requirements of the PCLP. Significant problems with respect to liquidation and litigation activities by either a PCLP CDC or its contractor may, at SBA's option, also lead to the non-renewal of PCLP status.

Section 120.847, requirements for the loan loss reserve fund, is implemented as proposed, except for one change as discussed below.

To mitigate some of the potential risk of delegating additional authority to PCLP CDCs, pursuant to section 508(c)(1) of the Act, PCLP CDCs must establish and make deposits to a Loan Loss Reserve Fund (''LLRF''). The LLRF is a restricted account established for the purpose of accumulating deposits and limiting withdrawals to those SBA specifically authorizes. The PCLP CDC may use the deposits to reimburse SBA for 10 percent of any loss sustained by SBA as a result of a default in the payment of principal or interest on a debenture issued by the PCLP CDC using PCLP procedures (''PCLP debenture''). Pursuant to section 508(c)(3) of the Act, the LLRF must be composed of: (1) Segregated deposit accounts at one or more federally insured depository institutions subject to a collateral assignment to SBA; (2) irrevocable letters of credit in favor of SBA; or (3) some combination of the above. Due to the characteristics and cost of letters of credit, and in consultation with the CDC industry, SBA has determined that letters of credit do not currently represent a feasible option for PCLP CDCs. Consequently, SBA is not addressing letters of credit in this rule. However, SBA will continue to explore this option with the CDC industry, and will promulgate regulations addressing letters of credit to the extent this becomes a feasible option.

Pursuant to section 508(b)(2)(c) of the Act, PCLP CDCs must reimburse SBA for 10 percent of any loss SBA incurs in connection with a default on a PCLP debenture and the regulation proposes how to measure SBA's loss. The statute and proposed rule also require that the LLRF maintain a deposit equal to one percent of the original principal amount of each PCLP debenture.

The LLRF must be a deposit account with a federally insured depository institution selected by the PCLP CDC. Following discussions with the CDC industry, SBA is aware that alternative accounts and financial instruments may offer greater returns on the LLRF. However, the Act restricts LLRFs to federally insured depository institutions and that language as well as other applicable law greatly limit the investment alternatives. This rule elaborates on what constitutes a deposit account acceptable to SBA. Also, to simplify the administration of the LLRF, this rule allows PCLP CDCs to pool loss reserves in a single segregated account. SBA generally does not anticipate that PCLP CDCs will incur significant fees in connection with their LLRFs, although PCLP CDCs will need to be mindful of breakage fees, should they place funds into certificates of deposit (''CDs''). This final rule goes on to make clear that the PCLP CDC will be responsible for any fees, costs and expenses incurred in connection with the LLRF.

Pursuant to section 508(c)(3) of the Act, any LLRF established by a PCLP CDC must be subject to a collateral assignment in favor of, and in a format acceptable to, SBA. Accordingly, a PCLP CDC must give SBA a first priority perfected security interest in each LLRF. The PCLP CDC must grant the security interest pursuant to a security agreement between the PCLP CDC and SBA, and the security interest must be subject to a control agreement between SBA, the PCLP CDC, and the applicable depository institution. The control agreement will include provisions requiring a depository institution to follow instructions from SBA regarding withdrawals without further consent from the PCLP CDC. The laws governing security interests in deposit accounts are complex, vary by jurisdiction, and are undergoing change. Therefore, when establishing an LLRF, a PCLP CDC must coordinate with the Lead SBA Office to develop, execute and deliver the required documentation. SBA field counsel will have a model control agreement, which they may need to modify to meet local legal requirements. This final rule provides that the CDC must provide to the Lead SBA office a fully executed original copy of the security and control agreements which the Lead SBA Office will retain in its files. All associated documents must meet SBA requirements and occasional changes may be necessary. If a depository institution will not enter into or modify a control agreement or violates the terms of any such agreement, the PCLP CDC cannot maintain an LLRF with that institution.

Pursuant to section 508(c)(4) of the Act, PCLP CDCs are allowed to make required deposits to the LLRF associated with each loan in as many as three deposits, but specifies the minimum amount and timing of those deposits. This final rule sets forth the amount and timing of those deposits.

Due to its management control and oversight responsibilities, SBA must ensure that LLRFs: (1) Are properly established; (2) contain the required reserve amounts; and (3) are appropriately administered and controlled. Periodic reporting by PCLP CDCs to SBA on the amount of funds maintained in LLRFs is critical to ensuring that LLRFs are properly established and maintained. However, while LLRFs must contain deposits equal to one percent of each PCLP debenture, the deposits associated with each PCLP debenture may be made in as many as three installments. Also, during the normal course of a PCLP CDC's operations, LLRFs will be subject to a variety of other deposits and withdrawals (*e.g.*, withdrawals associated with loans paid in full and defaults). As a result, reporting and reconciling LLRFs might become quite complex. SBA is concerned with the potential burden such reporting could represent to PCLP CDCs. SBA continues to work with the CDC industry to develop and test efficient and effective reporting procedures, and will publish appropriate procedural guidance as those procedures are finalized.

SBA will allow PCLP CDCs to withdraw any funds from the LLRFs that exceed required minimums, at SBA's discretion. Section 120.847(g) provides that requests for withdrawals must be forwarded to the Lead SBA Office, which will check the balances to ensure the required minimums are maintained and authorize withdrawals as appropriate.

Section 120.847(h) provides that when a PCLP CDC has submitted a liquidation wrap-up report to SBA, or SBA otherwise has determined that all reasonable collection efforts have been exhausted, the Lead SBA Office will calculate the SBA's loss and notify the

PCLP CDC of the amount of any reimbursement obligation and provide appropriate supporting documentation. The final rule sets forth procedures so that PCLP CDCs may appeal any problems or disagreements regarding the calculation of SBA's loss.

Section 120.847(i) requires PCLP CDCs to reimburse SBA for 10 percent of any loss and states that the reimbursement may come from the LLRF or from other funds provided by the PCLP CDC. There could also be instances where a PCLP CDC would not have sufficient funds in its LLRF to reimburse SBA for 10 percent of SBA's loss, and the regulation describes the period of time by which the CDC must reimburse the Agency.

Pursuant to section 508(c)(5) of the Act, the final rule requires that should a PCLP CDC's LLRF drop below the required minimum, the PCLP CDC must replenish the LLRF within 30 days of the time that it realizes this deficiency or of a notice from SBA that the LLRF is deficient. Thus, if a depository institution offsets from any LLRFs maintained with the institution any amounts owing by the PCLP CDC to it, the PCLP CDC must replenish the LLRF to the full amount then required within 30 days. Comments received regarding these changes concerned a perceived inconsistency in the source of reimbursement to SBA for losses. SBA considered this concern and is revising § 120.847 to clarify that a PCLP CDC may reimburse SBA for losses either from the LLRF or other funds.

Section 120.848, requirements of PCLP loan processing, closing, servicing, liquidating and litigating, is added.

Pursuant to section 508(e)(1) of the Act, PCLP CDCs are permitted to approve, authorize, close, service, and liquidate 504 Loans, subject to terms and conditions established by SBA. SBA's authority to establish such terms and conditions is limited by section 508(e)(2) of the Act, which states that the CDC's approval of a 504 Loan using its PCLP authority is subject to SBA's final approval of the PCLP debenture as to eligibility but that SBA as part of its approval may not review the creditworthiness, loan closing, and legal compliance (except with respect to eligibility) of the underlying 504 loan.

Several comments objected to the proposed § 120.848, including SBA's authority to require a PLCP CDC to process 504 Loans involving complex or problematic eligibility issues through SBA using standard loan processing procedures (§ 120.848(c)), or to require a PCLP CDC to turn over to SBA the handling of a particular PLCP loan (§ 120.848(f)). These commenters suggested that SBA does not have the authority, under section 503(e)(2) of the Act, to require that PCLP CDCs take these actions. However, SBA believes that these commenters misinterpret the Act. SBA has specific authority under section 508(e)(1) to establish the terms and conditions under which PCLP CDCs are permitted to approve, authorize, close, service, and liquidate 504 Loans, which authority encompasses all of the terms and conditions SBA proposed in the proposed rule.

Section 120.848 provides guidance on PCLP CDCs' approving, authorizing, closing, servicing, and liquidating 504 Loans and notes that all 504 Program requirements apply to 504 Loans processed by PCLP CDCs. Under § 120.848(c), PCLP CDCs are specifically authorized to determine a 504 Loan applicant's credit-worthiness; to establish the terms and conditions under which the loan will be made; and to take other processing actions as may be delegated by SBA to PCLP CDCs. SBA believes that the PCLP can be most prudently administered if SBA focuses, at least initially, on expediting the processing of routine CDC loan applications under the PCLP and handling complex or problematic eligibility issues using standard 504 Loan procedures. However, SBA will continue to study and analyze this issue and develop further guidance as the PCLP progresses.

Several comments suggested that SBA revise the requirement in § 120.848(c) that complex loan applications be processed through the Lead SBA Office, because SBA currently is expanding its centralized 504 loan processing activity. SBA considered this suggestion and agreed that this section should be modified. Therefore, in § 120.848(c) in the final rule, SBA deleted ''Lead SBA Office'' and added ''SBA,'' in order to accommodate ongoing Agency changes.

Several comments also suggested that SBA consider permitting PCLP CDCs to close their own 504 loans without SBA review. SBA notes that under § 120.848(e), a PLCP CDC is required to close PCLP loans and debentures under SBA's expedited loan closing procedures, which provides for a limited review of documents relating to the debenture, but does not include an entire review of the CDC's closing of the 504 Loan underlying that debenture. This is entirely consistent with the Act and with the comments. SBA did not propose to modify SBA's current practice, in which SBA shares with the PCLP CDC joint responsibility for closing the PLCP debenture. Refer to the discussion of § 120.960, responsibility for closing, for further discussion of SBA's reasons for not changing this current practice.

Several commenters also suggested that PLCP CDCs be permitted to make eligibility determinations which involve franchise issues and issues of potential environmental hazards and liability with respect to the project property collateral, independently and without SBA's review. SBA considered these suggestions but implements the proposed rule without change on this issue. These are important issues that relate to the eligibility for 504 loan financing of the borrower and of the project itself, and SBA has the authority under section 508(e)(2) of the Act to review and approve eligibility issues. Accordingly, SBA implements § 120.484 as proposed except as discussed.

With respect to § 120.848(b), SBA's management control and oversight responsibilities require a systematic review of a PCLP CDC's 504 loan processing proficiency. As a result, SBA must periodically review the processing actions of PCLP CDCs to ensure the PCLP CDC is using appropriate and reasonable procedures. PCLP CDCs are thus expected to retain in their loan files copies of all documents associated with their processing actions. SBA may occasionally review these documents on site or request that they be forwarded to SBA for review. If SBA identifies significant problems or deviations from SBA's 504 Program requirements, SBA will take appropriate corrective action, including possible removal from the PCLP.

SBA is deleting §§ 120.850–120.852, concerning ADCs, to eliminate the ADC designation. The reasons are twofold. First, SBA is seeking to eliminate redundancy in the regulations. One aspect of the ADC program was that it established requirements for organizations to qualify to contract with CDCs for 504-related services. However, § 120.824 permits CDCs to contract for 504-related services and governs such contracts. Second, these regulations established one of the grounds (not meeting the minimum required level of 504 Loan approval activity) for removing a CDC from the 504 Program discussed under § 120.854. In the final rule, all grounds for taking enforcement action against a CDC are combined under one regulation, § 120.854.

Section 120.855, CDC ethical requirements, is redesignated as § 120.851, and reworded to clarify its meaning and to remove the reference to ADCs (see § 120.850 discussion). SBA received several comments on this regulation. SBA proposed to delete the ''good cause'' exception to the general

rule, that an associate of a CDC may not be an officer, director, or manager of more than one CDC, and the commenters requested that such an exception remain. SBA has considered these comments but believes that, in every case, a CDC should be independently managed and operated to pursue its own economic development mission. Further, SBA believes that with the new requirement that each CDC's area of operations be statewide, a potential for a conflict of interest exists if the same individual is an officer of or on the board of two CDCs. Therefore, SBA is adopting § 120.851 as proposed.

Section 120.852 prohibits a CDC from investing in or being affiliated with a 7(a) lender or an SBIC, which SBA believes will help to avoid apparent conflicts of interest and serve the economic development mission of the CDC. However, the final rule does not require a CDC with an existing investment in an SBIC to liquidate such investment. In response to the ANPRM, commenters overwhelmingly stated that SBA should not permit a CDC to establish a 7(a) lender or permit a 7(a) lender to establish a CDC and that the two programs should remain separate. Comments in response to the proposed rule also were generally supportive of the separation of 7(a) lenders and CDCs. Several commenters suggested that there be an exception for CDCs that already are affiliated with State development companies that were authorized under section 501 of the Act that could continue to be so affiliated, even if the state development company is a 7(a) lender. SBA considered these comments and agrees to permit this exception.

SBA also received comments regarding the proposed prohibition on a CDC investing in an SBIC. A typical comment opposed the prohibition on the basis that it would eliminate a CDC's use of the SBIC program as an economic development tool (without explaining why it was believed this would occur). SBA believes the concern is unfounded. In general, if a CDC has an investment in an SBIC, then the CDC would be prohibited from referring a 504 borrower to that SBIC for that borrower's venture capital requirements. By contrast, by prohibiting a CDC itself from having an investment in an SBIC, the CDC will be free to refer its borrowers to the SBIC for venture capital, thus increasing the borrowers's access to capital. Other comments requested that the regulation be modified to be consistent with the preamble to the proposed rule, which SBA stated that the Agency would not require a CDC with an existing investment in an SBIC to liquidate such investment. SBA has considered this comment and agrees that the final rule should be modified to reflect this exception. This rule adopts § 120.882 as it was published in the proposed rule except as discussed.

Section 120.853 is identical to existing § 120.973 except that it would eliminate references to ADCs.

New § 120.854, grounds for taking enforcement action against a CDC, § 120.855, types of enforcement actions, and § 120.856, enforcement procedures, consolidate existing § 120.852 and §§ 120.982–120.984. These provisions also clarify and expand the grounds required for SBA enforcement actions against CDCs as well as SBA's and CDCs' rights and responsibilities in such actions. Section 120.981, voluntary transfer and surrender of CDC certification, is redesignated as § 120.857 to move it under the new heading entitled Enforcement Actions.

SBA received numerous comments regarding SBA's proposed changes to its enforcement procedures. Several comments expressed concern that SBA officials would abuse the authority provided by the enforcement regulations to unfairly penalize or control CDCs. Thus, one comment expressed concern that the regulations ''can be open to wide interpretation by any SBA official at either the local or national level.'' Another comment stated that the enforcement provisions are ''an attempt to give SBA personnel effective operating control of all CDCs'' and that ''[t]hrough the guise of oversight and evaluation SBA officials are attempting to create a web of regulations, which would enable a vindictive official to manipulate every action of a CDC under threat of suspension or termination.''

These comments reflect considerable misunderstanding of the regulations and how SBA typically conducts enforcement actions. SBA's actions reflect numerous layers of careful review and various controls in order to ensure that all facts and relevant issues are considered. Notably, the regulations only authorize the AA/FA (or his or her authorized delegate) to undertake enforcement actions, not numerous agency officials. Moreover, an enforcement action usually begins with a recommendation from the district office, which is signed and approved by various officials. When the recommendation reaches SBA's Headquarters, it is reviewed by a number of officials, as well as attorneys in SBA's Office of General Counsel prior to the initiation of any proposed action. After a notice of proposed action is sent to the program participant, any response from the participant is given considerable analysis by numerous SBA officials and attorneys and a consensus is attained as to whether to proceed with a final enforcement action. This carefully considered process should allay any concerns. Nevertheless, SBA's responsibility for managing the 504 Program requires that the Agency have a wide range of enforcement options available and considerable flexibility in implementing these actions. Moreover, SBA's revision of the enforcement regulations is a direct response to problems that SBA has encountered under the current regulations in dealing with CDCs that have repeatedly failed to comply with SBA rules and regulations or which have willfully failed to comply with SBA efforts to require compliance with regulations and other requirements. Thus, SBA disagrees with those comments that sought to retain the current enforcement regulations without change.

Several comments noted that the Act already prescribes the grounds for enforcement actions to suspend or revoke an ALP CDC or a PCLP CDC's ability to participate in these programs, and, therefore, that the proposed enforcement provisions as they relate to an ALP CDC or PCLP CDC were inconsistent with the statute.

SBA inadvertently consolidated the grounds for such enforcement actions with the general enforcement provisions in the proposed rule, and agrees that the Act sets forth grounds (but not procedures) for the suspension or termination (which the statute refers to as a revocation) of a CDC's authority to act as an ALP CDC or PCLP CDC. Consequently, SBA has made minor revisions to §§ 120.854 to include, verbatim as set forth in the Act, the grounds for such enforcement actions in new paragraphs (b) and (c), and has made conforming technical changes to § 120.855. Although these grounds for enforcement were not included in the proposed rule, the final rule simply incorporates statutory language, which SBA does not have discretion to modify, and makes conforming technical changes to the proposed rule.

In the final rule, all grounds for taking enforcement action against a CDC are combined under one regulation, § 120.854. SBA received some comments that asked whether § 120.854(b) would be applied retroactively. Section 120.180, however, currently provides for prospective application of any new regulations under Part 120, and this regulation has not been amended by this final rule.

Some comments suggested that the word ''knowingly'' be inserted into § 120.854(c) to establish intent. SBA considered this concern but has

declined to adopt it because it is based on a faulty legal premise, and because it would unduly burden the Agency's enforcement authority. Contrary to the assertion that misrepresentation is ''tantamount to civil fraud or deceit'', as several comments contended, the concept of negligent misrepresentation is well established in the law. *See, e.g., First National Bank, Henrietta* v. *SBA,* 429 F.2d 280 (5th Cir. 1970).

SBA emphasizes that the regulation authorizes enforcement action only if a CDC misrepresents or fails to disclose ''material'' information, which would include important information that the CDC would have reason to know the Agency was relying upon in making a decision about a loan or the CDC's participation in the Program. An example of such information would include a CDC's misrepresentation of or failure to disclose information in its annual report to SBA that, if accurately disclosed, would show that the CDC was in violation of SBA rules or regulations. Similarly, a CDC that was seeking authority from SBA to issue a 504 debenture and failed to disclose a significant adverse change in the borrower's financial condition that was known to the CDC would have failed to disclose a material fact.

As to such critical facts, the Agency believes that CDCs have an obligation to exercise diligence to ensure that they provide accurate information to SBA that the CDC knows, or should know, that the Agency is relying upon. Under egregious circumstances, enforcement action may be appropriate if a CDC negligently fails to do so, and SBA needs the flexibility to be able to undertake enforcement action without the unwarranted burden of having to prove that the CDC intended to deceive the Agency. If a CDC's misrepresentation or failure to disclose material was a result of inadvertence, the CDC will have the opportunity to explain this in responding to any proposed enforcement action. In doing so, however, SBA expects that the CDC would discuss the quality control measures it had implemented to prevent transmission of inaccurate or less than thorough information to the Agency. SBA will, thus, consider the ''intent'' of the CDC as part of its determination of whether to proceed with a proposed enforcement action.

A concern was raised regarding the use of the word ''material'' in § 120.854(c) because this term was considered to be too subjective and would ''open the likelihood for abuse and retaliation by the Agency.'' SBA has considered this comment but believes that the term should be retained in the final rule for several reasons. First, use of the word ''material'' is important in that SBA is making it clear that trivial infractions will not trigger an enforcement action under § 120.854(c). Thus, contrary to the comment's suggestion that the word ''material'' could increase the risk of unfounded enforcement actions against a CDC, the intent of the Agency in using this word is just the opposite. At the same time, SBA believes that needed flexibility in applying its 504 Program enforcement procedures is retained through the word ''material''. SBA notes that this term has been employed as longstanding policy with respect to denials of loan guarantees under the 7(a) Program under § 120.524. Thus, SBA believes it is appropriate to retain this word in the final rule.

Several comments were received regarding language in proposed § 120.854(d) that evidence of CDC improper actions could include the CDC's failure to meet one or more of the portfolio benchmarks established by SBA to measure a CDC's portfolio performance. Many of these comments raised similar concerns regarding the accuracy or lack of public adoption of the benchmarks that were discussed above, which SBA has considered and rejected.

Moreover, these comments appear to be based on the erroneous belief that an SBA enforcement action could proceed solely upon a CDC's failure to meet a portfolio benchmark. The regulation provides that benchmark performance is merely supporting evidence that a ''CDC is not performing underwriting, closing, servicing, liquidation, litigation, or other actions with respect to 504 loans in a commercially unreasonable or imprudent manner.'' SBA has made a minor revision to the second sentence of § 120.854(d) to emphasize this regulatory interpretation.

The need to show that a CDC's actions were imprudent or commercially unreasonable would also preclude SBA from being able to bring an enforcement action using the CDC's benchmark performance if the CDC could show that the performance score was directly related to SBA's approval or liquidation of 504 loans, and not the CDC's actions. Thus, SBA disagrees with those comments which asserted that the provision could be used to bring an enforcement action against a CDC for actions that were beyond its control.

In the context of a specific enforcement action that was relying on a CDC's benchmark score as evidence of that CDC's imprudence or commercial unreasonableness, the CDC, having access to the score, as discussed above, and having its own information about the performance of its loan portfolio, would be able to present SBA with arguments that the benchmark score was inaccurate in its opposition to the enforcement action. SBA would carefully consider those comments before proceeding with any enforcement action.

Other comments requested that SBA modify § 120.854(e) to clarify that an agency notification of deficiency to a CDC include a request to take corrective action if appropriate. SBA considered this concern, agrees with the comments, and is modifying the rule accordingly so that an agency notice of deficiency also include a request for corrective action if appropriate. SBA also agrees with, and has modified § 120.854(e) to address, those comments that stated that it would be fair to provide the CDC with a reasonable period of time to cure the deficiency. The Agency disagrees, however, with comments that a specified time for a cure should be provided because SBA needs flexibility in determining the appropriate cure period depending upon the facts of each situation. SBA further disagrees with comments suggesting that a notice of deficiency must describe with specificity the corrective action that is needed rather than simply requiring it to be corrected. Although SBA may suggest the type of corrective action that is needed, it will generally be the CDC, with the knowledge of its own operations and portfolio, that will be in the best position to make the judgment as to how best to correct a deficiency.

Comments objected to proposed language in § 120.854(f) that would permit SBA to initiate enforcement action based upon a CDC's ''pattern of uncooperative behavior or an action that SBA determines is ''deleterious to the 504 program'' or that ''undermines SBA's administration of the 504 program'' or that was ''not consistent with standards of good conduct.'' Generally, the comments expressed concern that these provisions were ambiguous and subject to subjective interpretation. The terms are so broad, one comment opined, so ''as to render it useless in determining what the SBA means and what is expected of the CDC'' and allows SBA ''to decertify a CDC simply for convenience,'' and without just cause or due process.

SBA has considered these comments but believes that the provisions should be retained in order to preserve needed and justifiable flexibility in administering the 504 program, as discussed above. It has been the Agency's experience in dealing with enforcement actions in the past that it

is imperative to have the type of catchall provision embodied by § 120.854(f) in order to have effective management tools available in the event that a program participant is engaging in ''a pattern of uncooperative behavior'' or has taken other action that warrants some enforcement action, but which does not squarely fit within the specific grounds identified in a regulation as a basis for enforcement.

Although SBA retained these provisions, the Agency is sensitive to those comments that CDCs would not be on notice of what behavior was expected by these regulations. SBA believes that the appropriate resolution of these concerns is to provide additional procedural protection to CDCs. Therefore, SBA has added language to § 120.854(f) that would ensure that SBA could only propose enforcement action based on § 120.854(f) after the Agency had: (1) Provided written notice to the CDC explaining why the CDC's actions were uncooperative, not good conduct, or undermined SBA's management of the program and that the CDC's actions could give rise to an enforcement action; and (2) providing the CDC with a reasonable time to cure the deficiency. This change reasonably addresses all of the comments that objected to these provisions.

Several comments objected to the enforcement actions authorized under § 120.855. Thus, concerns were expressed about the language in § 120.855(a) that the AA/FA or his or her delegate's decision to undertake enforcement actions ''in SBA's sole discretion'' would result in enforcement actions that were subjective or selective. SBA disagrees with the suggestion to delete this language because each enforcement case is different and the Agency believes that effective program administration requires maximum flexibility to determine the appropriate enforcement action appropriate for each particular action. SBA also believes that the due process rights that are provided by the regulations, including the review by the SBA OHA (which is discussed further below regarding § 120.856) protects CDCs from arbitrary enforcement actions.

Several comments objected to § 120.855(a)(3) which authorizes SBA to direct a CDC to transfer some or all of its portfolio to another entity. The comments asserted that SBA should provide the CDC with a right to cure any deficiency prior to such a transfer. Directing a CDC to transfer some or all of its portfolio to another entity is an extreme action that would generally only be considered in egregious circumstances. Typically, SBA would provide a CDC with an opportunity to cure a deficiency before the initiation of such an action. SBA, however, disagrees with the proposals to mandate a cure before initiating such an enforcement action because there may be circumstances where the opportunity to cure would not be possible, and SBA's administration of the program would be unnecessarily restricted by a mandatory cure opportunity prior to enforcement. For example, if a CDC was terminated from the program due to regulatory violations, a cure of these violations may not be possible. In such a case, SBA needs the authority to be able to direct the transfer of that CDC's portfolio to another entity without the requirement of providing the CDC with a cure opportunity.

SBA also disagrees with the comments which objected to the Agency's authority to direct the transfer of 504 loans to entities other than SBA or a CDC on the ground that transfer to banks and other for-profit entities was contrary to the public or program's interest. Although it would be SBA's clear preference that 504 loans be transferred to a CDC, there may be occasions where no other responsible CDC exists for such a transfer. SBA requires the flexibility to direct a portfolio transfer in the manner that the Agency believes is in the best interests of the program. Generally, however, it is anticipated that a transfer to an entity other than a CDC would be temporary until another responsible CDC was available.

Many comments objected to § 120.855(a)(4), which allows SBA to direct the Central Servicing Agent (CSA) to suspend payment of fees to a CDC and to direct the CSA to submit those fees to SBA to pay for any financial loss resulting from a CDC's imprudence, commercial unreasonableness or failure to comply with an SBA requirement. SBA has agreed to eliminate the provisions allowing for payment of the fees to the Agency to compensate for financial loss because it would like to study this issue further. SBA, however, has retained in the final rule the language allowing the suspension of fee payments to the CDC as an enforcement tool in the absence of any significant comments on this proposal.

A number of concerns were raised regarding § 120.856, which sets forth procedures for proposing and undertaking enforcement actions, and the affected CDC's due process and appellate rights. As discussed below, SBA has revised this section to address several of the comments the Agency received. These changes have also necessitated a renumbering of the subsections in § 120.856.

Several comments contended that § 120.856(a) should require SBA to provide details of the reasons behind a proposed enforcement action. SBA agrees with this proposal and has added language to make clear that the underlying facts and reasons for the proposed action should be reasonably detailed.

SBA received a number of comments regarding § 120.856(c) [now renumbered as § 120.856(b)], which sets forth the CDC's right to respond to a notice of proposed enforcement action or to a notice of immediate suspension. Several comments requested that the provision should specify that the period for the CDC to respond to a notice should be fixed at 30 days; others felt that the CDC should be given 60 days to respond. SBA disagrees with these comments because the Agency believes that 30 days is a sufficient amount of time, and that the Agency must retain the flexibility to permit a greater or lesser amount of time for a response to accommodate the unique circumstances of each enforcement action. SBA has, however, added language that a CDC may request additional time if it can show that there are compelling reasons why it is not able to respond within the 30-day timeframe.

SBA does, however, agree with those comments that urged that a CDC's 30-day response period should begin to run when a CDC receives the notice of proposed action or immediate suspension. For purposes of determining whether a CDC has timely responded to a notice of a proposed action or immediate suspension, the regulations will make clear that it is presumed that the notice has been received within 5 days of the date of the notice, absent compelling evidence from the CDC to the contrary.

Several comments contended that the regulations should make some or all of the following discovery procedures available to a CDC that receives a notice of a proposed action or immediate suspension: (1) The ability to undertake discovery; (2) the ability to review SBA's complete file; (3) the ability to request and review additional documents; (4) the ability to question SBA's employees; (5) the ability to obtain copies of any documentation that SBA has obtained during the course of its investigation before or after the CDC files its objection; and (6) the ability to obtain information from third parties. Absent these discovery procedures, the comments contended, the CDC would be deprived of the ability to respond meaningfully to the notice. In addition,

the comments urged, a CDC that avails itself of one or more of these discovery procedures should have additional time to respond to the notice of proposed enforcement action or immediate suspension or be able to make additional submissions to SBA beyond the initial objection in opposition to the enforcement action.

The SBA does not believe that these discovery procedures are necessary to provide the CDC with meaningful review or appropriate for the enforcement action set forth in §§ 120.854–120.857. The existing procedures already provide for a meaningful review, in that the CDC will receive a written notice setting forth the proposed enforcement action or immediate suspension and a reasonably detailed description of the underlying facts and reasons for SBA's proposed action or immediate suspension, and will have the opportunity to submit its objections and opposition to that notice. A second review is then undertaken by the Agency prior to the final decision, and the CDC has further relief in seeking review from the OHA and ultimately the courts. The requested discovery procedures will likely serve to delay and frustrate SBA efforts to undertake enforcement necessary for effective program management, and result in considerable additional burden on limited Agency resources in responding to the requested discovery. Indeed, it has been the Agency's experience in attempting enforcement actions in the past that certain CDCs have attempted to repeatedly delay those efforts.

Further, it is SBA's experience that enforcement actions are typically based on documentation and information that is already available or known to the CDC, *e.g.*, loan documentation, the CDC's annual report, or correspondence between the CDC and SBA. Thus, the requested discovery procedures are generally not necessary. Nevertheless, SBA does recognize that if an enforcement action is based on information derived from a third party, *i.e.* a party other than SBA or a CDC, such as a borrower, principles of fairness suggest that that the CDC should be provided with a copy of the relevant documentation or name of the third party in the event the information was oral. SBA recognizes also, however, that there may be occasions where there may be compelling reasons for not disclosing the identity of the third party or copies of the actual documentation, such as privilege or significant impairment of SBA's ability to manage the 504 Program. Therefore, SBA has added a new section § 120.856(g) providing that if an enforcement action is based upon information derived from a third party, SBA's notice of proposed action or immediate suspension will provide copies of documentation received from such third party or the name of the third party in case of oral information unless SBA determines that there are compelling reasons not to provide such information. If compelling reasons exist, SBA will provide a summary of the information it received to the CDC. Finally, SBA disagrees that a regulation is required to allow the CDC to obtain information from these or other third parties because the CDC can pursue such information without the need for a regulation.

Several comments asserted that § 120.856(c) [now renumbered as § 120.856(b)] should provide that a CDC which has received a notice of a proposed action or immediate suspension has the right to request a more definite statement if SBA's reasons for the proposed action were unclear. Inasmuch as SBA would, as a matter of course, respond to any legitimate request for clarification, SBA agrees to amend the regulation to make clear that a CDC may request clarification of a notice. SBA does not, however, agree with those comments that suggested that the regulation should be revised so that such a request for clarification would automatically delay the time for a CDC to respond to the notice. Allowing a CDC the right to postpone its response time based on an alleged inability to understand a notice could allow the CDC to improperly delay the enforcement action by seeking clarification where none was actually needed (and potentially filing repeated requests for clarification), and by waiting until the last possible moment to respond before seeking clarification. In addition, imposing an automatic delay of the CDC's response time would add considerable confusion to the enforcement procedures by creating uncertainty as to the deadline for the CDC's response. Thus, SBA has added language that the Agency ''may'' consider delaying the period for the CDC's response in the event the CDC legitimately seeks clarification or has a compelling basis for needing additional time to respond. The new language would likely preclude a CDC from delaying a request for clarification or additional time or improperly making such requests. If SBA disregarded a legitimate request for clarification or an extension of time and proceeded with a termination action, the CDC would have a right to appeal that decision before the OHA or a federal court.

Several comments requested that section 120.856(d) [now renumbered as § 120.856(c)] should include a deadline for SBA to issue a final decision on a proposed termination action. The offered rationale for this request was that without a deadline, the CDC would be ''in limbo'' for an indefinite period of time and could not pursue its rights before the OHA and the courts. SBA disagrees with these comments, for the most part. If SBA proposes an enforcement action, the CDC would not lose any right or authority until a final decision is made, and, therefore, would not experience any prejudice in the event that SBA did not immediately issue a final decision. Similarly, there is nothing for a CDC to appeal to OHA or the courts until a final decision is rendered. In the case of an immediate suspension under § 120.855(b) [now renumbered as § 120.856(a)(2)], however, the CDC's rights and authority would be affected. Therefore, for those actions, SBA agrees that a deadline should be imposed on the issuance of a final decision to avoid any undue prejudice to the CDC. Therefore, SBA has revised § 120.856(c) to require the Agency to issue a final decision on an immediate suspension within 90 days of receiving the CDC's objection. Procedures have also been added to address this deadline in the event a CDC seeks clarification or additional time. In addition, SBA has clarified that Agency decisions must be in writing in § 120.856(c).

Although SBA did not receive any comments pertaining to § 120.856(e) [now renumbered as § 120.856(d)], the Agency has determined through its own initiative that there is a conflict between this section and § 120.856(f) [now renumbered as § 120.856(e)]. Although proposed § 120.856(e) provided that a decision under that section constitutes the final agency decision, which signifies that there is no further appeal within the agency, proposed § 120.856(f) allowed for an appeal from that section to the OHA. To address this inconsistency, § 120.856(e) has been revised to clarify that it only sets forth a right of appeal and appellate procedures for an appeal from § 120.856(c).

SBA also received a comment from the SBA OHA regarding § 120.856(f) [now renumbered as § 120.856(e)] requiring the OHA review of the appeal of an enforcement action to be consistent with legal precedent developed under the arbitrary or capricious standard of 5 U.S.C. 706 because under OHA regulations this could be construed as requiring that only the SBA Administrative Law Judge would hear such appeals. The Agency intends that Administrative Judges and

the Administrative Law Judge be able to hear appeals and, therefore, has deleted the reference to the statute. Nonetheless, SBA expects that OHA judges will look to legal precedent developed under the arbitrary and capricious standard of the APA in deciding appeals from these enforcement provisions.

Many comments were received that the regulations should allow the SBA Office of Hearings and Appeals to have a de novo review of enforcement actions in § 120.856(e). Several comments contended this review was provided under current regulation (SBA does not interpret the regulation as providing such review, but acknowledges that the current regulation is unclear). One comment stated that the arbitrary and capricious standard imposes such an ''excessive'' burden upon the CDC that ''the decision of the program office would necessarily be affirmed by OHA even if it was obviously wrong.''

SBA has considered but disagrees with these contentions and has retained the original proposed regulations provision that the OHA review is limited to the arbitrary and capricious standard, a standard of review which is well established under the law. As previously noted, the fact that SBA enforcement actions are undertaken with considerable review and deliberation, and that numerous agency officials are involved in the decision, should allay those concerned about arbitrary decisionmaking. However, the decision to take an enforcement action necessarily involves policy judgments about what action is in the best interests of the Agency and the 504 Program. Therefore, SBA does not believe that it is appropriate or in the best interests of the 504 Program for the OHA, which is not a policymaking office and which does not have the familiarity and experience with the 504 Program, to be able to undertake a de novo review and to make policy for the 504 Program.

Further, the arbitrary and capricious standard, although a deferential review, requires that the Agency have a rational and reasonable basis for its decision. If such a basis is lacking, the matter should be remanded back to the Agency for further consideration. A review of the numerous cases which have applied this standard and remanded agency decisions refutes any assertion that the arbitrary and capricious review is merely a rubber stamp of an agency's decision.

Several comments took the position that de novo review by the OHA was required based upon the assertion that procedural due process under the Constitution requires that the decision be made by a ''fair, neutral decision maker.'' These comments, however, did not argue or show a basis for any suggestion that the AA/FA was not a fair, neutral decision maker. Moreover, to the extent these comments assert that an appeal of an agency decision to an independent office of the agency is required by constitutional due process, those comments are simply mistaken. SBA could, and, indeed, has in numerous regulations, provided that the decision by the relevant agency official is the final agency action, without providing any right of appeal to the OHA. OHA review of enforcement actions is not a right, but an accommodation that SBA has chosen to provide to CDCs in order to improve the fairness of the enforcement procedures.

Several comments contended that the regulations should allow a CDC to raise arguments with the OHA that it had not made to the Agency in responding to a proposed enforcement action, and that CDCs should have a right of discovery or to subpoena third parties in the OHA to add information to the record of the agency's decision. One comment's justification for allowing new arguments to be raised before the OHA was that ''the CDC may easily forget an important matter and not raise it or make a submission * * * without relying on counsel.''

SBA also considered but is not persuaded by these comments. If the CDC provided the OHA with arguments or information obtained through discovery in the OHA that were not considered by the Agency, the OHA's review would not merely evaluate whether the Agency's decision was supported by the administrative record, but would necessarily entail a de novo review of the underlying matter. As stated above, SBA believes such review is inappropriate. Additionally, a CDC that is faced with a proposed enforcement action or immediate suspension would be best advised to make sure that it diligently provides all relevant information to the Agency and consults with counsel to the extent it deems such consultation to be appropriate.

Nevertheless, SBA does agree that a CDC that can show that it was unable to present facts or an argument to the AA/FA due to compelling reasons beyond its control, and that it has been prejudiced by this inability, can request that the OHA remand the matter back to the AA/FA for further consideration. This procedure is set forth in new language that has been added to § 120.856(e). Similar language has been added to newly renumbered § 120.856(b) with respect to a CDC's objection to a notice of a proposed action or immediate suspension, with conforming language added to § 120.856(e)(3).

SBA also has added language to § 120.856(e) that if the OHA decides that SBA's decision was arbitrary, capricious or contrary to law, the OHA must remand the matter to the AA/FA or the deciding official for further consideration. Although this was clearly implied in the proposed rule, it was not explicitly stated and so SBA has added this language to the final rule for clarification.

As discussed above with respect to § 120.810 and elsewhere, SBA has deleted language from the proposed regulations to the effect that the procedures in §§ 120.854 to 120.856 do not apply to those sections. SBA has added a new paragraph 120.856(f) which incorporates the concept of the deleted language to specify that the procedures in § 120.856 only apply to actions undertaken pursuant to § 120.855.

Section 120.861, job creation or retention, is revised (see discussion of revisions to § 120.829 for a description of the changes to the job requirement criteria and the comments received). The change in the criteria will be published in a **Federal Register** notice from time to time.

Section 120.862, other economic development objective, includes two technical changes. The first is the Agency-wide replacement of ''SIC'' codes with ''NAICS'' codes when identifying the types of small businesses eligible to receive SBA assistance. The second is to correct the cross-reference to the regulation that describes a minority for purposes of the public policy goal of assisting minority-owned businesses. The changes also reflect the statutory changes to section 501(d) of the Act, which added women-owned and veteran-owned businesses to the public policy goals.

Section 120.870, leasing project property, eliminates references to 504 project property being leased by the CDC to the borrower. Comments received suggested revising SBA's rules regarding leasing to be more flexible. SBA considered these comments to be beyond the scope of the proposed rule. Therefore, SBA is adopting § 120.870 as proposed.

SBA is changing the heading of § 120.871 to make the form consistent with other section headings.

Section 120.880, basic eligibility requirements, simplifies the regulation by replacing the actual size standards with a cross-reference to the size standard regulation. As the size standard regulations change, so will this

regulation without requiring it to be re-written. Comments received were supportive of this change. Therefore, SBA is adopting § 120.880 as proposed.

Section 120.882, eligible project costs for 504 loans, clarifies eligible costs that may be included in 504 project costs. SBA received some comments on this regulation requesting clarification. For example, previously the regulation included accounting fees as a professional fee, but the proposed rule does not. SBA deliberately proposed to remove accounting fees because even though the regulation stated that only fees attributable to the project were to be included, borrowers were submitting as accounting costs fees charged by their accountant to prepare financial statements, which are a cost of doing business, not a project-related cost. The final rule retains this charge. Commenters were also concerned that certain items in the proposed rule were not project-related fees, such as hazard and flood insurance. SBA considered these concerns and agreed. Therefore, SBA is deleting hazard and flood insurance from the list of eligible project costs in § 120.822. Recording fees are eligible project costs, and are already covered in § 120.882(a), and therefore do not appear in § 120.882(c) in the final rule. Other comments were concerned that such fees as permit fees and utility hook-up fees were not included. SBA believes such fees are already covered by § 120.882(a), (b), and (d), which SBA did not propose to change. As a result of comments, SBA also deleted the reference to § 120.971(a)(2) which limits legal fees associated with a 504 loan and debenture closing. SBA was concerned that the limitation might be construed as also applying to legal fees that are part of eligible project costs. This rule adopts section § 120.882 as proposed except as discussed.

Section 120.883, eligible administrative costs for 504 loans, clarifies eligible administrative costs that may be paid from the proceeds of the 504 Loan and debenture. SBA received some comments on this proposed regulation that sought clarification. The comments objected to what was perceived as a stricter interpretation of eligible administrative costs for 504 loans than previously permitted. SBA intends this result, because administrative costs must be very limited in order to protect the government's lien position in the collateral. SBA's lien generally is in a second lien position behind a larger first lien securing the third party loan. The Act requires the borrower to contribute at least 10 percent towards the project costs (see section 502(3)(c) of the Act) . The calculation of the amount of SBA's share of the financing (up to a maximum of 40 percent) as well as the borrower's contribution is based on the total amount of project costs. Administrative costs were designed to permit the borrower to finance a limited number of specific fees above the project costs as part of the debenture financing that receives SBA's 100 percent guarantee. Every dollar of administrative cost that is included in the debenture increases SBA's exposure on the debenture and erodes the equity cushion provided by the borrower in the collateral. Therefore, it is SBA's intention that only the specific fees listed in the regulation be financed by the debenture and receive SBA's guaranty protection. Fees that are not eligible project costs or eligible administrative costs must be treated separately as a cost of doing business by the borrower. Accordingly, § 120.883 in the final rule refers to all of § 120.882, not just to § 120.882(c), to clarify that none of the fees that qualify as eligible project costs under § 120.882 may be included as administrative costs included in the debenture. This rule adopts § 120.883 as it was published in the proposed rule except as discussed.

Section 120.892 is revised to require a 504 loan borrower to provide to the CDC current financial statements within 120 days of 504 loan closing, instead of within 90 days. Comments received were supportive of this change. This rule adopts § 120.892 as proposed.

SBA is changing the headings of §§ 120.900 and 120.910 to make their form consistent with the other section headings in Subpart H.

Section 120.911, land contributions, makes a technical correction to the regulation by deleting the reference to CDCs. CDCs do not contribute land for a 504 loan.

Section 120.913, limitations on any SBIC contributions, clarifies the heading, and adds a cross-reference and clarifies the section.

Section 120.923, policies on subordination, changes the section heading and consolidates the current §§ 120.923 and 120.924.

Section 120.925, preferences, adds a cross-reference to another SBA regulation governing preferences.

Section 120.926, referral fee, modifies the current language by adding ''reasonable'' in describing the referral fee that a CDC may charge a third party lender. The changes also emphasize that neither the lender nor the CDC can charge this fee to the borrower. SBA received one comment that suggested that a CDC be permitted to charge a referral fee to a borrower. The commenter believes that it is in the best interest of a potential borrower that requires additional help in accessing capital to charge this fee directly to the borrowers. The commenter also stated that the inability to charge the fee to a borrower would be a disincentive to the CDC to find a lender for difficult or rural-based loans. SBA considered this comment but was not persuaded. SBA has observed that the fees permitted to be charged by a CDC to a borrower have generally been sufficient to reimburse a CDC for its services related to all aspects of a 504 financing. With the increase in choice among CDCs for a potential 504 borrower as a result of this rule, SBA believes the fees permitted to be charged to a borrower are sufficient incentive to CDCs to make financing available to all eligible and credit-worthy 504 borrowers.

Section 120.930, amount, eliminates the requirement that SBA must approve 504 loans between $25,000 and $50,000 on an exception basis. SBA does not believe that it ever has declined such a request. Comments received on §§ 120.900–120.930 were generally supportive. SBA is adopting § 120.900, § 120.910, § 120.911, § 120.913, § 120.923, § 120.925, § 120.926, and § 120.930 as they were proposed.

Section 120.931, 504 lending limits, increases the dollar amounts to reflect the changes to section 502(2) of the Act that became effective December 21, 2000. Comments received suggested that this section be adjusted automatically to reflect any changes established by Congress. SBA considered these comments but believes the suggestions are beyond the scope of the proposed rule. SBA is adopting § 120.931 as proposed.

Section 120.933, maturity, creates flexibility in debenture maturities. This will permit SBA to consider other maturities besides 10 and 20 years at some future date. SBA received comments regarding the proposed change that expressed concern regarding SBA's proposal to permit additional maturities. The comments suggested that this would ''cause chaos in the funding markets'' or ''wreak havoc.'' SBA considered these comments and strongly disagrees. SBA notes that the home mortgage industry has expanded the number of maturities offered substantially to better serve the needs of home loan borrowers. While SBA has no immediate plans to make changes to the 10 and 20-year maturities now used, SBA believes it is important that the Agency has this flexibility in order to serve the changing needs of the small business community. Therefore, SBA is publishing the regulation as proposed to

permit SBA greater flexibility in meeting the needs of the marketplace.

Section 120.934, collateral, clarifies the paragraph by rearranging and re-wording the sentences.

Section 120.935, changes the heading.

Section 120.936, subordination to CDC, is deleted. SBA believes that this regulation is a holdover from the former 501 and 502 programs. SBA knows of no instance when a CDC has requested a subordination on its 504 loans. Comments received were supportive of the changes to §§ 120.934–120.936. SBA adopts §§ 120.934, 120.935, and 120.936 as they were published in the proposed rule.

Section 120.960, responsibility for closing, describes the circumstances under which SBA can decline to close a debenture or cancel its guarantee of the debenture prior to sale. Several comments received suggested that the regulation gives too much unilateral authority to SBA. While the commenters did not suggest that SBA eliminate its right to review the debenture closing before the debenture sale, they did suggest that SBA would have too much discretion under this regulation as proposed, to decline to approve a debenture for sale. SBA considered these concerns and agrees that several changes are needed, which will make this section more consistent with SBA's long-standing practice in place for SBA-guaranteed 7(a) loans but without eliminating SBA's review of 504 loan and debenture closing prior to debenture sale. SBA has not proposed to, and does not in the final rule eliminate, this prior review by SBA, because of the significant differences between the 504 Program and the 7(a) program with regard to SBA's practice for determining SBA's liability under its guaranty. SBA believes it must have the discretion to take the actions set forth in § 120.960(c) in order to adequately protect SBA's guaranty of the debenture and minimize the credit risk to the entire 504 loan portfolio.

Section 120.524 describes the bases upon which SBA may be released from liability on its guaranty for 7(a) loans. SBA reviews the 7(a) lender's documentation after the 7(a) loan is closed and disbursed and usually only after a default. The purpose of the review is to determine whether SBA should honor its guaranty by granting a purchase request, seek a reduction in SBA's guaranty liability, deny liability in full or in part on SBA's guaranty, or seek recovery from the lender if the SBA has already purchased the loan from the secondary market holder or from the lender itself. The purchase review is a process that serves to minimize an erroneous payment by SBA, by ensuring that SBA purchases only those loans which were originated, closed, serviced and liquidated in accordance with the loan authorization, prudent lending standards, and SBA regulations and other requirements.

As discussed under § 120.848, currently there is no such purchase review process for 504 loans; SBA simply honors its guaranty to the debenture holder and generally does not seek recovery against the CDC for SBA's loss under the guaranty (although SBA has such regulatory authority). If a CDC were to close a 504 loan and debenture without SBA review, then SBA likely would need to create a new review process, to take place after SBA's purchase of the debenture upon default on the 504 loan, to ensure that the CDC had closed the 504 loan in accordance with the loan authorization, prudent lending standards and SBA regulations and other requirements, and if a deficiency were discovered, SBA would need to determine the extent to which SBA should seek recovery from the CDC for SBA's loss under its guaranty. SBA does not intend to implement such a process in the 504 Program at this time. For these reasons and based on recommendations from commenters, in the final rule SBA added the word ''materially'' to § 120.960(c)(1), to make it consistent with § 120.524(a)(1); and changed the phrase ''a material adverse change'' to ''an unremedied material adverse change'' to § 120.960(c)(7), to make it consistent with the terms of the 504 loan authorization. Other than these changes, § 120.960 is implemented as proposed.

Section 120.970, servicing of 504 loans and debentures, clarifies the regulation regarding a CDC's responsibility in servicing a 504 loan. Comments received on this regulation suggested that SBA establish a new borrower fee identified as a ''default servicing fee.'' According to the commenters, the borrower would incur the fee if the borrower failed to comply with certain requirements such as submitting financial statements. Since the proposed rule did not propose this new fee to a borrower, this suggestion is beyond the scope of the proposed rule. Comments also suggested that § 120.970(c) was confusing because it seemed to suggest that the borrower, not the CDC, was responsible for filing renewals and extensions of security interests. SBA considered these comments and concurs. SBA has modified the rule to clarify that the CDC is responsible for filing renewals and extensions. This rule adopts § 120.970 as it was published in the proposed rule except as discussed.

Section 120.971, allowable fees paid by borrower, clarifies the language describing the loan closing fees that a CDC may charge. Comments received suggested a change to permit CDCs the ability to increase the servicing fee charged to an uncooperative borrower for issues such as not providing required statements of proof of insurance, evidence of tax payments or financial statements. SBA considered these comments but believe they are beyond the scope of this rulemaking. This rule adopts § 120.971 as proposed.

Section 120.972, third-party lender participation fee and CDC fee, revises the heading, deletes the language ''from the Third Party Lender'' from paragraph (a), and slightly clarifies paragraph (b). SBA may accept the third party lender participation fee from the third party lender, the 504 borrower, or the CDC. This final rule implements § 120.972 as proposed.

SBA is removing §§ 120.980–120.984. Comments received were supportive of these changes. This rule removes §§ 120.980–120.984.

Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

Executive Order 13132: For the purposes of Executive Order 13132, the SBA determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 12988: For purposes of Executive Order 12988, Civil Justice Reform, SBA determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in paragraph 3 of that Order.

Executive Order 12866: The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. SBA received no comments regarding the Executive Order from the public. SBA believes there is a need for this regulatory action for the reasons stated in the preamble above. SBA believes these regulatory changes will improve 504 Program delivery to small business customers to increase customer choice of service; increase third party lender choice of CDCs; facilitate the formation of new CDCs; facilitate the expansion of existing CDCs; and increase the number of CDCs able to take advantage of special initiatives for rural areas. By allowing market-driven forces to determine availability of 504 Program

service, small businesses will have greater opportunity to negotiate the best total financing package, including fees, as well as receive increased service by CDCs. In addition, the 504 Program will be more responsive to changes in market conditions. SBA believes that there are no viable alternatives to these changes that would produce similar positive results without imposing an additional burden on the SBA or the public.

In Fiscal Year (FY) 2002, OMB developed the Program Assessment Rating Tool (PART) to establish a systematic, consistent process for rating the performance of programs across the Federal government. The 504 Program was evaluated under the PART criteria in FY 2002. The PART review revealed that the SBA needs to increase the availability of CDCs within the 504 Program to improve customer access to loans. Additionally, increasing the availability of CDCs will enable borrowers to determine which of the SBA's loan programs best meet their needs. The SBA expects that this rule will address that recommendation from OMB. The OMB PART review on this program can be found at *http://www.whitehouse.gov/omb/budget/fy2004/pma/certifieddevelopment.pdf.*

The SBA does not have sufficient data to establish a baseline in order to measure the costs and benefits of this rule on the affected public. However, the SBA has data on the cost to SBA of the 504 Program. In FY2002, the cost of the 504 Program to SBA was approximately $15 million. The majority of the cost of the Program, 82 percent or $12.6 million, was for the cost of the field office staff support that reviewed and approved loan applications and conducted marketing and outreach to generate new loans. The cost of the 504 Program to the SBA also includes the cost of reviewing and analyzing CDC requests to expand their areas of operations by SBA's field office and Headquarters staff. The SBA would expect this cost to decline substantially as a result of this final rule because it permits all CDCs to operate at least throughout their State of incorporation. Other data on costs of the program can be found at *http://www.sba.gov/aboutsba/budgetplans.html.* Relevant information is provided on pages 23–24 of SBA's Budget Request and Performance Plan: Congressional Submission Fiscal Year 2004 and on pages 69–71 of SBA's Performance and Accountability Report Fiscal Year 2002.

Regulatory Flexibility Act: This rule directly affects all CDCs, of which there are approximately 270. SBA has determined that CDCs fall under the size standard for NAICS 522298, All Other Nondepository Credit Intermediaries. The size standard is $6 million in average annual receipts. SBA estimates that at least 95 percent of the CDCs do not exceed this size standard and are therefore considered small entities by this definition. Thus, SBA has determined that this rule will have an impact on a substantial number of small entities.

Even though SBA has determined that this rule will have an impact on a substantial number of small entities, SBA has determined that the impact will not be significant. SBA understands the concerns raised by some comments received that suggested that this rule may have a significant impact on many small and rural CDCs. Some comments expressed the concern that increased competition and reliance on market forces could lead to more decertifications of small and rural CDCs. Other commenters stated that small CDCs will not be able to compete in the new competitive environment this rule would create. For example, one stated concern is that larger CDCs would have an unfair advantage, and that small CDCs would be hurt by the new competition because many small CDCs will not have the resources necessary to access more profitable markets beyond their current area of operations while larger CDCs will access the more profitable markets of small and rural CDCs.

SBA considered these comments but continues to believe that the rule is not significant. SBA believes that the effect of this rule will be first to ''level the playing field'' by allowing CDCs more flexibility to choose the optimal area of operations within their State of incorporation. Currently, each CDC has a specific area of operations that is approved by SBA. The typical area of operations is several counties within the CDC's State of incorporation. If a CDC wishes to apply to expand into neighboring counties, it can only do so if those counties are available. A county is available to a new CDC or a CDC requesting to expand its area of operations if the CDC(s) that include that county in its area of operations is not meeting a threshold of one 504 approval per year per 100,000 population averaged over two years. If the existing CDC is meeting this threshold of activity, both an applicant wishing to become a CDC and a CDC wishing to expand its area of operations is barred from including that county in their request. This rule eliminates that threshold and permits all CDCs the opportunity to operate anywhere in their State of incorporation. This would allow CDCs in less lucrative areas to have access to the greater opportunities available in the more lucrative areas.

SBA believes that some CDCs will choose to continue to operate in those counties they presently operate in while others will choose to expand their market area into neighboring counties or throughout the State. It has been SBA's experience with CDCs that are permitted to compete with other CDCs in the same market area, that the market of eligible 504 projects itself expands, resulting in a benefit for the affected CDCs as well as a benefit to small business borrowers. A recent example was the approval of a large CDC into a small CDC's area of operations in the Midwest. As a consequence, a county in which there had been no 504 loan activity the prior year generated two 504 loans for the small CDC and three 504 loans for the large CDC.

SBA also believes that smaller, rural CDCs will derive a similar benefit by having a greater opportunity to meet the required 504 loan activity level. Since 1993, SBA has had to revoke certifications from more than 100 CDCs and transfer their 504 loan portfolios and fees to other, active CDCs due to their failure to meet the required 504 activity level of two 504 loan approvals per year averaged over two years. Most of these CDCs have been located in rural areas where there are a limited number of potential 504 projects. Competition with other, larger CDCs was not the reason why these rural CDCs could not meet the required loan volume. There was simply a lack of 504-eligible projects in the geographic area. This rule enables those small, rural CDCs the opportunity to expand their market area by doing projects in more populous areas, resulting in their more easily meeting the 504 loan activity level. The result will be that these CDCs will remain in the program and continue to be available locally to small businesses in the rural areas. At the same time, those CDCs that currently have exclusive areas that include populous urban areas resulting in substantial 504 loan activity may seek to expand their market areas into the less lucrative rural areas which will increase awareness of the program overall which may in turn be beneficial to the small, rural CDCs.

Finally, as stated previously, it has been SBA's experience that the more CDCs that market the 504 program in a particular area, the higher the 504 loan volume in that area. SBA believes that this is due to the additional marketing initiatives by the CDCs which creates an increased awareness of the 504 Program among the local lending community and improves their willingness to participate because they have a choice. SBA

believes this increased awareness in the 504 Program can benefit small and rural CDCs even if they do not have the resources to increase their own marketing and outreach efforts. SBA also believes having multiple CDCs in the area improves the service provided by the CDCs, which also makes the 504 Program more useful to the local lending communities. As more and more lenders successfully use the program, they discuss it and provide information about it to other lenders which increases the impact of the marketing efforts of all CDCs serving the area. A similar phenomenon occurred in the lending industry. Over the years, lenders participating in SBA's 7(a) program have always been willing to come to lenders' meetings to describe their activity with other lenders. They do this because they recognize that as more people are aware of the program, the size of the market will increase, resulting in more overall loan activity for the lender.

This rule also permits new CDCs the opportunity to market in areas that may produce more 504 loans sooner. This in turn should permit the new CDC the ability to reach a breakeven point sooner in its operations and continue to meet the required 504 activity of two 504 approvals per year. Currently it is estimated that it takes a CDC at least two years at a cost of $200,000 or more to reach the 504 activity level where the 504 fee income covers the CDC's expenses. Very few of the new CDCs that SBA has certified in recent years have been able to remain viable. Allowing CDCs to market in multiple areas increases their ability to obtain customers.

To summarize, the expected results of this final rule are that CDCs (and existing and future 504 loan borrowers) will benefit because small, rural CDCs that currently struggle to meet the volume requirement will be retained, awareness of the 504 program among lenders will increase, new CDCs will have a greater opportunity to succeed, and borrowers will have more choice among CDCs.

In addition, SBA expects this rule will result in a reduction in the overall paperwork burden for CDCs since CDCs will no longer have to apply to SBA to expand their area of operations within their State of incorporation. SBA received and approved approximately 11 expansion requests during 2002. All were for CDCs requesting expansions into neighboring counties within the CDC's State of incorporation. The burden hours for a new CDC or a CDC wishing to expand to complete an application is estimated to be 10 hours. None of the applications for an expansion would have been necessary under this rule. In addition, applicants requesting to become CDCs also will be permitted to establish their optimal area of operations within their State of incorporation without being excluded from areas that currently have one or more CDCs. The SBA receives one or two applications to become a CDC per year. The burden hours for an application will be reduced by approximately one hour due to the changes in the general membership requirements that will allow an applicant more flexibility in meeting this requirement. The SBA believes that the economic impact of the reduction in paperwork, if any, will be minimal to small entities.

SBA also received comments expressing concern about the enforcement provisions and the perceived increased authority SBA would derive from the provisions. SBA disagrees that the new enforcement provisions will result in significant economic impact. Although SBA had proposed allowing the use of fees that CDCs receive to compensate SBA from financial losses resulting from improper CDC conduct, the final rule deletes this provision. SBA also has a history of fair and evenhanded use of enforcement authority in all of our lending, procurement, grant, and other assistance programs. CDCs are protected from unfair or biased enforcement of the rules through the notice and appeal procedures in the regulations.

Accordingly, SBA determines that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act: For the purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has submitted two different reporting requirements to OMB for review: (1) the PCLP application and (2) the PCLP Loan Loss Reserve Fund (LLRF) reporting requirements. SBA received no comments from the public regarding these two information collections. SBA makes no changes to either of these information collections in this rule.

A. Application

The PCLP application form is for the use of the 26 PCLP CDCs as provided in § 120.848(d). The application will allow SBA to collect the information it needs from the PCLP in order to extensively analyze the borrower's financing proposal, including information on the borrower's personal and business financial statements, cash flow projections, and related information to support an eligibility determination. Analysis of the application is activities are designed to control and limit the risk associated with the 504 Program and SBA's guaranty, but they do require significant SBA resources. SBA estimates the burden of this collection of information as follows: A PCLP CDC will complete these forms for each PCLP loan it processes. SBA estimates that the time needed to complete this collection is 45 minutes. SBA estimates that the cost to complete this collection will be approximately $20 per hour due to the clerical nature of most of the completion. Total estimated aggregated burden per annum is estimated to be approximately 700 hours per annum costing an aggregated $14,000 per year.

B. LLRF Compliance Information

The LLRF Compliance form is for the use of the 26 PCLP CDCs as provided in § 120.847(f). The LLRF compliance information will document the PCLP CDC's meeting of the LLRF deposit requirements. This will require the PCLP CDC to keep track of the face amount of each PCLP debenture and then determine and record the amount that must be contributed into its LLRF. SBA estimates the burden of this collection of information one hour per PCLP debenture. PCLP debenture volume will vary significantly among participants. We expect that few PCLP CDCs will issue more than 50 PCLP debentures annually. That would mean an aggregate burden of no more than 50 hours per year. SBA estimates that the added cost would be minimal, because existing PCLP CDC support staff and ordinary bank records will cover the labor costs. At an estimate of $10 per hour, the reporting requirements would not likely exceed $500 per year for any PCLP CDC.

SBA created these information collections with the goal of collecting only the necessary information needed to successfully and efficiently operate the CDC program with minimal burden to the public.

List of Subjects in 13 CFR Part 120

Loan Programs—business, Reporting and recordkeeping requirements, Small business.

■ For the reasons discussed in the preamble, SBA is amending 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a) and (h), 696(3) and 697(a)(2).

■ 2. Amend § 120.10 by adding a definition of ''SOP'' to read as follows:

* * * * *

SOPs are SBA Standard Operating Procedures, as issued and revised by SBA from time to time.

Subpart A—Policies Applying to All Business Loans

■ 3. Revise the first sentence of the introductory text of § 120.140 to read as follows:

§ 120.140 What ethical requirements apply to participants?

Lenders, Intermediaries, and CDCs (in this section, collectively referred to as ''Participants''), must act ethically and exhibit good character. * * *

* * * * *

Subpart H—Development Company Loan Program (504)

■ 4. Revise the heading of § 120.800 to read as follows:

§ 120.800 The purpose of the 504 program.

* * * * *

■ 5. Revise the heading of § 120.801 to read as follows:

§ 120.801 How a 504 Project is financed.

* * * * *

■ 6. Amend § 120.802 by removing the definition of ''Associate Development Company''; revising the definition of ''Area of Operations''; adding definitions of ''Designated Attorney'', ''Lead SBA Office'', and ''Priority CDC''; and revising the first sentence of the definition of ''Local Economic Area'', to read as follows:

§ 120.802 Definitions.

* * * * *

Area of Operations is the geographic area where SBA has approved a CDC's request to provide 504 program services to small businesses on a permanent basis. The minimum Area of Operations is the State in which the CDC is incorporated.

* * * * *

Designated Attorney is the CDC closing attorney that SBA has approved to close loans under an expedited closing process for a Priority CDC.

* * * * *

Lead SBA Office is the SBA District Office designated by SBA as the primary liaison between SBA and a CDC and with responsibility for managing SBA's relationship with that CDC.

Local Economic Area is an area, as determined by SBA, that is in a State other than the State in which an existing CDC (or an applicant applying to become a CDC) is incorporated, is contiguous to the CDC's existing Area of Operations (or the applicant's proposed Area of Operations) of its State of incorporation, and is a part of a local trade area that is contiguous to the CDC's Area of Operations (or applicant's proposed Area of Operations) of its State of incorporation. * * *

* * * * *

Priority CDC is a CDC certified to participate on a permanent basis in the 504 program (see § 120.812) that SBA has approved to participate in an expedited 504 loan and Debenture closing process.

* * * * *

■ 7. Revise § 120.810 to read as follows:

§ 120.810 Applications for certification as a CDC.

(a) An applicant for certification as a CDC must apply to the SBA District Office serving the jurisdiction in which the applicant has or proposes to locate its headquarters (see § 101.103 of this chapter).

(b) The applicant must apply for an Area of Operations. The applicant's proposed Area of Operations must include the entire State in which the applicant is incorporated, and may include Local Economic Areas. An applicant may not apply to cover an area as a Multi-State CDC.

(c) The applicant must demonstrate that it satisfies the CDC certification and operational requirements in §§ 120.820, and 120.822 through 120.824. The applicant also must include an operating budget, approved by the applicant's Board of Directors, which demonstrates the required financial ability (as described in § 120.825), and a plan to meet CDC operational requirements (without specializing in a particular industry) in §§ 120.821, and 120.826 through 120.830.

(d) The District Office will forward the application and its recommendation to the AA/FA, who will make the final decision. SBA will notify the CDC in writing of its decision, and, if the petition is declined, the reasons for the decision.

§ 120.811 [Removed]

■ 8. Remove § 120.811.

■ 9. Revise § 120.812 to read as follows:

§ 120.812 Probationary period for newly certified CDCs.

(a) Newly certified CDCs will be on probation for a period of two years from the date of certification, at the end of which the CDC must petition the Lead SBA Office for:

(1) Permanent CDC status; or

(2) A single, one-year extension of probation.

(b) SBA will consider the failure to file a petition before the end of the probationary period as a withdrawal from the 504 program. If the CDC elects withdrawal, SBA will direct the CDC to transfer all funded and/or approved loans to another CDC, SBA, or another servicer approved by SBA.

(c) The Lead SBA Office will send the petition and its recommendation to the AA/FA, who will make the final decision. SBA will determine permanent CDC status or an extension of probation, in part, based upon the CDC's compliance with the certification and operational requirements in §§ 120.820 through 120.830.

(d) SBA will notify the CDC in writing of its decision, and, if the petition is declined, the reasons for the decision.

■ 10. Revise § 120.820 to read as follows:

§ 120.820 CDC non-profit status and good standing.

A CDC must be a non-profit corporation, except that for-profit CDCs certified by SBA prior to January 1, 1987 may retain their certifications. An SBIC may not become a CDC. A CDC must be in good standing based upon the following criteria:

(a) In good standing in the State in which the CDC is incorporated and any other State in which the CDC conducts business.

(b) In compliance with all laws, including taxation requirements, in the State in which the CDC is incorporated and any other State in which the CDC conducts business.

■ 11. Revise § 120.821 to read as follows:

§ 120.821 CDC Area of Operations.

A CDC must operate only within its designated Area of Operations approved by SBA except as provided in § 120.839.

■ 12. Revise § 120.822 to read as follows:

§ 120.822 CDC membership.

(a) *CDC Membership.* A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). The CDC membership must meet annually. No person or entity can own or control more than 10 percent of the CDC's voting membership (or stock). No employee or staff of the CDC can qualify as a member of the CDC for the purpose of meeting the membership requirements. The CDC membership must include representatives from all the groups listed in paragraph (b) of this section.

(b) *Membership groups.* Members must be responsible for actively supporting economic development in the Area of Operations and must be from one of the following groups:

(1) Government organizations responsible for economic development in the Area of Operations;

(2) Financial institutions that provide commercial long term fixed asset financing in the Area of Operations;

(3) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, universities, or small business development centers (as defined in section 21(a)(1) of the Act, 15 U.S.C. 648(a)(1)); and

(4) Businesses in the Area of Operations.

(c) A CDC that is incorporated in one State and is operating as a Multi-State CDC in another State must meet the membership requirements for each State.

■ 13. Amend § 120.823 by revising paragraph (b) to read as follows:

§ 120.823 CDC Board of Directors.

* * * * *

(b) If a CDC is incorporated in one State and is approved as a Multi-State CDC to operate in another State, the CDC must have a Loan Committee for each State.

■ 14. Amend § 120.824 by revising the third sentence in the introductory text and paragraph (a) to read as follows:

§ 120.824 Professional management and staff.

* * * CDCs may obtain, under written contract, management, marketing, packaging, processing, closing, servicing or liquidation services provided by qualified individuals and entities under the following circumstances:

(a) The CDC must have at least one salaried professional employee that is employed directly (not a contractor or an Associate of a contractor) full-time to manage the CDC. The CDC manager must be hired by the CDC's board of directors and subject to termination only by the board. A CDC may petition SBA to waive the requirement of the manager being employed directly if:

(1) Another non-profit entity that has the economic development of the CDC's Area of Operations as one of its principal activities will contribute the management of the CDC, and the management contributed by the other entity also may work on and operate that entity's economic development programs, but must be available to small businesses interested in the 504 program and to 504 loan borrowers during regular business hours; or

(2) The CDC petitioning SBA for such waiver is rural; has insufficient loan volume to justify having management employed directly by the CDC; and has contracted with another CDC located in the same general area to provide the management.

* * * * *

■ 15. Revise § 120.826 to read as follows:

§ 120.826 Basic requirements for operating a CDC.

A CDC must operate in accordance with all 504 program requirements imposed by statute, regulation, SOPs, SBA policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA. In its Area of Operations, a CDC must market the 504 program, package and process 504 loan applications, close and service 504 loans, and if authorized by SBA, liquidate and litigate 504 loans. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records and submit the reports required by SBA.

■ 16. Revise § 120.827 to read as follows:

§ 120.827 Other services a CDC may provide to small businesses.

A CDC may provide a small business with assistance unrelated to the 504 loan program as long as the CDC does not make such assistance a condition of the CDC accepting from that small business an application for a 504 loan. An example of other services a CDC may provide is assisting a small business in applying for a 7(a) loan (as described in § 120.2). A CDC is subject to part 103 of this chapter when providing such assistance.

■ 17. Revise § 120.828 to read as follows:

§ 120.828 Minimum level of 504 loan activity and restrictions on portfolio concentrations.

(a) A CDC is required to receive SBA approval of at least four 504 loan approvals during two consecutive fiscal years.

(b) A CDC's 504 loan portfolio must be diversified by business sector.

■ 18. Amend § 120.829 by revising paragraph (a) to read as follows:

§ 120.829 Job Opportunity average a CDC must maintain.

(a) A CDC's portfolio must maintain a minimum average of one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a **Federal Register** notice. Such Job Opportunity average remains in effect until changed by subsequent **Federal Register** publication. A CDC is permitted two years from its certification date to meet this average.

* * * * *

■ 19. Revise paragraphs (a) and (b) of, and add a new paragraph (g) to § 120.830 to read as follows:

§ 120.830 Reports a CDC must submit.

* * * * *

(a) An annual report within 180 days after the end of the CDC's fiscal year (to include financial statements of the CDC and any affiliates or subsidiaries of the CDC), and such interim reports as SBA may require;

(b) For each new associate and staff, a Statement of Personal History (for use by non-bank lenders and CDCs) and other information required by SBA;

* * * * *

(g) Other reports as required by SBA.

■ 20. Revise § 120.835 to read as follows:

§ 120.835 Application to expand an Area of Operations.

(a) *General.* A CDC that has been certified to participate in the 504 program may apply to expand its Area of Operations if it meets all requirements to be an Accredited Lender Program (ALP) CDC, as set forth in § 120.840(c), and demonstrates that it can competently fulfill its 504 program responsibilities in the proposed area.

(b) *Local Economic Area Expansion.* A CDC seeking to expand its Area of Operations into a Local Economic Area must apply in writing to the Lead SBA Office.

(c) *Multi-State CDC Expansion.* A CDC seeking to become a Multi-State CDC must apply to the SBA District Office that services the area within each State where the CDC intends to locate its principal office for that State. A CDC may apply to be a Multi-State CDC only if:

(1) The State the CDC seeks to expand into is contiguous to the State of the CDC's incorporation;

(2) The CDC demonstrates that its membership meets the requirements in § 120.822 separately for its State of incorporation and for each additional State in which it seeks to operate as a Multi-State CDC; and

(3) The CDC has a loan committee meeting the requirements of § 120.823.

§ 120.836 [Removed]

■ 21. Remove § 120.836.

■ 22. Amend § 120.837 by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 120.837 SBA decision on application to become a new CDC or for an existing CDC to expand its Area of Operations

* * * * *

(b) SBA will notify the CDC of its decision in writing, and if the application is denied, the reasons for its decision.

(c) If a CDC is approved to operate as a Multi-State CDC, the CDC's ALP, PCLP, or Priority CDC authority will carry over into every additional State in which it is approved to operate as a Multi-State CDC.

§ 120.838 [Removed]

■ 23. Remove § 120.838.

■ 24. Revise § 120.839 to read as follows:

§ 120.839 Case-by-case application to make a 504 loan outside of a CDC's Area of Operations.

A CDC may apply to make a 504 loan for a Project outside its Area of Operations to the District Office serving the area in which the Project will be located. The applicant CDC must demonstrate that it can adequately fulfill its 504 program responsibilities for the 504 loan, including proper servicing. The District Office may approve the application if:

(a) The applicant CDC has previously assisted the business to obtain a 504 loan; or

(b) The existing CDC or CDCs serving the area agree to permit the applicant CDC to make the 504 loan; or

(c) There is no CDC within the Area of Operations.

■ 25. Revise § 120.840 to read as follows:

§ 120.840 Accredited Lenders Program (ALP).

(a) *General.* Under the ALP program, SBA designates qualified CDCs as ALP CDCs, gives them increased authority to process, close, and service 504 loans, and provides expedited processing of loan approval and servicing actions.

(b) *Application.* A CDC must apply for ALP status to the Lead SBA Office. The Lead SBA Office will send its recommendation and the application to the AA/FA for final decision.

(c) *Eligibility.* In order for a CDC to be eligible to receive ALP status, its application must show that it meets the criteria set forth in § 120.841.

(d) *Additional application requirements.* The CDC's application must include the following:

(1) Certified copy of the CDC's Board of Directors' resolution authorizing the application for ALP status.

(2) Summary of the experience of each of the CDC's loan processing, closing, and servicing staff members with significant authority.

(3) Name, address, and summary of experience of Designated Attorney.

(4) Documentation of any SBA required insurance.

(5) Any other documentation required by SBA.

(e) *Term of ALP designation.* SBA generally will designate a CDC as an ALP CDC for a two-year period. SBA may renew the designation for additional two-year periods if the CDC continues to meet the ALP program eligibility requirements.

(f) *SBA approval or decline decision.* SBA will notify the CDC in writing of an approval or decline of either an ALP application or of an ALP renewal. If the SBA approves the CDC's application, the ALP CDC may exercise its ALP authority in its entire Area of Operations. If an application or renewal is declined, SBA will notify the CDC of the reasons for the decision.

■ 26. Add a new § 120.841 to read as follows:

§ 120.841 Qualifications for the ALP.

An applicant for ALP status must show that it substantially meets the following criteria:

(a) *CDC staff experience.* The CDC's staff must have well-trained, qualified loan officers who are knowledgeable concerning SBA's lending policies and procedures for the 504 program. The CDC must have at least one loan officer with three years of 504 loan processing experience and at least one loan officer with three years of 504 servicing experience or two years experience plus satisfactory completion of SBA-approved processing and servicing training. The same loan officer may meet these qualifications. In addition, the CDC's staff must have demonstrated satisfactorily to SBA the ability to process and service 504 loans.

(b) *Number of 504 loans approved and size of portfolio.* SBA must have approved at least 20 504 loan applications by the CDC in the most recent three years, and the CDC must have a portfolio of at least 30 active 504 loans. (An ''active'' 504 loan is a loan that was approved and closed by the CDC and has a status of either current, delinquent, or in liquidation.)

(c) *Current reviews in compliance.* SBA-conducted oversight reviews must be current (within past 12 months) for applicants for ALP status, and these reviews must have found the CDC to be in compliance with 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA.

(d) *Record of compliance with 504 program requirements.* The CDC must have a record of conforming to SBA's policies and procedures and of satisfactorily underwriting, closing and servicing 504 loans. SBA will consider all relevant material information, which will include but is not limited to whether the CDC meets all SBA's CDC portfolio benchmarks, when determining the CDC's record of compliance, including:

(1) Submission of satisfactory 504 loan analyses and applications, and all required, and properly completed, loan documents.

(2) Careful and thorough analysis and screening of all 504 loan applications for conformance with SBA credit and eligibility standards;

(3) Proper completion of required 504 loan closing documents and compliance with SBA 504 loan closing policies and procedures.

(4) Compliance with SBA loan servicing policies and procedures.

(5) Compliance with the certification and operational requirements as set forth in §§ 120.820 through 120.830.

(6) Submission of timely, complete and acceptable annual reports.

(7) Compliance with CDC ethical requirements (see § 120.851).

(e) *Priority CDC.* The CDC must be a Priority CDC with a Designated Attorney and SBA required insurance.

(f) *Record of Cooperation.* The CDC must have a record of effective communication and a cooperative relationship with all SBA offices including district offices and SBA's loan processing and servicing centers.

■ 27. Revise § 120.845 to read as follows:

§ 120.845 Premier Certified Lenders Program (PCLP).

(a) *General.* Under the PCLP, SBA designates qualified CDCs as PCLP CDCs and delegates to them increased authority to process, close, service, and liquidate 504 loans. SBA also may give PCLP CDCs increased authority to litigate 504 loans.

(b) *Application.* A CDC must apply for PCLP status to the Lead SBA Office. The Lead SBA Office will send its written recommendation and the application to SBA's PCLP Loan Processing Center, which will review these materials and forward them with a recommendation to the AA/FA for final decision.

(c) *Eligibility.* In order for a CDC to be eligible to receive PCLP status, its application must show that it meets the following criteria:

(1) The CDC must be an ALP CDC in substantial compliance with 504 program requirements imposed by statute, regulation, SOP, policy and procedural notices, Debentures, loan authorizations, and any agreement between SBA and the CDC or meet the criteria to be an ALP CDC set forth in § 120.841(a) through (h).

(2) The CDC can adequately comply with SBA liquidation and litigation requirements.

(d) *Additional application requirements.* The application must include the following:

(1) Certified copy of the CDC's Board of Directors' resolution authorizing the application for PCLP status.

(2) Summary of the experience of each of the CDC's loan processing, closing, servicing and liquidation staff members with significant authority.

(3) Name, address and summary of experience of Designated Attorney.

(4) Documentation of any SBA required insurance.

(5) Any other documentation required by SBA.

(e) *Term of designation.* If approved, SBA generally will confer PCLP status for a period of two years. However, if SBA deems it appropriate, it may confer PCLP status for a period of less than two years.

(f) *Area of Operations for PCLP CDCs.* If the SBA approves the CDC's application, the PCLP CDC may exercise its PCLP authority in its entire Area of Operations.

(g) *SBA approval or decline decision.* SBA will notify the CDC in writing of an approval or decline of a PCLP application. If an application is declined, SBA will notify the CDC of the reasons for the decision.

■ 27a. Add §§ 120.846 through 120.848 to read as follows:

§ 120.846 Requirements for maintaining and renewing PCLP status.

(a) To maintain its status as a PCLP CDC, a CDC must continue to:

(1) Meet the PCLP eligibility requirements in § 120.845 .

(2) Timely conform with all requirements and deadlines set forth in SBA's regulations and policy and procedural guidance concerning properly establishing, funding and reporting a PCLP Loan Loss Reserve Fund (LLRF).

(3) Substantially comply with all 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA.

(4) Remain an active CDC.

(5) In accordance with statutory requirements set forth in section 508(i) of Title V, 15 U.S.C. 697e(i), establish a goal of processing at least 50 percent of its 504 loans using PCLP procedures.

(b) SBA will notify the PCLP CDC in writing of a renewal or non-renewal of PCLP status. If PCLP status is not renewed, SBA will notify the CDC of the reasons for the decision.

§ 120.847 Requirements for the Loan Loss Reserve Fund (LLRF).

(a) *General.* PCLP CDCs must establish and maintain a LLRF (or multiple accounts which together constitute one LLRF) which complies with paragraphs (b) through (g) of this section. A PCLP CDC must use the LLRF or other funds to reimburse the SBA for 10 percent of any loss sustained by SBA as a result of a default in the payment of principal or interest on a Debenture it issued under the PCLP (''PCLP Debenture''). A CDC that is participating in the PCLP as of January 1, 2004, and a CDC that has participated in the PCLP in the past but which does not have PCLP status as of that date, must establish a LLRF within 30 days of that date to cover potential losses for all 504 loans made in connection with PCLP Debentures that remain outstanding as of that date. A CDC that receives PCLP status after that date must establish and maintain a LLRF prior to closing any 504 loans processed under its PCLP status. The LLRF is the accumulation of deposits that a PCLP CDC must establish and maintain for each PCLP Debenture that it issues. PCLP CDCs must coordinate with their Lead SBA Office to ensure that the LLRF is properly established, that all necessary documentation is executed and delivered by all parties in a timely fashion, and that all required deposits are made.

(b) *PCLP CDC Exposure and LLRF deposit requirements.* A PCLP CDC's ''Exposure'' is defined as its reimbursement obligation to SBA with respect to default in the payment of any PCLP Debenture. The amount of a PCLP CDC's Exposure is 10 percent of any loss (including attorney's fees; litigation costs; and care of collateral, appraisal and other liquidation costs and expenses) sustained by SBA as a result of a default in the payment of principal or interest on a PCLP Debenture. For each PCLP Debenture a PCLP CDC issues, it must establish and maintain an LLRF equal to one percent of the original principal amount (the face amount) of the PCLP Debenture. The amount the PCLP CDC must maintain in the LLRF for each PCLP Debenture remains the same even as the principal balance of the PCLP Debenture is paid down over time.

(c) *Establishing a LLRF.* The LLRF must be a deposit account (or accounts) with a federally insured depository institution selected by the PCLP CDC. A ''deposit account'' is a demand, time, savings, or passbook account, including a certificate of deposit (CD) which is either uncertificated or, if certificated, non-transferable. A ''deposit account'' is not an investment account and must not contain securities or other investment properties. A deposit account may contain only cash and CDs credited to that account. A PCLP CDC may pool its deposits for multiple PCLP Debentures in a single account in one institution. The LLRF must be segregated from the PCLP CDC's other operating accounts. The PCLP CDC is responsible for all fees, costs and expenses incurred in connection with establishing, managing and maintaining the LLRF, including fees associated with transferring funds or early withdrawal of CDs, and related income tax expenses.

(d) *Creating and perfecting a security interest in a LLRF.* A PCLP CDC must give SBA a first priority, perfected security interest in the LLRF to secure the PCLP CDC's obligation to reimburse SBA for the PCLP CDC's Exposure under all of its outstanding PCLP Debentures. (If a PCLP CDC's LLRF is comprised of multiple deposit accounts, it must give SBA this security interest with respect to each such account.) The PCLP CDC must grant to SBA the security interest in the LLRF pursuant to a security agreement between the PCLP CDC and SBA, and a control agreement between the PCLP CDC, SBA, and the applicable depository institution. The control agreement must include provisions requiring the depository institution to follow SBA instructions regarding withdrawal from the account without a requirement for obtaining further consent from the PCLP CDC, and must restrict the PCLP CDC's ability to make withdrawals from the account without SBA consent. When establishing the LLRF, a PCLP CDC must coordinate with its Lead SBA Office to execute and deliver the required documentation. The PCLP CDC must provide to the Lead SBA Office a fully executed original of the security and control agreements. All documents must be satisfactory to SBA in both form and substance.

(e) *Schedule for contributions to a LLRF.* The PCLP CDC must contribute to the LLRF the required deposits for each PCLP Debenture in accordance with the following schedule:

(1) At least 50 percent of the required deposits to the LLRF on or about the date that it issues the PCLP Debenture.

(2) At least an additional 25 percent of the required deposits to the LLRF no later than one year after it issues the PCLP Debenture.

(3) Any remainder of the required deposits to the LLRF no later than two years after it issues the PCLP Debenture.

(f) *LLRF reporting requirements.* Each PCLP CDC must periodically report to SBA the amount in the LLRF in a form

that will readily facilitate reconciliation of the amount maintained in the LLRF with the amount required to meet a PCLP CDC's Exposure for its entire portfolio of PCLP Debentures.

(g) *Withdrawal of excess funds.* Interest and other funds in the LLRF that exceed the required minimums as set forth in paragraph (b) of this section, within the time frames set forth in paragraph (e) of this section, accrue to the benefit of the PCLP CDC. PCLP CDCs are authorized to withdraw excess funds, including interest, from the LLRF if such funds exceed the required minimums set forth in paragraph (b) of this section. The PCLP CDC must forward requests for withdrawals to the Lead SBA Office, which will verify the existence and amount of excess funds and notify the financial institution to transfer the excess funds to the PCLP CDC.

(h) *Determining SBA loss.* When a PCLP CDC has concluded the liquidation of a defaulted 504 loan made with the proceeds of a PCLP Debenture and has submitted a liquidation wrap-up report to SBA, or when SBA otherwise determines that the PCLP CDC has exhausted all reasonable collection efforts with respect to that 504 loan, SBA will determine the amount of the loss to SBA. SBA will notify the PCLP CDC of the amount of its reimbursement obligation to SBA (if any) and will explain how SBA calculated the loss.

(1) If the PCLP CDC agrees with SBA's calculations of the loss, it must reimburse SBA for ten percent of the amount of that loss no later than 30 days after SBA's notification to the PCLP CDC of the CDC's reimbursement obligation.

(2) If the PCLP CDC disputes SBA's calculations, it must reimburse SBA for ten percent of any loss amount that is not in dispute no later than 30 days after SBA's notification to the PCLP CDC of the CDC's reimbursement obligation. No later than 30 days after SBA's notification, the PCLP CDC may submit to the AA/FA or his or her delegate a written appeal of any disagreement regarding the calculation of SBA's loss. The PCLP CDC must include with that appeal an explanation of its reasons for the disagreement. Upon the AA/FA's final decision as to the disputed amount of the loss, the PCLP CDC must promptly reimburse SBA for ten percent of that amount.

(i) *Reimbursing SBA for loss.* A PCLP CDC may use funds in the LLRF or other funds to reimburse SBA for the PCLP CDC's Exposure on a defaulted PCLP Debenture. If a PCLP CDC does not satisfy the entire reimbursement obligation within 30 days after SBA's notification to the PCLP CDC's of its reimbursement obligation, SBA may cause funds in the LLRF to be transferred to SBA in order to cover the PCLP CDC's Exposure, unless the PCLP CDC has filed an appeal under paragraph (h)(2) of this section. If the PCLP CDC has filed such an appeal, SBA may cause such a transfer of funds to SBA 30 days after the AA/FA's or his or her delegate's decision. If the LLRF does not contain sufficient funds to reimburse SBA for any unpaid Exposure with respect to any PCLP Debenture, the PCLP CDC must pay SBA the difference within 30 days after demand for payment by SBA.

(j) *Insufficient funding of LLRF.* A PCLP CDC must diligently monitor the LLRF to ensure that it contains sufficient funds to cover its Exposure for its entire portfolio of PCLP Debentures. If, at any time, the LLRF does not contain sufficient funds, the PCLP CDC must, within 30 days of the earlier of the date it becomes aware of this deficiency or the date it receives notification from SBA of this deficiency, make additional contributions to the LLRF to make up this difference.

§ 120.848 Requirements for 504 loan processing, closing, servicing, liquidating, and litigating by PCLP CDCs.

(a) *General.* In processing, closing, servicing, liquidating and litigating 504 loans under the PCLP (''PCLP Loans''), the PCLP CDC must comply with 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA and in accordance with prudent and commercially reasonable lending standards.

(b) *Documentation of decision making.* For each PCLP Loan, the PCLP CDC must document in its files the basis for its decisions with respect to loan processing, closing, servicing, liquidating, and litigating.

(c) *Processing requirements.* SBA expects PCLP CDCs to handle most 504 loan processing situations, although SBA may require that the PCLP CDC process 504 loans involving complex or problematic eligibility issues through the SBA using standard 504 loan processing procedures. The PCLP CDC is responsible for properly determining borrower creditworthiness and establishing the terms and conditions under which the PCLP Loan will be made. The PCLP CDC also is responsible for properly undertaking such other processing actions as SBA may delegate to the PCLP CDC.

(d) *Submission of loan documents.* A PCLP CDC must notify SBA of its approval of a 504 loan by submitting to SBA's PCLP Loan Processing Center all documentation required by SBA, including SBA's PCLP eligibility checklist, signed by an authorized representative of the PCLP CDC. The PCLP Loan Processing Center will review these documents to determine whether the PCLP CDC has identified any problems with the PCLP Loan approval, and whether SBA funds are available for the PCLP Loan. If appropriate, the PCLP Processing Center will notify the PCLP CDC of the loan number assigned to the loan.

(e) *Loan and Debenture closing.* After receiving notification from SBA PCLP Loan Processing Center, the PCLP CDC is responsible for properly undertaking all actions necessary to close the PCLP Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.

(f) *Servicing, liquidation and litigation responsibilities.* The PCLP CDC generally must service, liquidate and litigate its entire portfolio of PCLP Loans, although SBA may in certain circumstances elect to handle such duties with respect to a particular PCLP Loan or Loans.

(g) *Making a 504 loan previously considered by another CDC.* A PCLP CDC also may utilize its PCLP status to process a 504 loan application from an applicant whose application was declined or rejected by another CDC operating in that same Area of Operations, if the applicant is located within that area and as long as SBA has not previously declined that applicant's 504 loan application. This may include the processing of a 504 loan application from an applicant that has withdrawn its application from another CDC.

■ 28. Revise § 120.850 to read as follows:

§ 120.850 Expiration of Associate Development Company designation.

The designation of Associate Development Company (ADC) will cease to exist on January 1, 2004. After that date, former ADCs may continue to contract with CDCs as Lender Service Providers (see part 103 of this chapter) or to perform other services.

■ 29. Add a new undesignated center heading before § 120.851 to read as follows:

Other CDC Requirements

■ 30. Revise § 120.851 to read as follows:

§ 120.851 CDC ethical requirements.

CDCs and their Associates must act ethically and exhibit good character.

They must meet all of the ethical requirements of § 120.140. In addition, they are subject to the following:

(a) Any benefit flowing to a CDC's Associate or his or her employer from activities as an Associate must be merely incidental (this requirement does not prevent an Associate or an Associate's employer from providing interim financing as described in § 120.890 or Third Party Loans as described in § 120.920, as long as such activity does not violate § 120.140); and

(b) A CDC's Associate may not be an officer, director, or manager of more than one CDC.

■ 31. Revise § 120.852 to read as follows:

§ 120.852 Restrictions regarding CDC participation in the Small Business Investment Company (SBIC) program and the 7(a) loan program.

(a) *7(a) loan program.* A CDC must not invest in or be an Affiliate of a Lender participating in the 7(a) loan program described in § 120.2(a). (For a definition of Affiliation, refer to § 121.103 of this chapter.) CDCs that already are affiliated with state development companies approved by SBA under section 501 of Title V, as of November 6, 2003 may remain Affiliates.

(b) *SBIC program.* A CDC must not directly or indirectly invest in a Licensee (as defined in § 107.50 of this chapter) licensed by SBA under the SBIC program authorized in Part A of Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.* A CDC that has an SBA-approved investment in a Licensee as of November 6, 2003 may retain such investment.

■ 32. Redesignate § 120.973 as § 120.853 and revise redesignated § 120.853 to read as follows:

§ 120.853 Oversight and evaluation of CDCs.

SBA may conduct an operational review of a CDC. The SBA Office of Inspector General may also conduct, supervise or coordinate audits pursuant to the Inspector General Act. The CDC must cooperate and make its staff, records, and facilities available.

■ 33. Add a new undesignated center heading immediately preceding new § 120.853 to read as follows:

SBA Oversight

§ 120.855 [Removed]

■ 34. Remove § 120.855.

■ 35. Add §§ 120.854 through 120.856 to read as follows:

§ 120.854 Grounds for taking enforcement action against a CDC.

(a) *General.* The AA/FA or his or her authorized delegate may undertake one or more of the enforcement actions set forth in §§ 120.855(a) and (b) with respect to a CDC, based upon a determination that one or more of the following grounds exist:

(1) The CDC has failed to receive SBA approval for at least four 504 loans during two consecutive fiscal years;

(2) The CDC has failed to comply materially with any requirement imposed by statute, regulation, SOP, policy and procedural notice, any agreement the CDC has executed with SBA, or the terms of a Debenture or loan authorization.

(3) The CDC has made a material false statement or has failed to disclose a material fact to SBA:

(i) With respect to a 504 loan;

(ii) In applying to SBA for authority to participate in the 504 program or for any change in the CDC's participation in the 504 program; or

(iii) In any report or other disclosure of information that SBA requires.

(4) The CDC is not performing underwriting, closing, servicing, liquidation, litigation, or other actions with respect to 504 loans in a commercially reasonable or prudent manner. Supporting evidence of a CDC's commercially unreasonable or imprudent action may include, but is not limited to, failure to meet one or more of the portfolio benchmarks.

(5) The CDC fails to correct an underwriting, closing, servicing, liquidation, litigation, or reporting deficiency, or fails to take other corrective action, after receiving notice from SBA of a deficiency and the need to take corrective action, if any, within the time period specified in SBA's notice of deficiency. Such a notice must give the CDC a reasonable time, as determined by SBA in its sole discretion, to correct the deficiency.

(6) The CDC has engaged in a pattern of uncooperative behavior or taken an action that SBA determines is deleterious to the 504 program, that undermines SBA's management and administration of the 504 program, or that is not consistent with standards of good conduct. Prior to issuing a notice of a proposed enforcement action or immediate suspension under § 120.855(a) or § 120.855(b) based upon this paragraph, SBA must send prior written notice to the CDC explaining why the CDC's actions were uncooperative, deleterious to the program, undermined SBA's management of the program, or were not consistent with standards of good conduct. The prior notice must also state that the CDC's actions could give rise to a specified enforcement action, and provide the CDC with a reasonable time to cure the deficiency before any further action is taken.

(b) *ALP CDCs.* The AA/FA or his or her authorized delegate may undertake one of the enforcement actions set forth in § 120.855(c) with respect to a CDC, based upon a determination that one or more of the following grounds exist:

(1) The CDC has not continued to meet the criteria for eligibility under section 507(b) of Title V, 15 U.S.C. 697d.

(2) The CDC has failed to adhere to the SBA's rules and regulations or is violating any other applicable provision of law.

(c) *PCLP CDCs.* The AA/FA or his or her authorized delegate may undertake one of the enforcement actions set forth in § 120.855(d) with respect to a CDC, based upon a determination that one or more of the following grounds exist:

(1) The CDC has not continued to meet the criteria for eligibility under section 508(b) of Title V, 15 U.S.C. 697e.

(2) The CDC has not established or maintained the loss reserve required under this paragraph (c).

(3) The CDC has failed to adhere to the SBA's rules and regulations.

(4) The CDC is violating any other applicable provision of law.

§ 120.855 Types of enforcement actions.

(a) *Enforcement.* Upon a determination that one or more of the grounds set forth in § 120.854(a) exist, the AA/FA or his or her authorized delegate may undertake, in SBA's sole discretion, one or more of the following enforcement actions:

(1) Suspend or terminate the CDC's authority to participate in the 504 program or in any pilot or program within the 504 program established by SBA other than a CDC's authority to participate as an ALP CDC or PCLP CDC, which are governed by paragraphs (c) and (d) of this section.

(2) Suspend or terminate the CDC's authority to perform underwriting, closing, servicing, liquidation, or litigation on one or more 504 loans or to perform any other function in connection with the 504 program.

(3) Require the CDC to transfer some or all of its existing 504 loan portfolio and/or some or all of its pending 504 loan applications to SBA, another CDC, or any other entity designated by SBA. Any such transfer may be on a temporary or permanent basis, in SBA's sole discretion.

(4) Instruct the CSA to withhold payment of servicing, late and/or other fee(s) to the CDC.

(b) *Immediate suspension.* If SBA determines that one or more grounds set forth in § 120.854(a) exist and further determines that immediate action is necessary to prevent the risk of significant loss to SBA or to prevent significant impairment of the integrity of the 504 program, the AA/FA may issue a written notice of immediate suspension to a CDC, suspending all or certain activities of a CDC pertaining to the 504 program, and such suspension will be effective as of the date of the notice. SBA may combine a notice of immediate suspension with any enforcement action set forth in paragraphs (a), (c) or (d) of this section.

(c) *Suspension or termination of ALP CDC.* Upon a determination that one or more of the grounds set forth in § 120.854(b) exist, the AA/FA or his or her authorized delegate may, in SBA's sole discretion, suspend or terminate a CDC's authority to participate as an ALP CDC.

(d) *Suspension or termination of PCLP CDC.* Upon a determination that one or more of the grounds set forth in § 120.854(c) exist, the AA/FA or his or her authorized delegate may, in SBA's sole discretion, suspend or terminate a CDC's authority to participate as a PCLP CDC.

(e) *Term of suspension.* Any suspension issued under this section will be for a term determined by SBA in its sole discretion.

§ 120.856 Enforcement procedures.

(a) *SBA's notice to CDC of enforcement action.* (1) Prior to undertaking an enforcement action set forth in § 120.855(a), (c) or (d) the AA/FA or his or her authorized delegate must issue a written notice to the affected CDC identifying the proposed enforcement action, setting forth in reasonable detail the underlying facts and reasons for the proposed action and, if a suspension also is proposed, stating the term of the proposed suspension.

(2) If the AA/FA or his or her authorized delegate undertakes an immediate suspension pursuant to § 120.855(b), he or she must issue a written notice to the affected CDC identifying the scope and term of the suspension, and setting forth in reasonable detail the underlying facts and reasons for the proposed action.

(3) If a proposed enforcement action or immediate suspension is based upon information obtained from a party other than the CDC or SBA, SBA's notice of proposed action or immediate suspension will provide copies of documentation received from such third party, or the name of the third party in case of oral information, unless SBA determines that there are compelling reasons not to provide such information. If compelling reasons exist, SBA will provide a summary of the information it received to the CDC.

(b) *CDC's opportunity to object.* (1) A CDC that desires to contest a proposed enforcement action or an immediate suspension must file, within 30 calendar days of its receipt of the notice or within some other term established by SBA in its notice, a written objection with the AA/FA or other SBA official identified in the notice. Notice will be presumed to have been received within five days of the date of the notice unless the CDC can provide compelling evidence to the contrary.

(2) The objection must set forth in detail all grounds known to the CDC to contest the proposed action or immediate suspension and all mitigating factors, and must include documentation that the CDC believes is most supportive of its objection. A CDC must exhaust this administrative remedy in order to preserve its objection to a proposed enforcement action or an immediate suspension.

(3) If a CDC can show legitimate reasons why it does not understand the reasons given by SBA in its notice of the action, the CDC may request clarification from the Agency. SBA will provide the requested clarification in writing to the CDC or notify the CDC in writing that such clarification is not necessary. SBA, in its sole discretion, will further advise in writing whether the CDC may have additional time to present its objection to the notice.

(4) A CDC may request additional time to respond to SBA's notice if it can show that there are compelling reasons why it is not able to respond within the 30-day timeframe or timeframe given by the notice for response. If such a request is submitted to the Agency, SBA may, in its sole discretion, provide the CDC with additional time to respond to the notice of proposed action or immediate suspension.

(5) Prior to the issuance of a final decision by SBA under § 120.856(c), if a CDC can show that there is newly discovered material evidence which, despite the CDC's exercise of due diligence, could not have been discovered within the timeframe given by SBA to respond to a notice, or that there are compelling reasons beyond the CDC's control why it was not able to present a material fact or argument to the AA/FA or other deciding SBA official in its objection, and that the CDC has been prejudiced by not being able to present such information, the CDC may submit such information to SBA and request that the Agency consider such information in its final decision.

(c) *SBA's decision on CDC's objection to proposed action.* (1) If the affected CDC files a timely written objection to a proposed enforcement action, the AA/FA or his or her authorized delegate must issue a written notice of decision to the affected CDC advising whether SBA is undertaking the proposed enforcement action setting forth the grounds for the decision. SBA will issue such a notice of decision whenever it deems appropriate.

(2) If the affected CDC files a timely written objection to a notice of immediate suspension, the AA/FA or his or her authorized delegate must issue a written notice of final decision to the affected CDC within 90 days of receiving the CDC's objection advising whether SBA is continuing with the immediate suspension. If the CDC submits additional information to SBA after submitting its objection pursuant to § 120.856(b)(5), SBA must issue its final decision within 90 days of receiving such information.

(3) Prior to issuing a notice of decision, SBA in its sole discretion can request additional information from the affected CDC or other parties and conduct any other investigation it deems appropriate. If SBA determines, in its sole discretion, to consider an untimely objection, it must issue a notice of decision pursuant to this paragraph.

(d) *SBA's notice of final agency decision.* If SBA chooses not to consider an untimely objection or if the affected CDC fails to file a written objection to a proposed enforcement action or an immediate suspension, and if SBA continues to believe that such proposed enforcement action or immediate suspension is appropriate, the AA/FA or his or her authorized delegate must issue a written notice of decision to the affected CDC that SBA is undertaking one or more of the proposed enforcement actions against the CDC or that SBA will continue to pursue an immediate suspension of the CDC. Such a notice of decision need not state any grounds for the action other than to reference the CDC's failure to file a timely objection, and represents the final agency decision. If the affected CDC fails to file a written objection to an immediate suspension, SBA need not issue any further notice to the CDC.

(e) *Appeal to OHA.* (1) A CDC may appeal from an SBA notice of decision issued pursuant to paragraph (c) of this section to the SBA Office of Hearings and Appeals (OHA). The rules and procedures set forth in part 134 of this chapter will govern such appeals.

(2) OHA must limit its review to a determination of whether SBA's decision was arbitrary, capricious or contrary to law, or without procedure required by law. OHA must limit its review to the record that the AA/FA or his or her authorized delegate, and any other SBA officials directly involved with the decision, considered in making the final decision. If the OHA decides that SBA's decision was arbitrary, capricious, contrary to law, or without procedure required by law, the OHA must remand the matter to the AA/FA or the original deciding official for further consideration. The CDC may appeal from a reconsidered SBA decision as set forth in this paragraph (e).

(3) (i) OHA must not consider any argument, fact or other information presented by the affected CDC unless the CDC previously submitted that information to SBA:

(A) In or with the affected CDC's objection;

(B) In response to a request for information from SBA; or

(C) Pursuant to paragraph (b)(5) of this section if such information was accepted by SBA.

(ii) However, if a CDC can show that there is newly discovered material evidence which, despite the CDC's exercise of due diligence, could not have been discovered before the Agency's final decision, or that there are compelling reasons beyond the CDC's control why it was not able to present a material fact or argument to the AA/FA or other deciding SBA official prior to such decision, and that the CDC has been prejudiced by not being able to present such information to the official, the CDC may file a motion with the OHA for a remand of the matter.

(4) A decision by OHA, other than a remand, is the final agency decision.

(f) *Limit on applicability.* The procedures in this section shall only apply to an action taken by SBA pursuant to § 120.855.

■ 35b. Add a new undesignated center heading immediately preceding new § 120.854 to read as follows:

SBA Enforcement Actions

■ 35c. Redesignate § 120.981 as § 120.857.

■ 36. Revise § 120.861 to read as follows:

§ 120.861 Job creation or retention.

A Project must create or retain one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a Federal Register notice. Such Job Opportunity average remains in effect until changed by subsequent **Federal Register** publication.

■ 37. Amend § 120.862 as follows:

■ a. By revising the parenthetical at the end of paragraph (a)(4);

■ b. By revising paragraph (b)(2);

■ c. By redesignating paragraphs (b)(3) through (b)(7) as (b)(5) through (b)(9);

■ d. By adding new paragraphs (b)(3) and (b)(4), and

■ e. By revising redesignated paragraph (b)(5). The revisions and additions read as follows:

§ 120.862 Other economic development objectives.

* * * * *

(a) * * *

(4) * * * (North American Industry Classification System (NAICS), Sectors 31 ''33); or

* * * * *

(b) * * *

(2) Expansion of exports;

(3) Expansion of small businesses owned and controlled by women as defined in section 29(a)(3) of the Act, 15 U.S.C. 656(a)(3);

(4) Expansion of small businesses owned and controlled by veterans (especially service-disabled veterans) as defined in section 3(q) of the Act, 15 U.S.C. 632(q);

(5) Expansion of minority enterprise development (see § 124.103(b) of this chapter for minority groups who qualify for this description);

* * * * *

■ 38. Amend § 120.870 as follows:

■ a. By removing paragraph (b);

■ b. By redesignating paragraph (c) as paragraph (b); and

■ c. By revising paragraph (a) introductory text to read as follows:

§ 120.870 Leasing Project Property.

(a) A Borrower may use the proceeds of a 504 loan to acquire, construct, or modify buildings and improvements, and/or to purchase and install machinery and equipment located on land leased to the Borrower by an unrelated lessor if:

* * * * *

■ 39. Revise the heading of § 120.871 to read as follows:

§ 120.871 Leasing part of Project Property to another business.

* * * * *

■ 40. Amend § 120.880 by revising paragraph (b) to read as follows:

§ 120.880 Basic eligibility requirements.

* * * * *

(b) Together with its Affiliates, meet one of the size standards set forth in § 121.301(b) of this chapter.

■ 41. Revise § 120.882(c) to read as follows:

§ 120.882 Eligible Project costs for 504 loans.

* * * * *

(c) Professional fees directly attributable and essential to the Project, such as title insurance, opinion of title, architectural and engineering costs, appraisals, environmental studies, and legal fees related to zoning, permits, or platting; and

* * * * *

■ 42. Revise paragraph (d) of § 120.883 to read as follows:

§ 120.883 Eligible administrative costs for 504 loans.

* * * * *

(d) Borrower's out-of-pocket costs associated with 504 loan and Debenture closing other than legal fees (for example, certifications and the copying costs associated with them, overnight delivery, postage, and messenger services) but not to include fees and costs described in § 120.882;

* * * * *

■ 43. Amend § 120.892(b) by removing the phrase ''90 days'' and adding in its place the phrase ''120 days''.

■ 44. Revise the heading of § 120.900 to read as follows:

§ 120.900 Sources of permanent financing.

* * * * *

■ 45. Revise the heading of § 120.910 to read as follows:

§ 120.910 Borrower contributions.

* * * * *

■ 46. Revise § 120.911 to read as follows:

§ 120.911 Land contributions.

The Borrower's contribution may be land (including buildings, structures and other site improvements which will be part of the Project Property) previously acquired by the Borrower.

■ 47. Revise § 120.913 to read as follows:

§ 120.913 Limitations on any contributions by a Licensee.

Subject to part 107 of this chapter, a Licensee may provide financing for all or part of the Borrower's contribution to the Project. SBA will consider Licensee funds to be derived from federal sources if the Licensee has Leverage (as defined in § 107.50 of this chapter). If the Licensee does not have Leverage, SBA will consider the investment to be from private funds. Licensee financing must be subordinated to the 504 loan and must not be repaid at a faster rate than the Debenture. (Refer to § 120.930(a) for additional limitations.)

■ 48. Amend § 120.923 by revising the heading to read as follows:

§ 120.923 Policies on subordination.

* * * * *

■ 48a. Redesignate § 120.924 as paragraph (c) of § 120.923.

■ 49. Amend § 120.925 by adding a parenthetical at the end to read as follows:

§ 120.925 Preference.

* * * (See § 120.10 for a definition of Preference.)

■ 50. Revise § 120.926 to read as follows:

§ 120.926 Referral fee.

The CDC can receive a reasonable referral fee from the Third Party Lender if the CDC secured the Third Party Lender for the Borrower under a written contract between the CDC and the Third Party Lender. Both the CDC and the Third Party Lender are prohibited from charging this fee to the Borrower. If a CDC charges a referral fee, the CDC will be construed as a Referral Agent under part 103 of this chapter.

■ 51. Revise paragraph (b) of § 120.930 to read as follows:

§ 120.930 Amount.

* * * * *

(b) A 504 loan must not be less than $25,000.

* * * * *

■ 52. Revise § 120.931 to read as follows:

§ 120.931 504 Lending limits.

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the 504 program covered by this part must not exceed $1,000,000 (or $1,300,000 if one or more of the public policy goals enumerated in § 120.862(b) applies to the Project).

■ 53. Revise § 120.933 to read as follows:

§ 120.933 Maturity.

From time to time, SBA will publish in the **Federal Register** the available maturities for a 504 loan and the Debenture that funds it. Such available maturities remain in effect until changed by subsequent **Federal Register** publication.

■ 54. Revise § 120.934 to read as follows:

§ 120.934 Collateral.

The CDC usually takes a second lien position on the Project Property to secure the 504 loan. Sometimes additional collateral is required. (In rare circumstances, SBA may permit other collateral substituted for Project Property.) All collateral must be insured against such hazards and risks as SBA may require, with provisions for notice to SBA and the CDC in the event of impending lapse of coverage.

■ 55. Revise the heading of § 120.935 to read as follows:

§ 120.935 Deposit from the Borrower that a CDC may require.

* * * * *

§ 120.936 [Removed]

■ 56. Remove § 120.936.

■ 57. Revise § 120.960 to read as follows:

§ 120.960 Responsibility for closing.

(a) The CDC is responsible for the 504 loan closing.

(b) The Debenture closing is the joint responsibility of the CDC and SBA.

(c) SBA may, within its sole discretion, decline to close the Debenture; direct the transfer of the 504 loan to another CDC; or cancel its guarantee of the Debenture, prior to sale, if any of the following occur:

(1) The CDC has failed to comply materially with any requirement imposed by statute, regulation, SOP, policy and procedural notice, any agreement the CDC has executed with SBA, or the terms of a Debenture or loan authorization;

(2) The CDC has failed to make or close the 504 loan or prepare the Debenture closing in a prudent or commercially reasonable manner;

(3) The CDC's improper action or inaction places SBA at risk;

(4) The CDC has failed to use required SBA forms or electronic versions of those forms;

(5) The CDC, Third Party Lender or Borrower has failed to timely disclose to SBA a material fact regarding the Project or 504 loan;

(6) The CDC, Third Party Lender or Borrower has misrepresented a material fact to SBA regarding the Project or 504 loan; or

(7) SBA determines that there has been an unremedied material adverse change, such as deterioration in the Borrower's financial condition, since the 504 loan was approved, or that approving the closing of the Debenture will put SBA at unacceptable financial risk.

■ 58. Revise the undesignated center heading immediately preceding § 120.970 to read as follows:

Servicing

■ 59. Revise § 120.970 to read as follows:

§ 120.970 Servicing of 504 loans and Debentures.

(a) In servicing 504 loans, CDCs must comply with 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA, and in accordance with prudent and commercially reasonable lending standards.

(b) The CDC is responsible for routine servicing including receipt and review of the Borrower's or Operating Company's financial statements on an annual or more frequent basis and monitoring the status of the Borrower and 504 loan collateral.

(c) The CDC is responsible for assuring that the Borrower makes all required insurance premium payments and has paid all taxes when due.

(d) The CDC is responsible for filing renewals and extensions of security interests on collateral for the 504 loan, as required.

(e) The CDC must timely respond to Borrower requests for loan modifications.

(f) For any 504 loan that is more than three months past due, the CDC must promptly request that SBA purchase the Debenture unless the 504 loan has an SBA-approved deferment or is in compliance with an SBA-approved plan to allow the Borrower to catch up on delinquent loan payments.

(g) The CDC must cooperate with SBA to cure defaults and initiate workouts.

(h) SBA may negotiate agreements with CDCs to liquidate 504 loans.

■ 60. Add a new undesignated center heading immediately preceding § 120.971 to read as follows:

Fees

■ 61. Revise paragraphs (a) (introductory text) and (a)(2) of § 120.971 to read as follows:

§ 120.971 Allowable fees paid by Borrower.

(a) *CDC fees.* The fees a CDC may charge the Borrower in connection with a 504 loan and Debenture are limited to the following:

* * * * *

(2) *Closing fee.* The CDC may charge a reasonable closing fee sufficient to reimburse it for the expenses of its in-house or outside legal counsel, and other miscellaneous closing costs (CDC Closing Fee). Some closing costs may be funded out of the Debenture proceeds (see § 120.883 for limitations);

* * * * *

■ 62. Revise § 120.972 to read as follows:

§ 120.972 Third Party Lender participation fee and CDC fee.

(a) *Participation fee.* For loans approved by SBA after September 30, 1996, SBA must collect a one-time fee equal to 50 basis points on the Third

Party Lender's participation in a Project when the Third Party Lender occupies a senior credit position to SBA in the Project.

(b) *CDC fee.* For loans approved by SBA after September 30, 1996, SBA must collect an annual fee from the CDC equal to 0.125 percent of the outstanding principal balance of the Debenture. The fee must be paid from the servicing fees collected by the CDC and cannot be paid from any additional fees imposed on the Borrower.

■ 63. Remove the undesignated center heading immediately preceding § 120.980.

■ 64. Remove §§ 120.980, 120.982, 120.983 and 120.984.

Dated: September 25, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–24860 Filed 10–6–03; 8:45 am]

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Federal Register

Tuesday,
October 7, 2003

Part III

Department of Health and Human Services

Centers for Disease Control Prevention

Agency for Toxic Substances and Disease Registry

Availability of Funds Announced in the CDC/ATSDR Federal Assistance Funding Book; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

Availability of Funds Announced in the CDC/ATSDR Federal Assistance Funding Book

ACTION: General notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of funds in the CDC/ATSDR Federal Assistance Funding Book (FAFB) for Fiscal Year 2004. This edition of the FAFB is a review of CDC and ATSDR Fiscal Year 2004 competitive assistance programs. Financial assistance programs include grants and cooperative agreements.

The FAFB contains most of CDC's and ATSDR's new competitive opportunities; however, additional grant and cooperative agreement opportunities may become available because of programmatic planning and Congressional action. The funding opportunities will be published in the **Federal Register**, CDC's and ATSDR's Internet Web site, which can be obtained by accessing *http://www.cdc.gov/od/pgo/funding/grantmain.htm,* and in addition may be published in the *NIH Guide For Grants and Contracts.* CDC and ATSDR, as well as the Department of Health and Human Services (HHS), has been very busy this year. In support of health related disease control and prevention activities, we are striving to provide simpler avenues for eligible organizations to apply for funding. We are working in cooperation with HHS and other organizations within HHS to improve our processes related to delivering CDC funding opportunities and awarding grants to eligible applicants. We are currently planning to deploy a new grants management information system, and have implemented processes to streamline our grant making operations. We are participating in pilot programs being conducted throughout the federal government that are designed to move the granting of federal dollars into the world of electronic government. CDC's streamlining efforts are part of HHS' activities to implement the Federal Financial Assistance Management Improvement Act (Pub. L. 106–207). CDC and ATSDR are committed to maximum competition for its grants and cooperative agreement opportunities, and will strive to provide support for all eligible entities that seek to apply for CDC's and ATSDR's financial assistance programs.

Julie Louise Gerberding, M.D., M.P.H.

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2. How to Use the CDC/ATSDR Federal Assistance Funding Book (FAFB)
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5. Funding Opportunities by Agency and Center. This notice describes funding for the following ATSDR and CDC discretionary authorities and programs (application receipt deadlines are also provided):

Agency for Toxic Substances and Disease Registry (ATSDR)

Exposure to Tremolite Asbestos in Vermiculite Ore—June 2004
Program to Facilitate Environmental Justice in Minority and Under Served Communities—May 1, 2004
Surveillance of Hazardous Substances—June 1, 2004
The Great Lakes Human Health Effects Research Program—May 2004
Program to Build Capacity to Conduct Site-Specific Health Promotion Activities—July 1, 2004
A Program to Build Capacity to Develop, Implement, and Evaluate Health Education and Health Promotion Activities in Tribal Communities—July 1, 2004
Program to Build Capacity to Conduct Environmental Health Education Activities—July 1, 2004
Program to Build Environmental Public Health Capacity Within Tribal Colleges and Universities—July 2004

Centers for Disease Control and Prevention (CDC)

National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)

Cancer Surveillance Research with Data Enhancement and Utilization—June 2004
National Programs to Improve the Health, Education, and Well-Being of Young People—December 2004

National Center for Environmental Health (NCEH)

Centers for Genomics and Public Health—February 15, 2004
Addressing Asthma from a Public Health Perspective—March 1, 2004

National Center for HIV, STD, and TB Prevention (NCHSTP)

Translating Proven Interventions for Underserved and Emergent High Risk Populations—March 2004
Public Health Conference Support Cooperative Agreement—Program for Human Immunodeficiency Virus (HIV) Prevention—April 15, 2004

National Center for Infectious Diseases (NCID)

Applied Research in Emerging Infections Investigations of West Nile Virus—May 15, 2004
Epidemiology and Laboratory Capacity (ELC) for Infectious Diseases—Cycle A, January 4, 2004; Cycle B, April 4, 2004
Cooperative Agreement for Research on Prevention of Lyme Disease in Humans in the United States—November 17, 2003
Cooperative Agreement for Research on the Ecology and Control of Tick Vectors of Lyme Disease in the United States—November 17, 2003
Cooperative Agreement for Research on the Laboratory Diagnosis, Immunology, and Pathogenesis of Lyme Disease in the United States—December 1, 2003

National Center for Injury Prevention and Control (NCIPC)

Grants for Acute Care, Rehabilitation, and Disability Prevention Research—February 3, 2004
Grants for Violence-Related Injury Prevention Research: Youth Violence, Suicide, Intimate Partner Violence, and Sexual Violence—February 3, 2004
Grants for New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Biomechanics, and Acute Care, Disability, and Rehabilitation-Related Research—February 3, 2004
Grants for Traumatic Injury Biomechanics Research—February 3, 2004—Research Grants to Prevent Unintentional Injuries—February 3, 2004
Grants for Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities—February 3, 2004

National Immunization Program (NIP)

National Minority Organizations Immunization Projects—March 2004

National Institute for Occupational Safety and Health (NIOSH)

Occupational Safety and Health Research Grants-Investigator-Initiated—All (new competing, revised, and, supplemental applications) February 3, 2004; June 1, 2004; and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004; July 1, 2004; and November 1, 2004.
Occupational Safety and Health Research Grants-Special Emphasis Research Career Award (K01)—All (new) February 3, 2004; June 1, 2004; and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004; July 1, 2004; and November 1, 2004.
Occupational Safety and Health Research Grants-Small Grants (R03)—All (new) February 3, 2004; June 1, 2004; and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004; July 1, 2004; and November 1, 2004.
Occupational Safety and Health Research Grants-Exploratory and Developmental

(R21)—All (new) February 3, 2004; June 1, 2004; and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004; July 1, 2004; and November 1, 2004.
Occupational Safety and Health Training—July 1, 2004
Health and Safety Programs for Construction Work—February 3, 2004.
Surveillance Program—April 1, 2004

Introduction

The purpose of the FAFB is to provide the general public with a single source of program and application information related to CDC's and ATSDR's competitive financial assistance offerings. The FAFB is designed to replace the multiple **Federal Register** notices that traditionally advertised the availability of CDC and ATSDR discretionary funding for its various programs. It should be noted that additional health promotion and disease prevention program initiatives responsive to new issues or issues unanticipated at the time of publication of the FAFB may be announced through the **Federal Register** and the CDC Web site, *http://www.cdc.gov/od/pgo/funding/grantmain.htm* or the ATSDR Web site at *http://www.atsdr.cdc.gov/,* click on ''ATSDR Grants and Cooperative Agreements.'' This notice does not change requirements appearing elsewhere in the **Federal Register**.

The CDC/ATSDR FAFB contains a description of competitive and other financial assistance (grants and cooperative agreements) programs scheduled for awards in Fiscal Year 2004. It includes instructions on how to contact the CDC/ATSDR for information.

Applications and instructions may be downloaded from the CDC Web site listed above. The FAFB also contains instructions for how to obtain application if your organization is not Internet active. Specifically, the following information is included in the FAFB: (1) Center/Institute/Office (CIO) Offering the Funding Program; (2) the Program Announcement Title; (3) the Program Announcement Number (4) the Catalog of Federal Assistance (CFDA) Identification Number; (5) the Program Contact Person, E-Mail Address, and Phone Number; (6) a Description of the Funding Opportunity; (7) Eligible Applicants; (8)Estimated Dollar Amount for this Competition; (9) Estimated Number of Awards to be Made; (10) Estimated or Average Size of Each Award; (11) Estimated Project Period; (12) Estimated Application Availability Date, which is the date further application guidance will be available on the CDC and ATSDR Web site, and the earliest date an application can be accepted; (13) Estimated Application Deadline Date, which is the last date an application can be accepted for review and potential funding; and (14) Estimated Projected Award Date, which is the date that a successful applicant can expect to be awarded funds. Certain other information, including how to obtain and use the FAFB and grant terminology, can also be found in the FAFB.

This notice describes funding for the following CDC and ATSDR discretionary authorities and programs (application deadline dates are also provided):

Agency for Toxic Substances and Disease Registry (ATSDR)

Centers for Disease Control and Prevention (CDC)

The Centers, Institutes, and Offices that comprise CDC are listed below in alphabetical order:
Epidemiology Program Office (EPO)
National Center for Birth Defects and Developmental Disabilities (NCBDDD)
National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)
National Center for Environmental Health (NCEH)
National Center for Health Statistics (NCHS)
National Center for HIV, STD, and TB Prevention (NCHSTP)
National Center for Infectious Diseases (NCID)
National Center for Injury Prevention and Control (NCIPC)
National Immunization Program (NIP)
National Institute for Occupational Safety and Health (NIOSH)
Public Health Practice Program Office (PHPPO)

How To Use the CDC/ATSDR Federal Assistance Funding Book (FAFB)

It is recommended that you read the introductory materials, terminology section, and individual program announcements listed under each CIO in alphabetical order. At the end of the FAFB, there is an optional form entitled ''Grants At A Glance.'' This form is provided so that you can record the funding opportunities that are of interest to you. We urge applicants to fully assess their eligibility for grants and cooperative agreements before spending the time and effort to apply.

The full descriptions of the funding opportunities, instructions for applications, application forms, and additional copies of the FAFB can be found at *http://www.cdc.gov,* click on ''Funding'' then click on ''Grants and Cooperative Agreements.'' If you are not Internet active, or you have difficulty downloading this information, you may call 770–488–2700 between 8 a.m. and 4:30 p.m. Eastern Time, Monday through Friday for assistance.

Terminology

Application Deadlines

Definitive deadline information may be found in the full program announcement. For many program announcements, applications will be considered on time if they are received on or before 4 p.m. Eastern Time on the established deadline in the program announcement.

Authorization

The citation of the law authorizing the various assistance programs is provided following the title in the full program announcement published on the CDC and ATSDR Web sites.

Budget Period

The Budget Period is the interval of time that a multi-year period of financial assistance (project period) is divided into for budgetary and funding purposes. Budget periods are usually 12 months long but may be shorter or longer, if appropriate.

CFDA Number

The Catalog of Federal Domestic Assistance (CFDA) is a Government-wide compendium of Federal Programs, projects, services, and activities that provide assistance. Programs listed therein are given a CFDA number.

Cooperative Agreement

A financial assistance mechanism (grant) used when substantial Federal programmatic involvement with the recipient is anticipated by the funding agency during performance of the project. The nature of the involvement will always be specified in the offering or application guidance materials.

Eligibility

The status an entity must possess to be considered for a grant. Authorizing legislation and programmatic regulations specify eligibility for individual grant programs and eligibility may be further restricted for programmatic reasons. In general, assistance is provided to nonprofit organizations and institutions, including faith-based and community-based entities, State and local governments, their agencies, Indian Tribes or tribal organizations, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

Estimated Amount for This Competition

The funding level listed is provided only as an estimate, and is subject to the availability of funds, Congressional action, and changing program priorities.

Evaluation Criteria

The evaluation criteria are listed in the full program announcement, as published on the CDC or ATSDR Web site, and are used to evaluate, score, and rank applications submitted by an applicant.

Funding Priorities and/or Preferences

Funding preferences, priorities, and special considerations may come from legislation, regulations, or programmatic reasons. These are not the same as review criteria. Funding preferences are any objective factors that would be used to place a grant application ahead of others without the preference on a list of applicants recommended for funding by a review committee. Some programs give preference to organizations that have specific capabilities, or have established relationships with public health organizations that promote CDC's or ATSDR's mission of health and disease prevention. Funding priorities are factors that cause a grant or cooperative agreement application to receive a fixed amount of extra rating points, which may similarly affect the order of applicants on a funding list. Special considerations other than review criteria, preferences, and priorities *e.g.*, are considered in order to

ensure an equitable geographic distribution of grant recipients, to meet requirements for urban or rural proportions.

Grant

A grant is a financial assistance (including cooperative agreements) in the form of money, or property in lieu of money, by the Federal government to an eligible recipient. The term does not include any Federal procurement subject to the Federal Acquisition Regulation (FAR); technical assistance (which provides services instead of money); or assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct payments of any kind to individuals.

Letter of Intent

A Letter of Intent is a letter that may be requested by the funding program to gauge the interest and the number of full applications anticipated so that the funding program can estimate both the proper number of reviewers and expertise needed to review the applications. A Letter of Intent may be optional or required.

Matching Requirements

Several CDC and ATSDR programs may require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, ATSDR or the CDC awarding CIO may administratively require matching or other cost-sharing requirements. Such requirements are listed in the full program announcement published on the CDC and or ATSDR Web site.

Notice of Grant Award

The Notice of Grant Award (NGA) is the official award document, signed by the Grants Management Officer that (1) Notifies the recipient of the award of a grant; (2) contains or references all the terms and conditions of the grant and Federal funding limits and obligations; and (3) provides the documentary basis for recording the obligation of Federal funds in CDC's accounting system.

Program Announcement Number

The program announcement number is a unique identifier for each program funded by CDC or ATSDR. This number must be included on your application for funding.

Project Period

The total time stated in the Notice of Grant Award (including any amendments) that Federal support is recommended. The project period usually consists of a series of one or more budget periods of one-year duration. Once approved through initial review, continuation of each successive budget period is subject to satisfactory performance, availability of funds, and program priorities. The project period is usually from one to five years.

Technical Assistance

A contact person is listed for each program and his/her e-mail address and telephone number are provided. Some programs have scheduled workshops and conference calls. If you have questions concerning individual programs or the availability of technical assistance, please contact the program contact listed in the full program announcement.

Frequently Asked Questions

1. Where Do I Submit Grant Applications?

The address for submitting your grant application will be published in the full program announcement on the CDC Web site at *http://www.cdc.gov/od/pgo/funding/grantmain.htm* or the ATSDR Web site at *http://www.atsdr.cdc.gov/* and in addition may be published in the *NIH Guide to Grants and Contracts.*

For general questions about CDC or ATSDR announcements, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2700.

2. How Do I Learn More About a Particular Grant or Cooperative Agreement Program?

In general, the program contact person provides information about the specific grant and cooperative agreement offering and its purpose, and the grants management specialist provides information about the grant/cooperative agreement mechanism and business matters, though their responsibilities often overlap.

3. The Dates Listed in the FAFB and the Dates on the CDC or ATSDR Web Site Do Not Agree. How Do I Know Which Is Correct?

The CDC/ATSDR FAFB dates for estimated application availability, the estimated application deadline date, and the estimated projected award date are based upon the best-known information at the time of publication, often up to nine months in advance of the competitive cycle. Since the full program announcement is published on the CDC and ATSDR Web sites later, the dates in the full program announcement are the correct dates. Thus, the definitive date may be found in the full program announcement.

4. Are Programs Announced in the CDC/ATSDR FAFB Ever Cancelled?

Infrequently, announced programs may be withdrawn from competition. If this occurs, an amendment to the original FAFB **Federal Register** Notice will be published and in addition, the change will be listed on the CDC or ATSDR Web site.

5. What Is a DUNS Number and Do I Need One?

The Data Universal Numbering Systems (DUNS) number is a unique 9-digit identification number provided by Dun & Bradstreet (D&B). The DUNS number is site-specific. Therefore, each distinct physical location of an entity (such as branches, divisions, and headquarters) may be assigned a DUNS number. In order to provide on-the-spot DUNS Number assignment, D&B does not control or limit who may request or receive a DUNS number. It is the applicant organization's responsibility to manage their DUNS numbers. To obtain a DUNS number, call Dun and Bradstreet at 1–866–705–5711 or visit their Web site at: *http://www.dunandbradstreet.com.* There is no charge obtaining a number and the number is easy to obtain. If you are unsure whether your organization already has a DUNS number, please contact your institution's grant office for guidance. A DUNS number will be required for all new grant and cooperative agreement awards for FY 2004 including foreign applicant organizations. A DUNS number will not be required of individuals or subrecipients. There should be a field in the new PHS 5161–1 and PHS 398 application forms to include your DUNS number. If the application form you are using does not have a DUNS number field, please write your DUNS number on the top of the application, and/or include your DUNS number in the cover letter of the application. Your organization will need to have a DUNS number in order for an award to be made in FY 2004.

6. Where Can I Find Out About Current Federal Grant and Cooperative Agreement Funding Opportunities?

In addition to the CDC and ATSDR Web sites, the U.S. Government has created and maintains a Web site at *http://www.fedgrants.gov* and at *http://www.grants.gov.*

7. Where Can I Obtain Applications for CDC and ATSDR Grant and Cooperative Agreement Funding Opportunities?

For most CDC and ATSDR grant and cooperative agreement announcements, the application form PHS 5161–1 or PHS 398 is used. Please see the full program announcement to see which application to use. Applications and instructions can be found at *http://www.cdc.gov/od/pgo/forminfo.htm.* When using the PHS 398 application form for CDC grant and cooperative agreement funding opportunities, please adhere to the program announcement instructions. The full program announcement is the definitive guide on forms and location of instructions. If you need assistance, please call the program or business office listed in the full program announcement. For general questions, please call (770) 488–2700. In addition, you may visit the ''Notice to Grantees'' section on the CDC Web site at *http://www.cdc.gov/funding.htm.* The Web site is updated frequently and grantees and potential applicants should periodically review the Web site to stay abreast of current issues and changes.

8. If My Institution or Organization Receives Funds From CDC or ATSDR, Are There Any Restrictions on How the Funds May Be Used?

Yes. Page 2 of the Notice of Grant Award contains references to the rules and regulations governing the use of funds awarded by CDC or ATSDR. If you have any business questions regarding a particular award, please contact the Grants Management Specialist or Contract Specialist that is managing the grant or cooperative agreement. For programmatic questions, please contact the project officer assigned to your grant or cooperative agreement.

CDC and ATSDR Program Competitions

This notice describes funding for the CDC and ATSDR discretionary authorities and programs below. Receipt deadlines are provided.

Grants At A Glance

The ''Grants At A Glance'' form should assist you in reviewing the potential funding opportunities below.

BILLING CODE 4163–18–C

The 2004 CDC Federal Assistance Funding Book.

GRANTS AT A GLANCE

Use this optional form to keep track of attractive grant opportunities.

Page #	Program Comments	Interest		
		Low	Medium	High
_____	_____	☐	☐	☐
	_____			
_____	_____	☐	☐	☐
_____	_____			
_____	_____	☐	☐	☐
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_____	_____	☐	☐	☐
_____	_____			
_____	_____	☐	☐	☐
_____	_____			

Agency for Toxic Substances and Disease Registry (ATSDR)

Competition Title: Exposure to Tremolite Asbestos in Vermiculite Ore.

Program Announcement Number: 04020.

CFDA Number: 93.161.

Program Contact Person: Kevin Horton or Maggie Warren.

E-Mail Address: dth9@cdc.gov or mcs9@cdc.gov.

Phone Number: (404) 498–0571 or (404) 498–0546.

Competition Description: The purpose of this program is to conduct site-specific health activities related to human exposure to contaminated vermiculite ore at sites identified by the Environmental Protection Agency (EPA) as receiving and/or processing ore from the mine in Libby, Montana.

Eligible Applicants: Assistance will be provided only to the health departments of States or their bona fide agents or instrumentalities. State organizations, including state universities, must establish that they meet their respective state legislature's definition of a state entity or political subdivision to be considered an eligible applicant.

Estimated Amount of This Competition: $300,000.

Estimated Number of Awards to be Made: 4.

Estimated or Average Size of Each Award: $10,000 to $250,000.

Estimated Project Period: 3 Years.

Application Availability Date: April 2004.

Application Deadline: June 2004.

Project Award Date: August 2004.

Competition Title: Program to Facilitate Environmental Justice in Minority and Under Served Communities.

Program Announcement Number: 04021.

CFDA Number: 93.161.

Program Contact Person: Stephanie Miles-Richardson, D.V.M., Ph.D.

E-Mail Address: srm7@cdc.gov.

Phone Number: (404) 498–0111.

Competition Description: The purpose of this program is to assist minority educational institutions in expanding and enhancing educational and research opportunities related to exposure to hazardous substances in the environment, and providing education and information to African American, Hispanic, and other minority and low income communities that are affected by hazardous waste sites and that have environmental justice concerns. This announcement follows a successful five-year project period, which included the development of culturally competent environmental health instructional materials for health professionals, and maintenance and distribution of environmental justice related resources. Community-based workshops on Geographic Information Systems (GIS) were conducted and strategies for assisting communities in identifying the needs of ''at risk'' populations were also identified. During this second five-year period, the project will continue to conduct outreach to diverse groups and organizations that focus on minority health, environment, and education with the goal of facilitating collaborations and partnerships. Strategies developed during the first program period will be implemented, evaluated, and expanded.

Eligible Applicants: Eligible applicants include: Historically Black Colleges and Universities (HBCUs) and Hispanic Serving Institutions (HSIs) with documented expertise in addressing environmental justice concerns of minority and under served communities.

Estimated Amount of This Competition: $125,000.

Estimated Number of Awards to be Made: 1.

Estimated or Average Size of Each Award: $125,000.

Estimated Project Period: October 1, 2004–September 29, 2009.

Application Availability Date: March 1, 2004.

Application Deadline: May 1, 2004.

Project Award Date: August 1, 2004.

Competition Title: Surveillance of Hazardous Substances Emergency Events.

Program Announcement Number: 04022.

CFDA Number: 93.161.

Program Contact Person: Wendy Kaye/Maureen Orr.

E-Mail Address: wek1@cdc.gov/mco0@cdc.gov.

Phone Number: (404) 498–0555/(404) 498–0559.

Competition Description: The purpose of this program is to assist state health departments in developing a state-based surveillance system for monitoring hazardous substances emergency events. This will allow the state health department to better understand the public health impact of hazardous substances emergencies through this added capacity.

Eligible Applicants: Official public health agencies of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and Federally recognized Indian Tribal governments. Also eligible are State organizations, including State universities, State colleges, and State research institutions, who must establish that they meet their respective State legislature's definition of a State entity or political subdivision to be considered an eligible applicant.

Estimated Amount of This Competition: $1,450,000.

Estimated Number of Awards to be Made: 15.

Estimated or Average Size of Each Award: $95,000.

Estimated Project Period: 5 years.

Application Availability Date: April 1, 2004.

Application Deadline: June 1, 2004.

Project Award Date: August 1, 2004.

Competition Title: The Great Lakes Human Health Effects Research Program.

Program Announcement Number: 04023.

CFDA Number: 93.161.

Program Contact Person: Dr. Heraline Hicks.

E-Mail Address: heh2@cdc.gov.

Phone Number: (404) 498–0717.

Competition Description: The purpose of the program is to assess the adverse effects of water pollutants, via contaminated fish in the Great Lakes, on the health of persons in the Great Lakes states. The research objectives of this program are to: (1) Build upon and amplify the results from past and on-going research in the Great Lakes basin; (2) develop information, databases and research methodology that will provide long-term benefit to human health effects research in the Great Lakes; (3) provide direction for future health effects research; (4) provide health information to State and local health officials, the concerned public, and their medical health care professionals; and (5) in concert with State and local health officials, increase the public awareness regarding the potential health implications of toxic pollution in the Great Lakes basin; and (6) coordinate as necessary with relevant research programs and activities of other agencies, including those of the Food and Drug Administration (FDA), Centers for Disease Control and Prevention (CDC), National Institutes of Health (NIH), and the Indian Health Service (IHS), as well as the Environmental Protection Agency (EPA), and state and local health departments, to ameliorate adverse public health impacts of persistent toxic substances in the Great Lakes.

Eligible Applicants: Eligible applicants are the Great Lake states and political subdivisions thereof, including federally recognized Indian tribal governments. State organizations, including state universities, state colleges, and state research institutions, must affirmatively establish that they meet their respective state's legislative definition of a state entity or political subdivision to be considered an eligible applicant. The Great Lake states include Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin, consistent with Section 106, subsection 118(e) of the Great Lakes Critical Programs Act of 1990 [33 U.S.C. 1268(e)]. ATSDR encourages collaborative efforts among these potential applicants.

Estimated Amount of This Competition: $2,000,000.

Estimated Number of Awards to be Made: 10.

Estimated or Average Size of Each Award: $200,000.

Estimated Project Period: FY 2004–FY 2006.

Application Availability Date: March 2004.

Application Deadline: May 2004.

Project Award Date: September 2004.

Competition Title: Program To Build Capacity To Conduct Site-Specific Health Promotion Activities.

Program Announcement Number: 04024.

CFDA Number: 93.161.

Program Contact Person: Robert Johnson.

E-Mail Address: rdj2@cdc.gov.

Phone Number: (404) 498–0498.

Competition Description: A five-year cooperative agreement program to build capacity to conduct site-specific health promotion activities. The purpose of this program is to conduct site-specific health education and promotion activities, including pediatric environmental health

specialty unit (PEHSUs) activities in the areas of health professional education, site-specific medical consultations, and referrals for clinical evaluations. (**Note:** Due to the ATSDR legislative mandate, clinical treatment cannot be provided.) This program addresses the ''Healthy People 2010'' educational and community-based programs, environmental health, health communication, and maternal, infant, and child health focus areas.

Eligible Applicants: This program is only directed to national organizations of health professionals that provide environmental health education activities for their membership, as well as environmental public health promotion activities.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards to be Made: 1–2.

Estimated or Average Size of Each Award: $500,000–$1,000,000.

Estimated Project Period: September 30, 2004–October 1, 2009.

Application Availability Date: May 1, 2004.

Application Deadline: July 1, 2004.

Project Award Date: September 30, 2004.

Competition Title: A Program To Build Capacity To Develop, Implement, and Evaluate Health Education and Health Promotion Activities in Tribal Communities.

Program Announcement Number: 04025.

CFDA Number: 93.161.

Program Contact Person: Teresa Nastoff.

E-Mail Address: tbn9@cdc.gov.

Phone Number: (404) 498–0530.

Competition Description: A five-year cooperative agreement program to build capacity, to develop, to implement, and to evaluate health education and health promotion activities in tribal communities. This program addresses the ''Healthy People 2010'' educational and community-based programs and environmental health focus areas. The cooperative agreement program is designed to assist American Indian and Alaska Native (AI/AN) governments and organizations in addressing present and potential environmental health challenges related to National Priorities List (NPL), Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA), and other hazardous substances and releases on or adjacent to Indian lands. Specifically, cooperative agreement funds will be used to assist tribal and village governments in addressing community health concerns related to environmental toxins. This will be accomplished by increasing tribal capacity to develop, implement, and evaluate culturally relevant and appropriate environmental health education and promotion activities for AI/AN communities and for the health professionals and para-professionals serving these communities.

Eligible Applicants: This program is directed only to federally-recognized Indian tribes or consortia of Indian tribes. Indian tribes are defined in Section 101(36) [42 U.S.C. 9601 936)] as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native Village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.''

Estimated Amount of This Competition: $175,000.

Estimated Number of Awards to be Made: 5.

Estimated or Average Size of Each Award: $35,000.

Estimated Project Period: September 30, 2004–October 1, 2009.

Application Availability Date: May 1, 2004.

Application Deadline: July 1, 2004.

Project Award Date: September 30, 2004.

Competition Title: Program To Build Capacity To Conduct Environmental Health Education Activities.

Program Announcement Number: 04026.

CFDA Number: 93.161.

Program Contact Person: Charles Green.

E-Mail Address: clg8@cdc.gov.

Phone Number: (404) 498–0297.

Competition Description: A five-year cooperative agreement program to build capacity to conduct environmental health education activities. This program addresses the ''Healthy People 2010'' educational and community-based programs, environmental health, health communication, and maternal, infant, and child health focus areas. The purpose of this program is to establish and promote environmental health education programs within an organization's constituent members and the communities they serve. Specifically, cooperative agreement funds will be used to develop and implement environmental health education needs assessment process for the applicants' membership and communities surrounding hazardous waste sites; develop, implement, and evaluate site-specific environmental health education activities based on the results of the needs assessment process; evaluate the effectiveness of each of the implemented activities and the impact of the overall project; and develop a strategy to provide environmental health education materials and programs, and to communicate identified environmental health needs, concerns, programs, and resources to constituent groups.

Eligible Applicants: This program is directed only to national organizations of health professionals that provide environmental health education for their defined membership and constituencies.

Estimated Amount of This Competition: $700,000.

Estimated Number of Awards to be Made: 10.

Estimated or Average Size of Each Award: $70,000.

Estimated Project Period: September 30, 2004–up to October 1, 2009.

Application Availability Date: May 1, 2004.

Application Deadline: July 1, 2004.

Project Award Date: September 15, 2004.

Competition Title: Program to Build Environmental Public Health Capacity Within Tribal Colleges and Universities.

Program Announcement Number: 04027.

CFDA Number: 93.161.

Program Contact Person: Alan Crawford.

E-Mail Address: acrawford@cdc.gov.

Phone Number: (404) 498–0485.

Competition Description: The purpose of this request for applications is to provide a grant for one year (with a project period of up to five years) to assist tribal colleges and universities in the development of environmental health curriculum through the provision of technical assistance in environmental health science, including toxicology, assistance with materials development, and internships in environmental health nursing, education, and science. The implementation of the program will assist American Indian and Alaska Native nations in: (1) Evaluating past and present public health impacts related to hazardous substances exposure; (2) identifying and mitigate the public health impacts of exposures to hazardous substances on or near Indian lands; and, (3) determining and evaluating the scientific, technical and culturally-appropriate response to such exposure.

Eligible Applicants: Eligible applicants are federally recognized tribal colleges and universities as defined in Executive Order 13201.

Estimated Amount of This Competition: $200,000.

Estimated Number of Awards to be Made: 4.

Estimated or Average Size of Each Award: $50,000.

Estimated Project Period: Up to 5 Years.

Application Availability Date: May 2004.

Application Deadline: July 2004.

Project Award Date: September 2004.

National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)

Competition Title: Cancer Surveillance Research with Data Enhancement and Utilization.

Program Announcement Number: 04029.

CFDA Number: 93.283.

Program Contact Person: Kevin Brady.

E-Mail Address: KBrady@cdc.gov.

Phone Number: (770) 488–4226.

Competition Description: The purpose of this program is to utilize data from the National Program of Cancer Registries (NPCR) to perform enhanced surveillance and operational research to include developing, conducting and evaluating cancer surveillance research projects targeting breast, colorectal, prostate, ovarian, and oral/pharyngeal cancers.

Eligible Applicants: Part I: Breast, Colorectal/Prostate Patterns of Care, Recurrence, and Survival. Determination is based upon silver or gold certification by the North American Association of Central Cancer Registries (NAACCR) for the diagnosis year specified (the diagnosis year certification is the most recent available from NAACCR). Part II: Reporting Pathology Protocols (colon and rectum). Eligibility is limited to NPCR registries, which can demonstrate effective partnership with a laboratory, or laboratory vendor providing pathologic diagnostic services in a National Cancer Institute designated comprehensive cancer or clinical cancer center facility. Part III: Ovarian Cancer Patterns of Care. Eligibility is limited to NPCR registries. Determination of eligibility is based upon NAACCR silver or gold certification for the diagnosis year specified. Part IV: Oral/

Pharyngeal Cancer: Date Completeness Quality. Eligibility is limited to NPCR registries. Determination of eligibility is based upon NAACCR silver or gold certification for the year specified.

Estimated Amount of This Competition: $4,000,000.

Estimated Number of Awards to be Made: 8–10.

Estimated or Average Size of Each Award: $400,000.

Estimated Project Period: 3 Years.

Application Availability Date: April 2004.

Application Deadline: June 2004.

Project Award Date: September 2004.

Competition Title: National Programs to Improve the Health, Education, and Well-Being of Young People.

Program Announcement Number: 04010.

CFDA Number: 93.938.

Program Contact Person: Mike Rainey.

E-Mail Address: mrr1@cdc.gov.

Phone Number: (770) 488–6100.

Competition Description: The purpose of this announcement is to improve the education, health, and well-being of young people by strengthening coordinated school health programs and by enabling other youth-serving organizations to address health risks. Award recipients will emphasize efforts to help young people avoid risks (*e.g.* to avoid using tobacco, alcohol, or drugs; to avoid violence; to avoid sexual intercourse).

Eligible Applicants: Non-profit, non-governmental organizations with a nationwide structure and capacity to achieve the purposes of the priority area applied for. Applicants ideally should have local, state, or regional constituencies representing all states and territories, but at minimum representing 25 states/territories.

Estimated Amount of This Competition: $9,304,000.

Estimated Number of Awards to be Made: Up to 41.

Estimated or Average Size of Each Award: Priority 1: HIV Prevention for School-Age Youth, Category A-Schools, approx. $218,600 Category B-Youth Serving Organizations, approx. $202,000; Priority 2: Integration of School Efforts to Prevent HIV, STDs, and Unintended Pregnancy, Category A—Pregnancy Prevention, approx. $75,000, Category B–STD Prevention $100,000; Priority 3: Abstinence Collaboration and Partnerships, approx. $150,000; Priority 4: Coordinated School Health Programs and Prevention of Chronic Disease Risks, approx. $183,333; Priority 5: Prevention of Foodborne Illnesses and Related School Absence, approx. $125,000; Priority 6: Training and Professional Development, approx. $250,000.

Estimated Project Period: 3 Years.

Application Availability Date: October 2004.

Application Deadline: December 2004.

Project Award Date: March 15, 2004.

National Center for Environmental Health (NCEH)

Competition Title: Centers for Genomics and Public Health.

Program Announcement Number: 04034.

CFDA Number: 93.283.

Program Contact Person: Timothy G. Baker.

E-Mail Address: tgb2@cdc.gov.

Phone Number: (404) 498–1441.

Competition Description: The purpose of this program is to develop Centers for Genomics and Public Health at schools of public health. Each center will establish a regional hub of expertise by coordinating existing programs at the recipient institution and by creating links with local, state, or regional public health programs. Each recipient's Practice Coordinator will help strengthen linkages to health departments and community groups. Centers will also be encouraged to draw on other regional resources, such as professional organizations, the clinical community, and industry.

Funding will allow the Centers to carry out activities in three areas: (1) Contributing to the knowledge base on genomics and public health; (2) providing technical assistance to local, state, and regional public health organizations; and (3) developing and providing training for the current and future public health work force.

Eligible Applicants: Schools of Public Health.

Estimated Amount of This Competition: $3,000,000.

Estimated Number of Awards to be Made: 5.

Estimated or Average Size of Each Award: $600,000.

Estimated Project Period: Up to 5 Years.

Application Availability Date: December 1, 2003.

Application Deadline: February 15, 2004.

Project Award Date: June 30, 2004.

Competition Title: Addressing Asthma from a Public Health Perspective.

Program Announcement Number: 04035.

CFDA Number: 93.283.

Program Contact Person: Kathryn Sunnarborg.

Phone Number: (404) 498–1451.

E-Mail Address: KSunnarborg@cdc.gov.

Competition Description: To provide the impetus to begin development of program capacity to address asthma from a public health perspective (Part A), to continue program development and begin implementation of selected interventions (Part A Enhanced), and to conduct full asthma plan implementation (Part B). Key components of program capacity for asthma include a surveillance system, a statewide coalition, and the identification of appropriate asthma interventions. These activities are captured in a state asthma plan, which is developed in Part A, partially implemented in Part A Enhanced, and fully implemented in Part B.

Eligible Applicants: Part A: Any Indian tribal government, Indian Tribe, or State Public Health Department or their bona fide agents, who have NOT received funding from CDC/NCEH under Program Announcements 99109, 01106, 02085, or 03032. Part A Enhanced: State Health departments from CO, CT, Washington DC, GA, ID, MD, MO, NE, NH, TX, UT, VA, WV, and WI. Part B: Any state not currently receiving funding under Part B of RFA 01106, or under RFA 02085.

Estimated Amount of This Competition: $6,300,000.

Estimated Number of Awards to be Made: 15 (3 Part A, 7 Part A Enhanced, 5 Part B).

Estimated Average Size of Each Award: $200,000 (Part A), $310,000 (Part A Enhanced), $700,000 (Part B).

Estimated Project Period: 3 years (Part A and Part A Enhanced)/5 years (Part B).

Application Availability Date: December 1, 2003.

Application Deadline: March 1, 2004.

Project Award Date: July 1, 2004.

National Center for HIV, STD, and TB Prevention (NCHSTP)

Competition Title: Translating Proven Interventions for Underserved and Emergent High Risk Populations.

Program Announcement Number: 04038.

CFDA Number: 93.941.

Program Contact Person: Craig Studer.

E-Mail Address: cstuder@cdc.gov.

Phone Number: (404) 639–5389.

Competition Description: This project will develop tools for rapid assessment of populations that have been identified as having evidence of elevated HIV exposure risk, but for whom research studies identifying effective prevention interventions have not been published. After the rapid assessment of the population, the applicant will need to adapt effective interventions used for other populations to the needs of the target population. The applicant, with the direction from CDC, will compile a manual of rapid assessment procedures and steps taken to use the assessment data for adapting and evaluating the adapted intervention.

Eligible Applicants: State and local health departments, public and private nonprofit and for-profit organizations.

Estimated Amount of This Competition: $1,200,000.

Estimated Number of Awards to be Made: 4.

Estimated or Average Size of Each Award: $300,000.

Estimated Project Period: 3 Years.

Application Availability Date: January 2004.

Application Deadline: March 2004.

Project Award Date: July 15, 2004.

Competition Title: Public Health Conference Support Cooperative Agreement—Program for Human Immunodeficiency Virus (HIV) Prevention.

Program Announcement Number: 04039.

CFDA Number: 93.941.

Program Contact Person: Victoria Saho.

E-Mail Address: vsaho@cdc.gov.

Phone Number: (404) 639–5211.

Competition Description: The purpose of conference support funding is to provide partial support for specific non-federal conferences in the areas of health promotion and disease prevention information/education programs pertaining to HIV prevention. This program addresses the Healthy People 2010 focus area of HIV.

Eligible Applicants: Letters of intent (LOI) and applications may be submitted by nonprofit organizations, government agencies, tribal governments, and private corporations. These include: Community-based organizations, research institutions, state or local health departments, hospitals, universities or colleges, faith based organizations, technical school, other non-profit organizations, federally and non-

federally recognized American Indian/Alaskan Native (AI/AN) tribal governments and corporations that qualify under the Indian Civil Rights Acts, including State Charter Tribes, Urban Indian Health Programs, Indian Health Boards, Inter-tribal Councils, and other Tribal Organizations, including urban and eligible inter-tribal consortia. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $112,000.

Estimated Number of Awards to be Made: 5.

Estimated or Average Size of Each Award: $20,000.

Estimated Project Period: Awards will begin on or about April 1, 2004 and will be made for a 12-month budget and project period. Conferences planned for April 1, 2004 through September 30, 2004 will be considered for funding.

LOI Deadline Date: Submit your LOI on or before January 12, 2004.

Application Availability Date: February 25, 2004.

Application Deadline: April 15, 2004.

Project Award Date: May 15, 2004.

National Center for Infectious Diseases (NCID)

Competition Title: Applied Research in Emerging Infections Investigations of West Nile Virus.

Program Announcement Number: 04052.

CFDA Number: 93.283.

Program Contact Person: Dr. John Roehrig.

E-Mail Address: jtr1@cdc.gov.

Phone Number: (970) 221–6442.

Competition Description: The West Nile (WN) virus outbreak continues to expand in the United States. The persistence of WN virus in overwintering mosquitoes suggests that WN virus will become enzootic in the U.S. for the foreseeable future. The natural transmission cycle of WN virus involves mosquitoes becoming infected by feeding on birds infected with the virus. Many mammal-biting mosquito species have been infected with WN virus. This observation has been accompanied by an increase in WN virus infections of mammalian species other than humans and equines (*e.g.* bats, squirrels, cats, chipmunks, rabbits, and skunks). This expanded epizootic, which again occurred during the peak southern bird migration, emphasizes the need for continued vigilance for the spread of the virus beyond the outbreak epicenter. The purpose of the program is to provide assistance to organizations in developing applied research efforts pertaining to West Nile (WN) virus and other arboviruses that occur in the United States (U.S.).

Eligible Applicants: Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $2,000,000.

Estimated Number of Awards to be Made: 12.

Estimated or Average Size of Each Award: $150,000.

Estimated Project Period: 3 Years.

Application Availability Date: March 14, 2004.

Application Deadline: May 15, 2004.

Project Award Date: September 1, 2004.

Competition Title: Epidemiology and Laboratory Capacity (ELC) for Infectious Diseases.

Program Announcement Number: 04040.

CFDA Number: 93.283.

Program Contact Person: Debbie Deppe, M.P.A.

E-Mail Address: dadl@cdc.gov.

Phone Number: (404) 639–4668.

Competition Description: The purpose of the Epidemiology and Laboratory Capacity in Infectious Diseases (ELC) program is to assist State and eligible local public health agencies in strengthening basic epidemiologic and laboratory capacity to address infectious disease threats with a focus on notifiable diseases, food-, water-, and vector-borne diseases, vaccine-preventable diseases, and drug-resistant infections. Awards are intended to support activities that enhance the ability of a program to identify and monitor the occurrence of infectious diseases of public health importance in a community, characterize disease determinants, identify and respond to disease outbreaks and other infectious disease emergencies, use public health data for priority setting and policy development, and assess the effectiveness of activities. Strengthening collaboration between laboratory and epidemiology practice is a crucial component of this program.

Eligible Applicants: Assistance will be provided only to the health departments of states or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. In addition, official public health agencies of city governments, with jurisdictional populations greater than 1,500,000, or county governments, with jurisdictional populations greater than 8,000,000 (based on 2000 census data), are eligible to apply.

Funding preference will be given to current ELC grantees.

Estimated Amount of This Competition: Cycle A: $20,000,000 Cycle B: $16,000,000.

Estimated Number of Awards to be Made: 45.

Estimated or Average Size of Each Award: $800,000.

Estimated Project Period: 5 Years.

Application Availability Date: Cycle A: November 1, 2003, Cycle B: February 3, 2004.

Application Deadline: Cycle A: January 4, 2004, Cycle B: April 1, 2004. Current ELC grantees should submit an application for the cycle they are currently in. New applicants may apply for either cycle, but not both.

Project Award Date: Cycle A: April 1, 2004, Cycle B: July 1, 2004.

Competition Title: Cooperative Agreement for Research on Prevention of Lyme Disease in Humans in the United States.

Program Announcement Number: 04008.

CFDA Number: 93.942.

Program Contact Person: Barbara Stewart.

E-Mail Address: bsg2@cdc.gov.

Phone Number: (404) 639–0044.

Competition Description: The incidence of Lyme disease in the United States has been increasing and is likely to continue to increase unless affected communities and populations at risk develop and implement integrated control and prevention strategies. In addition, there is a need to explore new methods of Lyme disease prevention and new treatment regimens that may yield higher levels of community and individual participation and behavior change than existing strategies. The purpose of the program is to evaluate and compare effectiveness and cost of established as well as novel methods for decreasing the incidence of Lyme disease in humans. The program's overall objective is to find the most effective strategies to lower the incidence of Lyme disease in endemic areas.

Eligible Applicants: Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, political subdivisions of states (in consultation with states), federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $1,300,000.

Estimated Number of Awards to be Made: 2.

Estimated or Average Size of Each Award: $650,000.

Estimated Project Period: 4 Years.

Application Availability Date: October 1, 2003.

Application Deadline: November 17, 2003.

Project Award Date: February 28, 2004.

Competition Title: Cooperative Agreement for Research on the Ecology and Control of Tick Vectors of Lyme Disease in the United States.

Program Announcement Number: 04007.

CFDA Number: 93.942.

Program Contact Person: Joe Piesman.

E-Mail Address: jfp2@cdc.gov.

Phone Number: (970) 221–6408.

Competition Description: The purpose of the program is to increase the understanding

of the ecology of Lyme disease in the United States, especially in high risk areas, and to test available methods for controlling tick vectors of Lyme disease that will lead directly to the design of new prevention strategies to limit the transmission of the etiologic agent of Lyme disease, Borrelia burgdorferi. Awards will be made in two separate categories, (1) tick ecology projects and (2) tick control projects.

Eligible Applicants: Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, political subdivisions of states (in consultation with states), federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $1,300,000.

Estimated Number of Awards to be Made: 4.

Estimated or Average Size of Each Award: $325,000.

Estimated Project Period: 4 Years.

Application Availability Date: October 1, 2003.

Application Deadline: November 17, 2003.

Project Award Date: February 28, 2004.

Competition Title: Cooperative Agreement for Research on the Laboratory Diagnosis, Immunology, and Pathogenesis of Lyme Disease in the United States.

Program Announcement Number: 04006.

CFDA Number: 93.942.

Program Contact Person: Barbara Stewart.

E-Mail Address: bsg2@cdc.gov.

Phone Number: (404) 639–0044.

Competition Description: The purposes of the program are to develop improved and standardized laboratory tests to identify and characterize infection by Borrelia burgdorferi and related Borrelia species in humans and to better understand the immunology and pathogenic mechanisms of B. burgdorferi. Better laboratory methods can facilitate earlier and more accurate diagnosis and appropriate treatment of Lyme disease, thus preventing secondary consequences of infection. Better laboratory methods also can be used for improved surveillance and understanding of the epidemiology of Lyme disease in communities.

Immunology and pathogenesis studies can enhance understanding of host responses to infection, leading to improved prevention or intervention strategies such as vaccination.

Eligible Applicants: Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, political subdivisions of states (in consultation with States), federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $1,300,000.

Estimated Number of Awards to be Made: 7.

Estimated or Average Size of Each Award: $200,000.

Estimated Project Period: 4 Years.

Application Availability Date: October 1, 2003.

Application Deadline: December 1, 2003.

Project Award Date: February 28, 2004.

National Center for Injury Prevention and Control (NCIPC)

Competition Title: Grants for Acute Care, Rehabilitation, and Disability Prevention Research.

Program Announcement Number: 04044.

CFDA Number: 93.136.

Program Contact Person: Paul Smutz.

E-Mail Address: pos1@cdc.gov.

Phone Number: (770) 488–1508.

Competition Description: In conducting activities to achieve the purposes of this program, the recipient will be responsible for one of the following research activities:

1. Develop and evaluate protocols that provide onsite interventions in acute care settings or linkages to off-site services for patients at risk of injury or psychosocial problems following injury.

2. Identify methods and strategies to ensure that people with traumatic brain injury (TBI) and spinal cord injury (SCI) receive needed services.

3. Develop and evaluate methods of using point-of-care clinical information systems to report injuries and other acute health problems to public health agencies.

Eligible Applicants: Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organization, and small, minority, and/or women-owned businesses. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $600,000.

Estimated Number of Awards to be Made: 2.

Estimated or Average Size of Each Award: $300,000.

Estimated Project Period: 3 Years.

Application Availability Date: November 3, 2003.

Application Deadline: February 3, 2004.

Project Award Date: August 1, 2004.

Competition Title: Grants for Violence-Related Injury Prevention Research: Youth Violence, Suicide, Intimate Partner Violence, and Sexual Violence.

Program Announcement Number: 04045.

CFDA Number: 93.136.

Program Contact Person: Paul Smutz.

E-Mail Address: pos1@cdc.gov.

Phone Number: (770) 488–1508.

Competition Description: NCIPC is soliciting investigator-initiated research that will help expand and advance our understanding of violence, its causes, and prevention strategies. The following research themes are the focus of this investigator-initiated solicitation:

1. Evaluate strategies for disseminating and implementing evidence-based interventions or policies for the prevention of child maltreatment or youth violence;

2. Evaluate the efficacy and effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence (includes both sexual violence against adults and child sexual abuse), child maltreatment, youth violence or suicidal behavior; and

3. Identify shared and unique risk and protective factors for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behavior, and examine the relationships among these forms of violence.

Eligible Applicants: Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organization, and small, minority, and/or women-owned businesses. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $2,600,000.

Estimated Number of Awards to be MADE: 9.

Estimated or Average Size of Each Award: $275,000.

Estimated Project Period: 3 Years.

Application Availability Date: November 3, 2003.

Application Deadline: February 3, 2004.

Project Award Date: August 1, 2004.

Competition Title: Grants for New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Biomechanics, and Acute Care,

Disability, and Rehabilitation-Related Research.

Program Announcement Number: 04046.

CFDA Number: 93.136.

Program Contact Person: Paul Smutz.

E-Mail Address: pos1@cdc.gov.

Phone Number: (770) 488–1508.

Competition Description: Consideration of research that addresses one of the following research areas:

(1) Violence-dissemination and implementation of interventions for violence prevention; effectiveness of interventions, programs, and policies to prevent violence; risk and protective factors for violence perpetration.

(2) Unintentional Injury-Dissemination of effective interventions; evaluation of the usability of an intervention package for moving effective interventions to practice and policy; effectiveness of interventions; identification of risk and protective factors for injuries; development of measures of supervision and sports injuries.

(3) Acute Care, Disability, and Rehabilitation-evaluation of protocols for onsite interventions and linkage to offsite services for patients at risk of injury or psychological problems following injury; identify of strategies to ensure people with SCI and TBI receive services; evaluation of injury clinical information systems.

(4) Biomechanics-build on the basic knowledge of biomechanics and encourage interdisciplinary intervention oriented injury control research as supported in the CDC Injury Research Agenda.

Eligible Applicants: Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities and colleges (including but not limited to schools or departments of public health, medicine, nursing, criminal justice, bioengineering, or the behavioral or social sciences), technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organization, and small, minority, and/or women-owned businesses. Applicants must have a research or a health-professional doctorate-level degree from an accredited program and have demonstrated the capacity or potential for highly productive research in the period after the doctorate, commensurate with level of experience. Applicants who have been the principal investigator on an R01 or R01 equivalent health-related research grant or who have had equivalent injury related research support from an existing Injury Control Research Center (ICRC) are not eligible. Recipients of dissertation research grants or NIH Small Grant Awards are eligible to apply.

Estimated Amount of This Competition: $400,000.

Estimated Number of Awards to be Made: 4.

Estimated or Average Size of Each Award: $100,000.

Estimated Project Period: 1 Year.

Application Availability Date: November 3, 2003.

Application Deadline: February 3, 2004.

Project Award Date: August 1, 2004.

Competition Title: Grants for Traumatic Injury Biomechanics Research.

Program Announcement Number: 04047.

CFDA Number: 93.136.

Program Contact Person: Paul Smutz.

E-Mail Address: pos1@cdc.gov.

Phone Number: (770) 488–1508.

Competition Description: Consideration of research that addressees the following: High priority: (1) Use biomechanics research and knowledge of injury tolerance and mechanisms to develop and/or evaluate interventions that address falls among children and the elderly, injuries in mass trauma events, sports/physical activity/recreation injuries, motorcycling/bicycling/pedestrian injuries and motor vehicle injuries to child occupants and older drivers; (2) Identify the biomechanics and specific injuries that would be highly predictive of diagnoses of intimate partner violence and child maltreatment, and improve case definitions. Lower priority: (1) Advance the biomechanical understanding of traumatic injury though biofidelic model development, injury assessment technology improvements, and research into injury mechanisms and biomechanical responses; (2) Define human tolerance limits for injury with respect to age, fitness and gender; define injury tolerance of tissue, bone, and other structures for developing interventions; (3) Identify modifiable risk factors for and mechanisms of nonfatal neck, back, and soft tissue (whiplash-like) injuries.

Eligible Applicants: Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organization, and small, minority, and/or women-owned businesses. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $1,100,000.

Estimated Number of Awards to be Made: 3–4.

Estimated or Average Size of Each Award: $275,000.

Estimated Project Period: 3 Years.

Application Availability Date: November 3, 2003.

Application Deadline: February 3, 2004.

Project Award Date: August 1, 2004.

Competition Title: Research Grants to Prevent Unintentional Injuries.

Program Announcement Number: 04048.

CFDA Number: 93.136.

Program Contact Person: Paul Smutz.

Phone Number: (770) 488–1508.

E-Mail Address: pos1@cdc.gov.

Competition Description: Consideration of research that addresses the following:

1. Develop methods to better define and measure supervision, especially in children.

2. Evaluate existing and develop new methods to obtain exposure and injury incidence data for sports, exercise and recreation-related injuries.

3. Identify risk and protective factors related to childhood falls, safe motor vehicle use by older adults, or car crashes involving teens.

4. Evaluate environmental, behavioral, legislative, or regulatory interventions to prevent injuries related to sports, exercise, and, recreation or pedestrian crashes.

5. Develop and evaluate the usability of an intervention package for moving effective interventions to public health practice and policy, especially for older adult falls prevention or transportation safety.

6. Evaluate strategies to increase dissemination of effective interventions to reduce injuries that: Are related to alcohol-impaired driving; occur at home and in the community; are due to falls at home among older community-dwelling adults; or sports, recreation and exercise-related.

Eligible Applicants: Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organization, and small, minority, and/or women-owned businesses. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $800,000.

Estimated Number of Awards to be Made: 3.

Estimated or Average Size of Each Award: $265,000.

Estimated Project Period: 3 Years.

Application Availability Date: November 3, 2003.

Application Deadline: February 3, 2004.

Project Award Date: August 1, 2004.

Competition Title: Grants for Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities.

Program Announcement Number: 04049.

CFDA Number: 93.136.

Program Contact Person: Paul Smutz.

E-Mail Address: pos1@cdc.gov.

Phone Number: (770) 488–1508.

Competition Description: To achieve the purpose of this program, the recipient will be responsible for one of the following activities:

Violence

(1) Evaluating strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence, youth violence, suicide, and child maltreatment.

(2) Evaluating the efficacy, effectiveness, and cost effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence, youth violence, suicide, and child maltreatment.

(3) Identifying shard and unique risk and protective factors for the perpetration of intimate partner violence and sexual violence and examine the relationships among these forms of violence and others such as child maltreatment, youth violence, or suicidal behavior.

Unintentional Injury

Dissemination of effective interventions; evaluation of the usability of an intervention package for moving effective interventions to practice and policy; effectiveness of interventions; identification of risk and protective factors for injuries; development of measures of supervision and sports injuries.

Eligible Applicants: Assistance will be provided to any United States public or private institution. The institution must support an accredited doctoral level training program. The performance site must be domestic. Applicants must be students in good standing enrolled in an accredited doctoral degree program. The applicant must have the authority and responsibility to carry out the proposed project. Applicants must be conducting or intending to conduct research in one of the areas described under the ''Research Objectives'' in the Program Requirement's section of this announcement. To receive this funding, applicants must have successfully defended their dissertation proposal. This must be verified in a letter of certification from the mentor (the chair or another member of the dissertation committee). CDC requests that, if available, the letter of certification be submitted with the grant application, or before the negotiation and award.

Estimated Amount of This Competition: $120,000.

Estimated Number of Awards to be Made: 6.

Estimated or Average Size of Each Award: $20,000.

Estimated Project Period: 1 Year.

Application Availability Date: November 3, 2003.

Application Deadline: February 3, 2004.

Project Award Date: August 1, 2004.

National Immunization Program (NIP)

Competition Title: National Minority Organizations Immunization Projects.

Program Announcement Number: 04051.

CFDA Number: 93.185.

Program Contact Person: Valerie Morelli.

E-Mail Address: VMorelli@cdc.gov.

Phone Number: (404) 639–8091.

Competition Description: The purpose of this cooperative agreement is to assist National Minority Organizations (NMOs) with the promotion and improvement of childhood, adolescent, and adult immunization coverage levels. Applicants must allocate a percentage of the funds awarded to subcontract with affiliate minority Community Based Organizations (CBOs). Focus is on technical assistance to and training of CBOs to identify and document effective models of collaboration at the community level to improve immunization access and levels among racial and ethnic minorities. Other requirements include development and dissemination of education products to be shared with other national organizations, State and local health agencies, and other CBOs. Development and implementation of a plan to ensure sustainability of program activities to ensure its continuation after the end of the project period is also necessary.

Eligible Applicants: Established, tax-exempt national organizations that coordinate public health or related programs serving racial or ethnic minority populations within a major portion or region of the United States through their own offices or organizational affiliates. Faith-based organizations are eligible to apply for these funds. Groups recognized as racial and ethnic minorities include (but are not limited to) African Americans, Alaskan Natives, Asian Americans, Caribbean Americans, Latinos/Hispanics, Native Americans, and Pacific Islanders.

Estimated Amount for This Competition: $750,000.

Estimated Number of Awards to be Made: 3.

Estimated or Average Size of Each Award: $250,000.

Estimated Project Period: 3 years.

Application Availability Date: January 2004.

Application Deadline: March 2004.

Projected Award Date: July 1, 2004.

National Institute for Occupational Safety and Health (NIOSH)

Competition Title: Occupational Safety and Health Research Grants—Investigator-Initiated (R01).

Program Announcement Number: NIOSH–1.

CFDA Number: 93.262 (R01).

Program Contact Person: Michael Galvin.

E-Mail Address: MGalvin@cdc.gov.

Phone Number: (404) 498–2524.

Competition Description: NIOSH supports research to identify and investigate the relationships between hazardous working conditions and associated occupational diseases and injuries; to develop more sensitive means of evaluating hazards at work sites, as well as methods for measuring early markers of adverse health effects and injuries; to develop new protective equipment, engineering control technology, and work practices to reduce the risks of occupational hazards; and, to evaluate the technical feasibility or application of a new or improved occupational safety and health procedure, method, technique, or system.

The announcement for this program is published in the *NIH Guide.* See *http://www.cdc.gov/niosh* for links to the announcements.

Eligible Applicants: Eligible applicants include domestic and foreign, public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, and other public and private organizations, including state and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Racial/ethnic minority individuals, women, and persons with disabilities are encouraged to apply as Principal Investigators. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $38,000,000.

Estimated Number of Awards To Be Made: 50.

Estimated or Average Size of Each Award: $30,000 to $400,000, average $300,000.

Estimated Project Period: Contact NIOSH Extramural Program Office, *http://www.cdc.gov/niosh/extramur.html.*

Application Availability Date: Contact NIOSH Extramural Program Office, *http://www.cdc.gov/niosh/extramur.html.*

Application Deadline: All (new) February 3, June 1, and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004, July 1, 2004, and November 1, 2004.

Project Award Date: From 4 to 5 months, with an additional 4 to 5 months for program review and funding.

Competition Title: Occupational Safety and Health Research Grants—Special Emphasis Research Career Award (K01).

Program Announcement Number: NIOSH–2.

CFDA Number: 93.262 (K01).

Program Contact Person: Gwendolyn Cattledge.

E-Mail Address: GCattledge@cdc.gov.

Phone Number: (404) 498–2508.

Competition Description: Special Emphasis Research Career Award (SERCA) Grants (K01) are an important mechanism used in the occupational safety and health research grants program to attract new investigators into occupational safety and health. NIOSH supports research to identify and investigate the relationships between hazardous working conditions and associated occupational diseases and injuries; to develop more sensitive means of evaluating hazards at work sites, as well as methods for measuring early markers of adverse health effects and injuries; to develop new protective equipment, engineering control technology, and work practices to reduce the risks of occupational hazards; and to evaluate the technical feasibility or application of a new or improved occupational safety and health procedure, method, technique, or system.

Eligible Applicants: Eligible applicants include domestic and foreign, public and private nonprofit and for-profit organizations and governments and their agencies; that is, universities, colleges, research institutions, hospitals, and other public and private organizations, including state and local

governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Racial/ethnic minority individuals, women, and persons with disabilities are encouraged to apply as Principal Investigators. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $4,000,000.

Estimated Number of Awards To Be Made: 20.

Estimated or Average Size of Each Award: $30,000 to $400,000, average $200,000.

Estimated Project Period: Contact NIOSH Extramural Program Office, *http://www.cdc.gov/niosh/extramur.html.*

Application Availability Date: Contact NIOSH Extramural Program Office, *http://www.cdc.gov/niosh/extramur.html.*

Application Deadline: All (new) February 3, June 1, and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004, July 1, 2004, and November 1, 2004.

Project Award Date: From 4 to 5 months, with an additional 4 to 5 months for program review and funding.

Competition Title: Occupational Safety and Health Research Grants—Small Grants (R03).

Program Announcement Number: NIOSH–3.

CFDA Number: 93.262 (R03).

Program Contact Person: Michael Galvin.

E-Mail Address: MGalvin@cdc.gov.

Phone Number: (404) 498–2524.

Competition Description: The NIOSH Small Grant (R03) program is one of the mechanisms used in the occupational safety and health research grants program. NIOSH supports research to identify and investigate the relationships between hazardous working conditions and associated occupational diseases and injuries; to develop more sensitive means of evaluating hazards at work sites, as well as methods for measuring early markers of adverse health effects and injuries; to develop new protective equipment, engineering control technology, and work practices to reduce the risks of occupational hazards; and to evaluate the technical feasibility or application of a new or improved occupational safety and health procedure, method, technique, or system.

Eligible Applicants: Eligible applicants include domestic and foreign, public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, and other public and private organizations, including State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Racial/ethnic minority individuals, women, and persons with disabilities are encouraged to apply as Principal Investigators. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $4,000,000.

Estimated Number of Awards to be Made: 30.

Estimated or Average Size of Each Award: $30,000 to $200,000, average $130,000.

Estimated Project Period: Contact NIOSH Extramural Program Office or visit *http://www.cdc.gov/niosh/extramur.html.*

Application Availability Date: Contact NIOSH Extramural Program Office or visit *http://www.cdc.gov/niosh/extramur.html.*

Application Deadline: All (new) February 3, June 1, and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004, July 1, 2004, and November 1, 2004. To request application: Please contact NIOSH Extramural Program Office or visit *http://www.cdc.gov/niosh/extramur.html.*

Project Award Date: From 4 to 5 months, with an additional 4 to 5 months for program review and funding.

Competition Title: Occupational Safety and Health Research Grants-Exploratory and Developmental (R21).

Program Announcement Number: NIOSH–4.

CFDA Number: 93.262 (R21).

Program Contact Person: Michael Galvin.

E-Mail Address: MGalvin@cdc.gov.

Phone Number: (404) 498–2524.

Competition Description: Exploratory and Developmental (R21) research program is another mechanism used in the occupational safety and health research grants program. NIOSH supports research to identify and investigate the relationships between hazardous working conditions and associated occupational diseases and injuries; to develop more sensitive means of evaluating hazards at work sites, as well as methods for measuring early markers of adverse health effects and injuries; to develop new protective equipment, engineering control technology, and work practices to reduce the risks of occupational hazards; and, to evaluate the technical feasibility or application of a new or improved occupational safety and health procedure, method, technique, or system.

Eligible Applicants: Eligible applicants include domestic and foreign, public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, and other public and private organizations, including state and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Racial/ethnic minority individuals, women, and persons with disabilities are encouraged to apply as Principal Investigators. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $4,000,000.

Estimated Number of Awards to be Made: 25.

Estimated or Average Size of Each Award: $30,000 to $200,000, average $150,000.

Estimated Project Period: Contact NIOSH Extramural Program Office.

Application Availability Date: Contact NIOSH Extramural Program Office.

Application Deadline: All (new) February 3, June 1, and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004, July 1, 2004, and November 1, 2004. For request for application: Please contact program office or visit *http://www.cdc.gov/niosh/extramur.html.*

Project Award Date: From 4 to 5 months, with an additional 4 to 5 months for program review and funding.

Competition Title: Occupational Safety and Health Training.

Program Announcement Number: 04001.

CFDA Number: 93.263.

Program Contact Person: John Talty.

E-Mail Address: jtalty@cdc.gov.

Phone Number: (513) 533–4687.

Competition Description: The National Institute for Occupational Safety and Health (NIOSH) is mandated to provide an adequate supply of qualified personnel to carry out the purposes of the Occupational Safety and Health Act. The specific purpose of this program is to provide financial assistance to eligible applicants to assist in providing an adequate supply of qualified professional occupational safety and health personnel. The objective is to develop specialized professional and paraprofessional personnel in the occupational safety and health field with training in occupational medicine, occupational health nursing, industrial hygiene, and occupational safety. Projects are funded to support Occupational Safety and Health Education and Research Center Training Grants (ERCs) and Long-Term Training Project Grants (TPGs). ERCs are academic institutions that provide interdisciplinary graduate training and continuing education in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields. The ERCs also serve as regional resource centers for industry, labor, government, and the public. TPGs are academic institutions that primarily provide single-discipline graduate training in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields.

Eligible Applicants: Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and any other U.S. Territory or Trust Territory not named herein are eligible to apply for an institutional training grant. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $4,000,000.

Estimated Number of Awards to be Made: 12.

Estimated or Average Size of Each Award: ERC Grants: range: $400,000 to $800,000; average $600,000. Other: $20,000 to $500,000, average $58,000.

Estimated Project Period: Up to five years.

Application Availability Date: April 2003.

Application Deadline: July 1, 2004.

Project Award Date: FY 2004. Contact program office for updated information or visit *http://www.cdc.gov/niosh/extramur.html.*

Competition Title: Health and Safety Programs for Construction Work.

Program Announcement Number: NIOSH–5.

CFDA Number: 93.955.

Program Contact Person: Michael Galvin.

E-Mail Address: MGalvin@cdc.gov.

Phone Number: (404) 498–2524.

Competition Description: The purposes of this cooperative agreement are to develop, implement, and evaluate a national research program in prevention intervention effectiveness research and preventive service systems research in construction safety and health. Many of the National Occupational Research Agenda (NORA) priority areas are relevant to the construction industry and should be considered when responding to this Request for Assistance. These include, preventing hearing loss, back disorders, asthma, and dermatitis and reducing or eliminating traumatic injuries (caused by falls, electrocutions, struck-bys or contact with materials/objects). In addition, other high priority problems in construction are not explicitly included in NORA, such as silicosis and lead poisoning, which should be addressed. The overall project will respond to problems that are specific to different regions, different trades, and different industry sectors.

Eligible Applicants: Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, state and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $5,000,000.

Estimated Number of Awards to be Made: 1 or 2.

Estimated or Average Size of Each Award: $5,000,000.

Estimated Project Period: 3 to 5 years depending on availability of funds, with budget periods of 12 months.

Application Availability Date: November 2003. Contact program office for updated information or visit *http://www.cdc.gov/niosh/extramur.html.*

Application Deadline: February 3, 2004.

Project Award Date: FY 2004. Contact program office for updated information or visit *http://www.cdc.gov/niosh/extramur.html.*

Competition Title: Surveillance Program.

Program Announcement Number: NIOSH–6.

CFDA Number: 93.957.

Program Contact Person: Gwendolyn Cattledge.

E-Mail Address: GCattledge@cdc.gov.

Phone Number: (404) 498–2508.

Competition Description: To (1) Recognize new hazards; (2) define the magnitude of the problem; (3) follow trends in incidence; (4) target exceptional hazardous workplaces for intervention; and (5) evaluate the effectiveness of prevention efforts. The goal of this program is to prevent selected occupational morbidity and mortality by evaluating work situations at high risk and formulating and disseminating prevention strategies to those who can intervene in the workplace.

Eligible Applicants: Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, state and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

Estimated Amount of This Competition: $500,000.

Estimated Number of Awards to be Made: varies.

Estimated or Average Size of Each Award: Surveillance program $100,000 to $200,000, average $150,000.

Estimated Project Period: Awards may be made up to 4 years as indicated below depending on availability of funds, with budget periods of 12 months. Surveillance program-up to 4 years.

Application Availability Date: Contact NIOSH Extramural Program Office or visit *http://www.cdc.gov/niosh/extramur.html.*

Application Deadline: April 1, 2004.

Project Award Date: Contact NIOSH Extramural Program Office or visit *http://www.cdc.gov/niosh/extramur.html.*

Dated: September 30, 2003.

Edward J. Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–25240 Filed 10–6–03; 8:45 am]

BILLING CODE 4163–18–P

Federal Register

Tuesday,
October 7, 2003

Part IV

Department of Housing and Urban Development

24 CFR Part 203

Up-Front Mortgage Insurance Premiums for Loans Insured Under Sections 203(k) and 234(c) of the National Housing Act; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4749–P–01]

RIN 2502–AH82

Up-Front Mortgage Insurance Premiums for Loans Insured Under Sections 203(k) and 234(c) of the National Housing Act

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD charges an up-front mortgage insurance premium (MIP) for loans that are obligations of its mutual mortgage insurance fund, and of its general insurance fund only for insurance in connection with Section 8 homeownership. However, to date there has been no provision for up-front premiums for loans such as home rehabilitation loans under section 203(k) of the National Housing Act (NHA) and condominium unit loans under section 234(c) which are obligations of the general insurance fund. Recent statutory changes now provide for an up-front MIP for those programs. This rule amends HUD's regulations related to mortgage insurance to conform the regulations to the recent statutory changes.

DATES: *Comment Due Date:* December 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, at (202) 708–2121 (this is not a toll-free number). Persons with hearing- or speech-impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

Section 203(c) of the National Housing Act (NHA) authorizes the Secretary to set the premium charge for insurance of mortgages under Title II of the NHA. Prior to a recent statutory change, section 203(c)(2) provided for the establishment of an up-front premium for mutual mortgage insurance programs not to exceed 2.25 percent of the amount of the original insured principal obligation of the mortgage. The Fiscal Year (FY) 2002 HUD Appropriations Act (Pub. L. 107–73, approved November 26, 2001), amended this authority. Specifically, section 207 of the FY 2002 HUD Appropriations Act amended section 203(c) of the NHA to include mortgages insured under section 203(k) (rehabilitation loans) and section 234(c) (condominium loans) among those mortgages for which HUD collects a premium payment not to exceed 2.25 percent of the amount of the original insured mortgage (or not to exceed 2.0 percent for a first-time homebuyer who completes an approved program of homeownership counseling) at the time of insurance. Finally, the statutory amendments that are the subject of this rule only apply to mortgages that are executed after the date of enactment of the law, which was November 26, 2001. HUD, however, will only collect up-front premiums for 203(k) and 234(c) loans originated after the effective date of the final rule.

B. This Proposed Rule

This proposed rule would amend relevant sections of HUD's regulations in 24 CFR part 203 to conform these regulations to the statutory changes. Specifically, this proposed rule would amend regulations at 24 CFR 203.284(a) and 203.285(a), on up-front premiums, and § 203.50, on rehabilitation loans under section 203(k). Part 234, which relates to condominium mortgage insurance, incorporates by reference at § 234.255 the provisions of 24 CFR 203.284 and 203.285, and, therefore, will include the latest revisions, so that further revision of part 234 is unnecessary. Transition provisions in 24 CFR 203.284 and 203.285 for older mortgage loans will remain as published in the April 1, 2003, edition of title 24 of the Code of Federal Regulations.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no new obligations of any kind, but only changes the scheduling and conditions of premium payment obligations, requiring an up-front payment instead of monthly payments. Generally, these amounts are amortized in the mortgage and ultimately impose no obligations on businesses.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''), which the President issued on September 30, 1993. This rule was determined economically significant under E.O. 12866. Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. The Economic Analysis prepared for this rule is also available for public inspection in the Regulations Division.

Environmental Impact

This proposed rule involves the discretionary establishment of a rate or cost determination and related external administrative or fiscal requirements, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Order are met. This rule does not have federalism implications and does not

impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Congressional Review of Final Rules

This rule constitutes a ''major rule'' as defined in the Congressional Review Act (5 U.S.C. Chapter 8). At the final rule stage, this rule will have a 60-day delayed effective date and be submitted to Congress in accordance with the requirements of the Congressional Review Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to this rule is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

Subpart A—Eligibility Requirements and Underwriting Procedures

2. Amend 24 CFR 203.50 by adding a paragraph (m) to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

* * * * *

(m) With regard to loans under this section executed on or after [the effective date of the final rule], the Commissioner shall charge an up-front and annual MIP in accordance with 24 CFR 203.284 or 203.285, whichever is applicable.

Subpart B—Contract Rights and Obligations

3. Amend 24 CFR 203.284 by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 203.284 Calculation of up-front and annual MIP on or after July 1991.

* * * * *

(a) *Permanent provisions.* Any mortgage executed on or after October 1, 1994, that is an obligation of the Mutual Mortgage Insurance Fund, as well as any mortgage executed after [the effective date of the final rule], which is insured under sections 203(k) or 234(c) of the National Housing Act (12 U.S.C. 1709 (k) and 12 U.S.C. 1715y(c)) shall be subject to the following requirements:

* * * * *

(b) *Transition provisions; savings provision.* Mortgages that are obligations of the Mutual Mortgage Insurance Fund and that were insured during Fiscal Years 1991–1994, are governed by 24 CFR 203.284(b) as in effect on April 1, 2003, (see 24 CFR parts 200–499 revised as of April 1, 2003).

* * * * *

4. Amend 24 CFR 203.285 by revising the first sentence of paragraph (a) to read as follows:

§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.

(a) *Up-front.* Any mortgage for a term of 15 or fewer years executed on or after December 26, 1992, that is an obligation of the Mutual Mortgage Insurance Fund, and any mortgage executed on or after [the effective date of the final rule], to be insured under sections 203(k) and 234(c) of the National Housing Act, shall be subject to a single up-front premium payment established and collected by the Commissioner in an amount not exceeding 2.0 percent of the amount of the original insured principal obligation of the mortgage. * * *

* * * * *

Dated: September 9, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–25214 Filed 10–6–03; 8:45 am]

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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.R. 659/P.L. 108–91

Hospital Mortgage Insurance Act of 2003 (Oct. 3, 2003; 117 Stat. 1158)

H.R. 978/P.L. 108–92

To amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes. (Oct. 3, 2003; 117 Stat. 1160)

S. 111/P.L. 108–93

To direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes. (Oct. 3, 2003; 117 Stat. 1161)

S. 233/P.L. 108–94

Coltsville Study Act of 2003 (Oct. 3, 2003; 117 Stat. 1163)

S. 278/P.L. 108–95

Mount Naomi Wilderness Boundary Adjustment Act (Oct. 3, 2003; 117 Stat. 1165)

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